Decision 06-06-048 June 29, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) for Authority to Make Various Electric Rate Design Changes, Close Certain Rates, and Revise Cost Allocation Among Customer Classes Effective, January 1, 2006.	Application 05-02-019 (Filed February 18, 2005)

OPINION GRANTING INTERVENOR COMPENSATION TO THE UTILITY CONSUMERS ACTION NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 05-12-003

1. Summary

This decision awards the Utility Consumers' Action Network (UCAN) $51,625.98 for its substantial contributions to Decision (D.) 05-12-003, on San Diego Gas & Electric Company's (SDG&E) 2006 Rate Design Window for electricity service. This proceeding is closed.

2. Background

The Commission adopted the all-party settlement for the 2006 SDG&E Rate Design Window in D.05-12-003 and clarified that the settling parties' electricity rate design was adopted, but not any other ongoing ratemaking mechanism. The Commission found it was not necessary to adopt SDG&E's proposed Total Rate Adjustment Component (TRAC) mechanism and include it in the tariffs in order to adopt a reasonable rate design as proposed by the settling parties. The settlement includes a reduction in the cross-subsidies to residential customers by other commercial and industrial customers, and other

related allocations of costs among customer classes. The separate one-time cost reallocation component adopted in the settlement was instead identified as the 2006 Rate Design Settlement Component. The Commission otherwise found that the settlement's electricity rate design successfully moves towards cost-based rates, lessening cross subsidies between rate classes.

UCAN actively participated in evidentiary hearings, examined SDG&E's application and testimony, and was a participant in the all-party settlement.

3. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812,[1] requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may collect the amount awarded from its ratepayers.

To be compensated, an intervenor must satisfy all of the following procedures and criteria:

a. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (Notice) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)

b. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

c. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)

[1] All code references are to the California Pub. Util. Code.

d. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)

e. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1801(1), 1803(a).)

f. The claimed fees and costs are reasonable and are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items a-d above are combined, followed by separate discussions on Items e and f.

4. Procedural Issues

A prehearing conference was held on April 13, 2005. UCAN filed a timely Notice on April 26, 2005. On June 29, 2005, Administrative Law Judge (ALJ) Long ruled that UCAN is a customer pursuant to § 1802(b)(1)(C), and meets the financial hardship condition under § 1804(b)(1). UCAN filed a request for compensation on December 16, 2005, within 60 days of D.05-12-003 being issued. UCAN has therefore satisfied all the procedural requirements necessary to make its request for compensation.

5. Substantial Contribution

We look at several things to evaluate whether a customer made a substantial contribution. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (*See* § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller

record that assisted the Commission in making its decision? (*See* §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

> In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission. (D.98-04-059, 79 CPUC2d, 628 at 653.)

D.05-12-003 adopted an all-party settlement, with one adjustment that did not affect the final rate design.[2] The Commission has previously recognized that where parties have engaged in case preparation and settlement activities, eligible parties may receive full compensation for pre-hearing activity, even where the settlement is not adopted. (D.96-05-064, p. 4.) However, in this case, UCAN's recommendations were recognized by the applicants and successfully incorporated into the adopted settlement.

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[2] The Commission rejected the inclusion of TRAC in the settlement rate design tariffs, indicating "(i)nclusion of the TRAC mechanism in the settlement and its subsequent inclusion in SDG&E's tariffs may unintentionally imply that the Commission has given its imprimatur to the proposed ratemaking mechanism and such implication could lead parties in the next rate design proceeding to approach the issue as if the TRAC was a Commission-approved process." (D.05-12-003, p. 14.) Instead, the Commission characterized the one-time rate effect for 2006 as the "2006 Rate Design Settlement Component." (*See* D.05-12-003, pp. 13-15.)

UCAN asserts that it raised four primary issues through the testimony of William Marcus, an expert witness. D.015-12-003 expressly notes the following contributions:

1. UCAN conducted the most detailed examination of the application (D.05-12-003, p. 10.)
2. UCAN proposed an alternate revenue allocation, but the results were similar so that the settlement did not resolve the methodological differences. (*Id.*, p. 17.)
3. UCAN proposed an alternate means of calculating marginal costs that will be presented in the next proceeding. (*Id.*, p. 16.)
4. The Commission found UCAN's concerns about the correlation of the customers' average peak demand worth additional study in the next proceeding. (*Id.*, p. 18.)

D.05-12-003 also notes UCAN's concerns about the TRAC and its observations contributed to the final decision which changed tariff language for the 2006 Rate Design Settlement Component. (*Id.*, p. 14.) The parties to the settlement acknowledged that under the Commission's Rules of Practice and Procedure (Rules) Rule 51.8, they could not bind the Commission in the future; however D.05-12-003 actively limits the settlement implementation to exclude references to TRAC in 2006 tariffs.[3]

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[3] (Rule 51.8) Adoption Binding, Not Precedential. Commission adoption of a stipulation or settlement is binding on all parties to the proceeding in which the stipulation or settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

The Commission's decision confirmed facts and remedies addressing the issues raised by UCAN, thus satisfying § 1802(h), under which an intervenor has made a substantial contribution when:

> ....in the judgment of the Commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions or specific policy or procedural recommendations presented by the customer.

The Commission noted regarding UCAN's contribution:

> UCAN conducted the most detailed examination by any of the parties, and it proposed significant changes to SDG&E's proposed cost allocation, marginal costs, and rate design. Having reviewed the prepared testimony of SDG&E and all other parties, we find that the proposed rate design included in the settlement is within the range of reasonable findings had the application been fully litigated. (D.05-12-003, pp. 10-11.)

UCAN settled the most contentious issues with SDG&E. With this settlement, we cannot gauge the cost per resolved issue as we might for a litigated outcome. SDG&E argued that "$128 million in annual residential subsidies"[4] from other customer classes were addressed in the application. Ultimately, the settlement's reallocation of costs adopted by the Commission resulted in a residential allocation increase capped by the settlement at 2% of total costs. (D.05-12-003, p. 8.) Other issues, less easily quantified, were also settled.

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[4] Ex. SDG&E-4, p. WGS-8.

When UCAN participated in the settlement, it contributed to mitigating the rate impact on the customers it represents. UCAN's participation was critical to this proceeding[5] and we therefore find that UCAN made a substantial contribution to D.05-12-003.

6. Reasonableness of Requested Compensation

In general, the components of this request must constitute reasonable fees and costs directly associated with the customer's preparation for and participation in a proceeding that resulted in the substantial contribution. The issues we consider to determine reasonableness are discussed below.

6.1. Time and Cost of a Substantial Contribution

In addition to its own attorney Michael Shames, UCAN engaged the services of outside economists William Marcus and Jeffrey Nahigian of JBS Energy Inc. (JBS), and Erik Woychik of Strategy Integration (SI). The Division of Ratepayer Advocates (DRA),[6] and third parties such as customer intervenors, have the right to examine whether SDG&E's rate design proposal was reasonable. When the Commission concludes that an eligible intervenor such as UCAN made a substantial contribution to a decision, the customer may recover

[5] The decision also noted: "…UCAN affirmatively represented small commercial and residential customers, sponsoring the most detailed testimony besides SDG&E,…" (Page 12.)

[6] Effective January 1, 2006, the Office of Ratepayer Advocates became the Division of Ratepayer Advocates, pursuant to Senate Bill 608.

its reasonable fees and other costs related to that contribution. UCAN requests $51,625.98[7] as follows:

Requested Hourly Rates and Costs

	Year	Rate	Hours Billed	Total Fees
UCAN - Shames	2005	$300	89.4	$26,820.00
SI – Woychik	2005	$185	76.4	$14,134.00
JBS Energy – Marcus	2005	$210	38.83	$ 8,154.30
JBS Energy – Nahigian	2005	$155	10.5	$ 1,627.50
Miscellaneous	2005			$ 890.18
Total Request				**$51,625.98**

As detailed below, UCAN organized its costs in four categories: (1) General Preparation; (2) Revenue Allocation; (3) Marginal Cost; and (4) Post hearings.

Costs Allocated by Issue					
	General Preparation	Revenue Allocation	Marginal Costs	Post-Hearing	Total
UCAN	$10,728.00 40%	$2,682.00 10%	$ 2,682.00 10%	$10,728.00 40%	$26,820.00 100%
SI	$ 3,533.50 25%		$10,600.50 75%		$14,134.00 100%

[7] UCAN made a $90 math error, acknowledged by e-mail to the ALJ on December 19, 2005. $51,715.98 shown in the Request is incorrect; the error was in total labor cost for JBS Energy.

JBS Energy		$4,812.15 50%	$ 4,812.15 50%		$ 9,781.80 100%
Miscellaneous					$ 890.18
Total	$14,.261.50	$7,494.15	$18,094.65	$10,728.00	**$51,625.98**

UCAN documented its claimed hours by presenting a breakdown of the hours by category and a brief description of each activity for each attorney or economist. The detailed explanation of the hours describes the work task with reference to the litigated issues and the hourly breakdown reasonably supports the claim for total hours. UCAN's request is reasonable based on these records.

6.2 Market Rate Standard

To determine compensation, we consider the market rates for similar services from comparably qualified persons.

UCAN requests an hourly rate of $300 for attorney Shames for work performed in 2005. We previously approved this rate in D.06-01-034 and adopt it here. This rate is also consistent with D.05-11-031,[8] which set principles and guidelines for determining 2005 hourly rates for intervenors' representatives.

UCAN requests hourly rates in 2005 for JBS economists Marcus at $210, and Nahigian at $155. We previously approved these rates in D.06-04-012 and adopt them here. These rates are also consistent with D.05-11-031. UCAN requests an hourly rate of $185 for SI economist Woychik for 2005. We

[8] Dated November 18, 2005, in Rulemaking (R.) 04-10-010, filed October 7, 2004. *Rulemaking to Set Hourly Rates for Purposes of Calculating Intervenor Compensation Awards, Pursuant to Public Utilities Code Section 1801 and Following, for Work Performed in Calendar Year 2005*.

previously approved this rate for Woychik for 2004 in D.05-10-031. This rate is consistent D.05-11-031, and we adopt it here for 2005.

The table below details the hourly rates and fees adopted in today's decision.

Adopted Hourly Rates and Costs

	Year	Rate	Hours Billed	Total Fees
UCAN - Shames	2005	$300	89.4	$26,820.00
SI - Woychik	2005	$185	76.4	$14,134.00
JBS Energy – Marcus	2005	$210	38.83	$ 8,154.30
JBS Energy - Nahigian	2005	$155	10.5	$ 1,627.50
Miscellaneous	2005			$ 890.18
Total Request				$51,625.98

6.3 Productivity

To assist us, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable cost to the benefits of their participation. The costs should bear a reasonable relationship to the benefits of their participation.

UCAN was a significant participant in the settlement – it raised more substantive issues than any other party, including DRA. UCAN performed the most comprehensive review, and all of its recommendations were reflected within the settlement or in the final tariff modification (eliminating reference to TRAC). Overall, we find that the costs of UCAN's participation in this proceeding were minor compared to the ratepayer interests at stake.

6.4 Direct Expenses

UCAN itemized $890.18 in direct expenses which include costs for travel, photocopying, postage, etc. The cost breakdown shows the direct expenses to be commensurate with the work performed and we find these costs reasonable.

7. Award

We award UCAN $51,625.98 as compensation for its contributions to D.05-12-003. Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) beginning on March 1, 2006, the 75th day after UCAN filed its compensation request, and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. UCAN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

9. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

10. Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding.

Findings of Fact

1. UCAN satisfied the procedural requirements necessary to claim compensation in this proceeding.

2. UCAN made a substantial contribution to D.05-12-003 on SDG&E's 2006 electricity Rate Design Window, as described.

3. The hours and itemized direct expenses claimed by UCAN were reasonable and consistent with the scope of its participation in this proceeding.

4. The total of the reasonable compensation is $51,625.98.

5. The appendix to today's decision summarizes this award.

Conclusions of Law

1. UCAN fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to its claimed compensation incurred in making substantial contributions to D.05-12-003.

2. UCAN should be awarded $51,625.98 for its contribution to D.05-12-003.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that UCAN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Utility Consumers' Action Network (UCAN) is awarded $51,625.98 as compensation for its substantial contributions to Decision (D.) 05-12-003.

2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall pay UCAN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as

reported in Federal Reserve Statistical Release H.15, beginning on March 1, 2006, the 75th day after the filing date of UCAN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. Application 05-02-019 is closed.

This order is effective today.

Dated June 29, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D0606048	**Modifies Decision?**
Contribution Decision(s):	D0512003	
Proceeding(s):	A0502019	
Author:	ALJ Long	
Payer(s):	San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Utility Consumers' Action Network, (UCAN)	12/16/05	$51,715.98	$51,625.98	No	Math error ($90).

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michael	Shames	Attorney	UCAN	$300	2005	$300
Eric	Woychic	Economist	UCAN	$185	2005	$185
Jeffrey	Nahigian	Economist	UCAN	$155	2005	$155
William	Marcus	Economist	UCAN	$210	2005	$210

(END OF APPENDIX)