Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U-902-E) for Adoption of an Advanced Metering Infrastructure Deployment Scenario and Associated Cost Recovery and Rate Design.	Application 05-03-015 (Filed March 15, 2005)

DECISION GRANTING INTERVENOR COMPENSATION TO THE UTILITY CONSUMERS' ACTION NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 07-04-043

This decision awards the Utility Consumers' Action Network $460,324 in compensation for its substantial contributions to Decision 07-04-043 in the second phase of this proceeding, a decrease of $5,967 from the amount originally requested.

1. Background

On March 15, 2005, San Diego Gas & Electric Company (SDG&E) filed Application (A.) 05-03-015, seeking approval of its Advanced Metering Infrastructure (AMI) Project deployment proposal and associated cost recovery and rate design. SDG&E entered into a settlement agreement with other active parties on the scope and funding for AMI pre-deployment activities, which the Commission approved in Decision (D.) 05-08-028. With the permission of Administrative Law Judge (ALJ) Cooke, SDG&E served updated testimony on its AMI deployment proposal on March 28, 2006. On July 14, 2006, SDG&E served amendments to its testimony. The Division of Ratepayer Advocates

(DRA) and the Utility Consumers' Action Network (UCAN) served testimony on August 14, 2006, and SDG&E served its rebuttal testimony on September 7, 2007. Evidentiary hearings were held September 25, 2006 through October 5, 2006, and the case was submitted on November 15, 2006, upon the filing of reply briefs. With a ruling issued on December 15, 2006, ALJ Gamson reopened the record to obtain further information, including information on the projected costs and benefits of SDG&E's proposal based on a set of assumptions specified in that ruling. SDG&E subsequently filed a motion requesting an extension of time in which to propose a settlement. On February 9, 2007, SDG&E filed a motion for approval of an all-party settlement agreement. Parties supported the settlement with written answers to questions provided in a ruling of ALJ Gamson issued on February 16, 2007, and testimony from evidentiary hearings held on February 27, 2007.

D.07-04-043 adopts the settlement between SDG&E, UCAN, and DRA on implementation and funding of AMI deployment in A.05-03-015, finding it to be reasonable in light of the whole record, consistent with law, and in the public interest. The settlement agreement proposes deployment funding of $572 million for AMI implementation, adds functionality to SDG&E's AMI proposal to increase its cost-effectiveness, and establishes an AMI Technology Advisory Panel (TAP) to review SDG&E's AMI deployment and new industry developments related to AMI technologies. The decision finds the all-party settlement to be cost-effective, and approves the funding and other terms of the settlement.

2. 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 adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor must 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).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. 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. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

[1] All subsequent references are to the Public Utilities Code unless otherwise indicated.

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

3. Procedural Issues

The PHC in this matter was held on June 16, 2005. UCAN filed its timely NOI on July 8, 2005. Section 1802(b)(1) defines a "customer" as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. In this case, UCAN is a customer as defined in Paragraph C: it is an organization authorized by its articles of incorporation to represent the interests of consumers, a majority of which are residential customers. In its NOI, UCAN asserted financial hardship.

On July 20, 2005, ALJ Cooke ruled that UCAN is a customer pursuant to § 1802(b)(1)(c), and found that UCAN meets the financial hardship condition, through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), by showing a finding to meet this requirement was made in another proceeding within one year of the commencement of this proceeding (ALJ Long's Ruling dated June 28, 2005). UCAN filed its request for compensation on April 26, 2007, less than 60 days after the issuance of D.07-04-043. No party opposed the request. In view of the above, we find that UCAN has satisfied all the procedural requirements necessary to make its request for compensation.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, we assess whether the Commission adopted one or more of the factual or legal contentions, or specific policy or

procedural recommendations put forward by the customer. (*See* § 1802(i).) Second, we consider, if the customer's contentions or recommendations paralleled those of another party, whether the customer's participation materially supplemented, complemented, or contributed 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:

> UCAN describes its contributions as follows:
>
> "First, UCAN examined the cost-effectiveness of the application and found a number of problems with SDG&E's representations … .
>
> "Secondly, UCAN focused upon the functionality requirement of the Commission for AMI applications. In its testimony, UCAN raised concerns about whether the proposed technologies in its AMI Project would accomplish meeting the Commission's functionality goals. It documented missed opportunities and the unduly narrow scope of SDG&E's AMI application. In support of this position, UCAN cosponsored a joint study conducted by University of San Diego (Smart Grid study) and presented a summary of its findings in the testimony of Michael Shames … .
>
> "Finally, UCAN also participated in the lengthy settlement talks that led to the all-party settlement submitted to the Commission on March 14, 2007 and adopted by the Commission on April 12, 2007 in D.07-03-048."[2]

Despite the fact that the deployment phase of this case was settled, parties provided testimony, and the final decision outlines the parties' litigation positions and uses them in an evaluation of SDG&E's original proposal. As

[2] UCAN Request, p. 2.

UCAN points out in its request, the Commission cites UCAN's contributions throughout the analysis of SDG&E's proposal in D.07-04-043. The Commission also acknowledges the contribution of the Smart Grid study initiated by UCAN (and later joined by SDG&E) in illustrating possible applications of AMI and related technology beyond the specific proposal advocated by SDG&E. Some of these potential improvements were integrated into the settlement agreement ultimately signed by SDG&E.

In addition, the settlement agreement adopted in D.07-04-043 addressed both of the major issues UCAN raised in its testimony, including UCAN's questions about the cost-effectiveness of SDG&E's original proposal and about whether SDG&E's proposed functionality was sufficient to meet the Commission's expressed goals. Many of UCAN's recommendations for addressing these concerns, some stemming from the Smart Grid study, were incorporated in the settlement and approved by the Commission in D.07-04-043.[3] Therefore, we find that UCAN made a substantial contribution to D.07-04-043.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

5. Reasonableness of Requested Compensation

UCAN requests compensation for its participation in this proceeding, as follows:

Advocate	Year	Rate	Hours	Total
Shames				

[3] UCAN recommendations adopted in the settlement agreement included the addition of technological advances and functionality, including the use of a Home Area Network chip and the creation of the TAP.

Advocate	Year	Rate	Hours	Total
	2005	$310	4.2	$ 1,302
	2006	$310	282.7	$ 87,637
	2007	$310	76.1	$ 23,591
Subtotal for Shames			363	$112,530
Marcus	2006	$220	44.84	$ 9,865
	2007	$235	0.92	$ 216
Schilberg	2005	$150	4.47	$ 670
	2006	$175	307.49	$ 53,811
	2007	$185	37.35	$ 6,910
Nahigian	2005	$140	4.5	$ 630
(January to March)	2006	$155	3.5	$ 543
(April to December)	2006	$165	324.6	$ 53,559
	2007	$175	57.85	$ 10,124
Ruszovan	2006	$165	25.3	$ 4,175
Smart Grid Study				$211,000
Miscellaneous				$ 2,258
TOTAL				**$466,291**

UCAN's calculations result in the slightly different amount of $466,309.41. We will base our calculations on the corrected requested amount in the table above. In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

5.1. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

UCAN documented its claimed hours by presenting a daily breakdown of the hours of its attorney and witness, Shames, accompanied by a brief description of each activity.

UCAN provided monthly invoices of the hours worked by its consultant, JBS Energy, Inc. (JBS). The JBS invoices provide only a total for the hours billed for the proceeding, but do not sufficiently specify the time period for which the invoice applies or the tasks and work performed during that time period. We will award full compensation of the hours requested for each of UCAN's consultants. UCAN is cautioned that in the future additional specificity of description of the services rendered is necessary for the hours claimed by its consultants, similar to the documentation it provided for attorney Shames. In summary, we will award compensation for $460,324.

5.2. Hourly Rates

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

UCAN seeks an hourly rate of $300 for work performed by Shames in 2005. We previously approved this rate for work performed by Shames in 2005 in

D.06-01-034. UCAN seeks an hourly rate of $310 for work performed by Shames in 2006 and 2007. We approved this rate in D.07-04-029 for 2006. UCAN asks that this $310 rate also be used for 2007 work performed by Shames in this proceeding, if the 4.2 hours (out of 363 total hours) performed in 2005 is compensated at the 2006 rate. Alternatively, UCAN seeks a 3% increase from 2006 rates for 76.1 hours of 2007 work (*i.e.*, from $310 to approximately $320). While an increase for 2007 may be appropriate, we find it reasonable to accept

UCAN's offer for a lower total amount, and compensate all of Shames' work at $310/hour.

UCAN seeks to use the hourly rates of JBS consultants William Marcus, Gayatri Schilberg, Jeffrey Nahigian, and Greg Ruszovan already approved by the Commission in cases in 2006 and 2007. The rates UCAN seeks are consistent with previous Commission decisions and are adopted here, except:

a. The requested hourly rate for Marcus in 2007 ($235) is higher than the previously approved rate. We will allow the approved $220/hour rate (D.08-01-038). This change reduces the total by $14,

b. The requested hourly rate for Nahigian for 2007 ($175) is higher than the previously approved rate. We will use the approved 2007 hourly rate of $165 (D.08-01-038). This change reduces the total by $579, and

c. The requested hourly rate for Schilberg for 2007 ($185) is higher than the previously approved rate. We will use the approved 2007 hourly rate of $175 (D.08-04-014) instead of the requested $185. This change reduces the total by $374.

The total adjustment for hourly rates is $967.

5.3. Smart Grid Study Expenses

UCAN is also seeking $206,000 (modified from its original request of $211,000) in compensation for its share of the costs of the University of San Diego (USD) Smart Grid study. The study was jointly sponsored and paid for by UCAN and SDG&E. UCAN states it entered into the contract with USD for purposes of presenting the report to the Commission in the Long-Term Resource Planning proceeding. However, due to changes in schedules, UCAN submitted the report in this proceeding in Shames' testimony and elsewhere.

UCAN acknowledges that it is unusual to submit a joint report in Commission hearings sponsored by both sides. However, UCAN claims it did

so in order to effectuate a common technical baseline for informed debate and to inform regulators of this knowledge baseline. UCAN submits that the joint report model as part of a contested proceeding is a model the Commission should support and encourage.

SDG&E supports the UCAN request related to the USD study for three reasons. First, SDG&E says it would not have contracted for the study in the absence of UCAN's advocacy. Second, the study was directly utilized in the settlement of the proceeding. Finally, SDG&E claims the study has proven useful to SDG&E's TAP which was formed as a part of the settlement in this proceeding.

SDG&E presented documentation that it directly paid $156,000 for its portion of the study's costs and was credited another $50,000 for work directly contributed by SDG&E staff. SDG&E's total contribution was $206,000, the same amount that UCAN is seeking here. SDG&E states that SDG&E and UCAN reached an agreement to split the costs of the study through informal verbal exchanges, formalized through the final agreements with USD. UCAN documented its costs of $211,000, later corrected to be $206,000, through invoices from USD. These invoices are consistent with UCAN's subcontract agreement with USD.

We turn to the reasonableness of UCAN's costs of the study (half of the total costs of the study). SDG&E states that two competitive bids were obtained and the lowest bid was selected. SDG&E also states that the billing rates in the bids were compared to a similar consulting engagement between SDG&E and its consultant on a comparable project. The Smart Grid project working group, comprised of SDG&E, USD and UCAN, jointly determined the scope of work and found the proposed rates to be reasonable.

It is difficult to determine whether UCAN's costs for the study were reasonable because we have no precedent for this type of arrangement. What is different here is that UCAN undertook the study and agreed to pay half the costs before this proceeding began. Further, UCAN intended for the study to be used in a different proceeding. UCAN took a risk of whether the study would be used at all, or would be found useful in a Commission proceeding. In this case, the study was admitted as an exhibit in the record and, as SDG&E confirms, significantly contributed to the final decision. As an example, in the settlement adopted by the Commission, specific language regarding the AMI Technology Advisory Project was taken directly from the Smart Grid study.[4]

While submission of this joint study by opposing parties is unusual, it is not different in function from joint exhibits, joint stipulations or other joint products routinely submitted by opposing parties in Commission proceedings. Such submissions are a normal part of the Commission's process. When one or more of the parties participating in these joint submissions is eligible for intervenor compensation, the fact that part of the effort included joint submissions with opposing parties has not been a barrier to full intervenor compensation (if otherwise merited).

The Smart Grid study was performed by a combination of 17 SDG&E, UCAN and USD analysts. The study was undertaken over a period of 12 months. Using certain assumption, it is possible to make a ballpark estimate of the costs and hours involved with the study as a method of considering reasonableness. The average cost per hour of UCAN's advocacy in this

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[4] *See* D.07-04-013, Attachment A to Appendix A, pp. 1-2.

proceeding (excluding the Smart Grid study and miscellaneous costs) was approximately $215/hour ($253,000/1,174 hours). We can use this figure as a proxy for the hourly compensable rate for the study's authors. Of the 17 authors, 13 were from SDG&E, leaving four[5] authors to accrue $362,000 ($412,000 minus $50,000 for SDG&E authors). Each named author is a senior official of their organizations. If four authors were compensated at $215/hour, they would work approximately 1,680 hours each over a period of 12 months (or about 140 hours/month) to reach the total cost of $362,000. This is a bit under full-time work (approximately 168 hours/month) for each individual named author, and surely reflects many hours of work from unnamed authors working with the Executives named as authors. We note that UCAN is seeking only $206,000 of the $362,000 in non-SDG&E employee costs. As a ballpark figure, it is reasonable to assume the nearly 200-page detailed study did require at least this level of effort. In the future, we will expect more detailed information on rates and hours involved with any studies submitted for compensation.

We note that had the Smart Grid study been performed solely by SDG&E, ratepayers would have paid all of its costs through SDG&E's general rates. Due to UCAN's participation, we are required to perform a review of UCAN's costs. The USD study was a part of UCAN's significant contribution in this proceeding. As described above, there is a reasonable basis to believe the costs involved were reasonably incurred. We generally grant full compensation for an eligible

[5] The four non-SDG&E named authors were Steve Pullins, Assistant Vice President, and John Westerman, Senior Program Manager of Science Applications International Corporation, Scott Anders, Director of Energy Policy Initiatives Center, and Michael Shames, Executive Director of UCAN.

party's efforts when there is a significant contribution unless there is a demonstrable overlap, unreasonable hourly rates, errors in the filing or other clear rationale for reductions. The facts here do not support any reductions. Therefore, we find UCAN's request for $206,000 in compensation for the USD study reasonable. We encourage UCAN and other intervenors to indicate the likeliness of any similar study in the future in the NOI.

5.4. Direct Expenses

The itemized direct expenses submitted by UCAN include costs for travel, photocopying, postage, and telephone. The total is $2,258.10. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

5.5. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request. UCAN did not attempt to quantify the monetary benefits of its participation although it discussed that it minimized duplication with other parties, its efforts reduced the scope of funding authorized in Phase 1, and it promoted efficient use of utility resources through the conditions adopted in the settlement. We find that UCAN's efforts were productive.

6. Award

With the $5,000 modification for the Smart Grid study and hourly rate adjustments, we award UCAN $460,324.

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) commencing on July 10, 2007, the 75th day after UCAN filed its compensation request, and continuing until full payment of the award is made. The award is to be paid by SDG&E as the regulated entity in this proceeding.

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.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

8. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner, and David M. Gamson is the assigned ALJ in this proceeding.

Findings of Fact

1. UCAN has satisfied all the procedural requirements necessary to claim compensation in the proceeding.
2. UCAN made a substantial contribution to D.07-04-043, as described herein.
3. UCAN requested hourly rates for attorneys and experts, and related expenses, that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of the reasonable compensation is $460,324.
5. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. UCAN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.07-04-043.
2. UCAN should be awarded $460,324.00 for its contribution to D.07-04-043.

3. Per Rule 14.6(c)(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 $460,324 as compensation for its substantial contributions to Decision 07-04-043.

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 July 10, 2007, 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 05-03-015 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?** **No**
Contribution Decision(s):	D0704043	
Proceeding(s):	A0503015	
Author:	ALJ Gamson	
Payer(s):	San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Utility Consumers' Action Network	April 26, 2007	$466,309.41	$460,324	No	Adjust Smart Grid Study Costs; hourly rate adjustments

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michael	Shames	Attorney	Utility Consumers' Action Network	$310	2005, 2006, 2007	$310
William	Marcus	Expert	Utility Consumers' Action Network	$220	2006	$220
				$235	2007	$220
Gayatri	Schilberg	Expert	Utility Consumers' Action Network	$150	2005	$150
				$175	2006	$165
				$185	2007	$175
Jeffrey	Nahigian	Expert	Utility Consumers' Action Network	$140	2005	$140
				$155	To March, 2006	$155
				$165	2006	$165
				$175	2007	$165
Greg	Ruszovan	Expert	Utility Consumers' Action Network	$165	2006	$165

(END OF APPENDIX A)