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Decision 84 06 128

JUN 20 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA PUBLIC INTEREST RESEARCH )  
 GROUP; CONSUMERS UNION; COMMON )  
 CAUSE OF CALIFORNIA; CONSUMER )  
 FEDERATION OF CALIFORNIA,

Complainants,

vs.

PACIFIC TELEPHONE AND TELEGRAPH )  
 COMPANY, a corporation,

Defendant.

Case 83-08-04  
 (Filed August 9, 1983)

TOWARD UTILITY RATE NORMALIZATION, )  
 a Non-Profit California Corporation,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH )  
 COMPANY, a California Corporation,

Defendant.

Case 83-12-03  
 (Filed December 7, 1983)

John R. Phillips, Attorney at Law, Geoffrey  
Cowan, Attorney at Law, Ethan F. Schulman,  
 and Harvey Rosenfield, for complainants in  
 C.83-08-04; and Robert Spertus, Attorney at  
 Law, Michel Peter Florio, Jon F. Elliott,  
 and Sylvia M. Siegel, for complainant in  
 C.83-12-03.

Margaret deB. Brown, Attorney at Law, for  
 defendant.

Ruth MacNaughton, Attorney at Law, for AT&T  
 Communications, and William Knecht, Attorney  
 at Law, for California Association of Utility  
 Shareholders, intervenors.

Sheldon Rosenthal, Attorney at Law, for the  
 Commission staff.

ORDER ON COMPLAINANTS'  
NOTICE OF INTENT TO CLAIM COMPENSATION

On January 6, 1984 complainants California Public Interest Research Group (Cal PIRG), Consumers Union, Common Cause of California, and Consumer Federation of California filed a Notice of Intent to Claim Compensation (Notice) under our public participant compensation procedures in the Rules of Practice and Procedure of the Public Utilities Commission (Commission), 20 California Administrative Code Section 76.21 et seq. (Rule 76.21 et seq.).

The case for which complainants intend to seek compensation, Case (C.) 83-08-04, is a complaint brought by them against defendant (originally The Pacific Telephone and Telegraph Company, now Pacific Bell, and herein simply referred to as Pacific) seeking access to extra space in Pacific's billing envelope for the formation of and the later use by a telephone consumers utility board or "TeleCUB".<sup>1/</sup>

The compensation complainants intend to claim is for the costs incurred by the Center for Law in the Public Interest (Center) in representing them in this matter. The Center is a nonprofit public interest law firm which is funded by tax-exempt charitable contributions and may not, under Internal Revenue Service regulations, accept fees from clients. The propriety of such a request for direct compensation of a public interest firm by a client not obligated to pay has been solidly established

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<sup>1/</sup> This complaint has been consolidated for hearing with C.83-12-03, another complaint seeking access to extra space in Pacific's billing envelope. The latter complaint was brought by Toward Utility Rate Normalization (TURN), which is not a party to this Notice proceeding.

by modern California case law (Serrano v Priest (1977) 20 Cal 3d 25; Horn v Swoap (1974) 41 Cal App 3d 375; Trout v Carleson (1974) 37 Cal App 3d 337). Furthermore, our intent to extend these compensation provisions to such entities is made clear by our broad definition of the term "participant" (Rule 76.22(d)) and by our reference to those acting in a representative capacity. For example, in Rule 76.25(a)(1)(A) we speak of participants who "have or represent" (emphasis added) an interest which would not otherwise be adequately represented.

Complainants' Notice lists the prehearing activities they have participated in and the further participation they plan, together with the amount of compensation they expect to be entitled to. The Notice specifies that the bases for the estimates of attorney and law clerk time are the prevailing market rates for comparable services. Appendix A to the Notice estimates the number of compensable hours it is expected that each of these persons will work on this matter, the hourly rate complainants believe to be the market rate, and the totals for each person. It also estimates other associated costs such as postage, telephone, and airfare.

Appendix B consists of the resumes of participating attorneys and law clerks and is apparently intended to offer data upon which market rates for comparable services can be determined.

Additionally complainants allege that absent compensation, participation in this proceeding would impose a significant financial hardship on them. They demonstrate this by describing their conformance with the three criteria set out in Rule 76.25(a)(1). That is, they claim that they represent

an interest which would not otherwise be represented and which is necessary for a fair determination of this case, and they claim that the indirect economic interest of their individual members (in the outcome of this proceeding) is small in comparison to the costs of effective participation in the proceeding.

Complainants state that the interest which would not otherwise be represented is the general interest of Pacific's customers in access to the billing envelope and interest in the formation and operation of a consumers utility board to represent them before the Commission. And, they state that both the general interest of Pacific ratepayers in access to billing envelopes and the interest in the particular nature of the relief which they propound are necessary to a fair and complete determination in this proceeding. Finally, they claim that the economic interest of their individual members is indirect and uncertain, not special or unique, and identical to the interest of all 7.5 million Pacific residential customers in that any savings to customers stemming from the participation in Pacific's rate cases by the proposed "TeleCUB" would be shared by all Pacific's customers. Thus, they conclude that the economic interest of each individual member is small when compared to the costs of effective participation in this proceeding which are estimated in Appendix A.

Pacific filed a response to complainants' Notice under Rule 76.24 which permits parties to file a statement commenting on the notice filing and making appropriate recommendations to the Commission. Pacific raises five issues in its reply.

First, it claims that any award of compensation to complainants should be deferred until the California Supreme Court has ruled on the validity of Rules 76.21 et seq. in its review of our Decision (D.) 83-04-017 (Pacific Telephone v Public Utilities Commission, S.F. No. 24605) which is presently pending before it.

The Notice is not a request for compensation but merely a statement on which the Commission bases a finding of financial hardship, the threshold criterion for later seeking compensation. Therefore, we need not and will not address the issue of awarding compensation in this decision.

Second, Pacific claims that these compensation provisions are designed for participants in rate cases where there is no fund or other source from which fees can be paid if participants are successful. In this proceeding, says Pacific, if the participants prevail they will create TeleCUB, a well-financed organization which "should pay the costs for its own creation, including attorney's fees." We disagree with both facets of this claim. Initially, we note that the provisions in question (Rule 76.21 et seq.) are not directed solely at participants in rate cases. As complainants point out in their reply brief, the purpose of these rules as set out in Rule 76.21 is "to establish procedures for awarding reasonable fees and costs to participants in proceedings before this Commission." "Proceeding" is broadly defined to include "any application, case, investigation, rule-making, or other formal matter before the Commission." Further, we do not perceive this as a matter which might create a "common fund" in the sense described in Consumers Lobby Against Monopolies v Public Utilities Commission (1979) 25 Cal 3d 891, 907) and can

think of no other basis, legal or rational, for asserting that a possible future TeleCUB should reimburse complainants for successfully advocating its creation.

Third, Pacific claims that complainants have not shown significant financial hardship as required by Rule 76.23. One basis for this assertion is that complainants are under no obligation to pay for their legal representation. We have already addressed this issue. Counsel's eligibility for compensation has nothing to do with whether complainants have an obligation to pay attorney's fees. See, e.g. Serrano v Priest (1977) 20 Cal 3d 25, 47-48.

Another basis for this claim is that TURN has sought similar relief and therefore the ratepayers' interests would be adequately represented without complainants. Complainants and TURN do not take identical positions in this matter and, furthermore, the question of duplication in the development of issues bears on the ultimate claim for compensation, not the threshold question of eligibility.

As a final basis, Pacific claims that complainants are "large, well-financed consumer organizations who could represent themselves in this matter if they chose to do so, using either attorneys already on their staffs or hiring outside counsel." Pacific requests leave to present evidence on this claim at a later date. We decline to permit such an evidentiary showing and we point out that Rule 76.23(a) states that a showing of significant financial hardship "should address the factors set forth in Rule 76.25(a)(1) or (2)," which complainants did. Since complainants are "groups or organizations" they needed only to demonstrate that the "economic interest in the outcome

of this proceeding/ of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding." This constitutes a prima facie demonstration of need under Rule 76.25.

Complainants' claim regarding this question is convincing. Complainants have no direct economic stake in the outcome of this proceeding. Rather, they are asserting an issue of broad public interest in which the economic interest of individual members of complainant organizations is indirect, uncertain, and identical to that of all other Pacific residential customers. Such interest is small in comparison to the costs of effective participation in the proceeding. Thus, complainants have made a prima facie showing of need and the evidence that Pacific proposes to present is irrelevant.

Fourth, Pacific claims that the "number of lawyers involved and hours worked, according to the Notice, appear to be excessive." We reiterate that the Notice is only a petition requesting a determination of financial hardship--the threshold criterion necessary for later seeking compensation. Our ruling on a Notice of Intent does not validate the propriety of the estimates set forth. In fact, it does not guarantee that the petitioner will receive any compensation. It merely acknowledges that the petitioner is eligible to file a Request for Compensation after the issuance of a Commission order or decision in the underlying matter. Therefore, we will take Pacific's comments under consideration in the event complainants file a Request for Compensation.

Fifth, Pacific requests that, "in the event complainants prevail in this case, additional discovery on the question of compensation and additional hearings take place." Such a request is premature and we will not rule on it now. However, we remind Pacific that it raised this same claim in our OII (Order Instituting Investigation) 100 proceedings which resulted in the adoption of these rules. In our decision in that matter, we stated:

"With respect to the recommendations of Pacific..., we point out that it is not the utility that will be paying the bill, but the utility's ratepayers and it is therefore appropriate that the Commission staff perform any audit of the participants' books and records." D.83-04-017 (1983) mimeo. page 45.

Findings of Fact

1. Complainants, Cal PIRG et al., filed a timely Notice of Intent to Claim Compensation.
2. The Notice includes a specific budget estimate for the participation which claimants believe they may be entitled to.
3. The Notice describes the basis for the budget estimate.
4. The Notice describes the extent of financial commitment of complainants' planned participation.
5. The Notice describes the nature and extent of complainants' planned participation so far as it was possible to set out at the time the Notice was filed.
6. The Notice shows that:
  - a. Participants have or represent an interest which would not otherwise be adequately represented in this proceeding;



- b. Participants have or represent an interest whose representation is necessary for a fair determination in this proceeding; and
- c. Participants are groups or organizations for which the economic interest of their individual members is small in comparison to the costs of effective participation in this proceeding.

Conclusions of Law

1. Complainants have met the criteria of Rule 76.23(a) for establishing that participation in this proceeding may be a significant financial hardship but for their ability to receive compensation.

2. Complainants have met all other criteria requisite to seeking a favorable ruling on a Notice of Intent to Claim Compensation.

3. Complainants should be found eligible to file a Request for Compensation within 30 days following the issuance of a decision or order in this matter.

4. Because of the nature of this order it should be effective immediately.

IT IS ORDERED that complainants California Public Interest Research Group, Consumers Union, Common Cause of California, and Consumer Federation of California are eligible to file a Request for Compensation and are granted the right to do so within 30 days following issuance of a decision or order on the merits of Case 83-08-04.

This order is effective today.

Dated JUN 20 1984, at San Francisco, California.

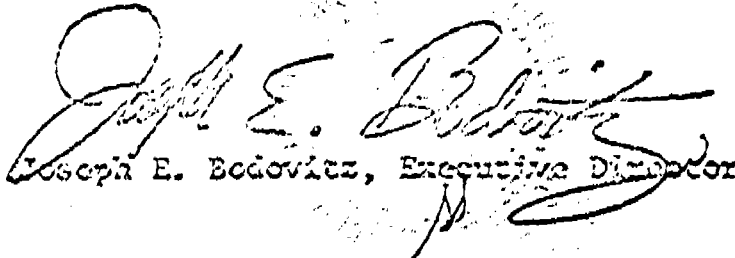
LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
Commissioners

Commissioner WILLIAM T. BAGLEY

Present but not participating.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director