

Decision 89 06 051 JUN 21 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of General Telephone)
Company of California, a California)
corporation (U 1002 C), for authority)
to increase and/or restructure)
certain intrastate rates and charges)
for telephone services.)

Application 87-01-002
(Filed January 5, 1987)

Investigation on the Commission's own)
motion into the rates, tolls, rules)
charges, operations, costs separa-)
tions practices, contracts, service)
and facilities of GENERAL TELEPHONE)
COMPANY OF CALIFORNIA, a California)
Corporation; and of all the telephone)
corporations listed in Appendix A,)
attached hereto.)

I.87-02-025
(Filed February 11, 1987)

OPINION ON PUBLIC ADVOCATES'
REQUEST FOR COMPENSATION

Summary

On February 27, 1989, Public Advocates, Inc. (Advocates) filed a request for compensation in the amount of \$26,781.50 in connection with its participation in GTE California's (GTEC, formerly General Telephone Company of California) Application (A.) 87-01-002 for intrastate rate increases and/or rate restructuring. Third Interim Opinion on this matter, Decision (D.) 89-01-015 dated January 11, 1989, found Advocates complies with the provision of Rule 76.54 of Article 18.7 of our Rules of Practice and Procedure and is eligible for compensation. Based on the underlying records and pleadings, we find Advocates made a substantial contribution to D.89-01-015 and we award the compensation requested.

Background

Compensation is sought pursuant to Rule 76.56 for Advocates' work on behalf of the American G.I. Forum, the Filipino-American Political Association, and the League of United Latin American Citizens in connection with Women and Minority Business Enterprises (W/MBE) issue and stipulated bilingual services issues, which were not heard.

D.89-01-015 was mailed January 12, 1989. By stipulation of the parties, the date for filing the request for compensation was extended to February 27, 1989.

The request for a finding of eligibility of attorneys' fees, expert witness fees, and other reasonable costs is restricted to W/MBE and bilingual services issues and no compensation is sought for any work prior to the proceeding or for any related work outside this proceeding.

Comments on Advocates' Request

On March 7, 1989, this Commission's Division of Ratepayer Advocates (DRA) filed its response to Advocates' request for compensation. DRA urges this Commission to grant Advocates' request for compensation in full on the basis that:

1. Although DRA conducted its own investigation of GTEC's W/MBE activities and submitted evidence in the proceeding Advocates' showing presented a substantial amount of additional and greatly detailed evidence;
2. Staff Witness Grimard, who prepared the staff review, retired just after he testified and staff participation in other proceedings precluded detailed staff review of the additional evidence presented by Advocates; and
3. Advocates made a contribution that DRA was unable to make by exploring in depth the W/MBE issue and by entering its significant findings into the record for the Commission's consideration.

Requirements for Award

Rule 76.53 of our Rules of Practice set forth the Requirements for Award as follows:

"The Commission may award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of participation or intervention in a hearing or proceeding for the purpose of modifying a rate or establishing a fact or rule that may influence a rate to any customer who complies with Rule 76.54¹ and satisfies all of the following requirements:

- "(a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the Commission's order or decision.
- "(b) Participation or intervention without an award of fees or costs imposes a significant financial hardship.
- "(c) The customer's presentation does not materially duplicate the contribution or presentation of any other party to the proceeding. If in the Commission's opinion there is such duplication, any compensation to which the customer would otherwise be entitled may be reduced in proportion to the amount of duplication of effort. Customers are encouraged to file requests as soon as possible in the progress of the proceeding."

Substantial Contribution

Rule 76.52(g) defines substantial contribution to mean that:

"...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

¹ Advocates' compliance with Rule 76.54 was established by D.89-01-015.

had adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer."

With respect to the W/MBE issue, Advocates sought to require GTEC to set specific, substantial and long-term goals and to have GTEC substantially increase its short-term achievements with respect to awarding contracts. According to Advocates, GTEC met both of these goals as a result of its participation in these hearings. As set forth in the record, GTEC's President Anderson committed himself to increasing the dollar amount and percentage of contracts by eight-fold from 1986 and signed an agreement, filed with this Commission on February 8, 1988 that provides for goals of 15% for minorities and 5% for white women-owned businesses within five years. It appears unlikely that either of these accomplishments would have occurred at this time without the participation of Advocates in this proceeding. In D.89-01-015, we note these accomplishments and state: "Such action coupled with full compliance with the above discussed GO 156 should place GTEC well on the road of meeting our goal of equal opportunity and anti-discriminatory practices in the contracts and agreements GTEC may enter into with other parties for the provision of goods and services."

With respect to the bilingual issue, there is no dispute that but for Advocates, there would be no bilingual agreement specifically tailored to meet the needs of GTEC and its customers.

In view of the above, it is obvious that Advocates' participation in hearings substantially assisted this Commission in making its order.

Financial Hardship

In D.89-01-015, we found that: "Advocates comply with the provisions of Rule 76.54 of Article 18.7 of our Rules of Practice and Procedure regarding eligibility for compensation." (Finding of Fact 12, mimeo. pg. 38.) Rule 76.54(a)(i) requires "A

showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship." Consequently, Advocates complies with the above quoted Rule 76.53(b) setting forth the requirements for awards.

Duplication of Presentation

Advocates was the only party involved in the negotiations and preparation of the stipulation of GTEC regarding the bilingual issue. With respect to the W/MBE issue, Advocates alleges and DRA concurs that Advocates' presentation went far beyond DRA's presentation. According to Advocates, DRA played no role in regard to verification or accuracy of data, the setting of specific W/MBE goals, or increasing GTEC's achievements. Under these circumstances, it is obvious that there is little if any duplication of presentation.

Amount of Compensation

The details of Advocates request for compensation of \$26,781.50 are as follows:

| <u>Time and Pay Rate</u> | <u>Dollar Amount</u> |
|---|----------------------|
| Attorney Time: Gnaizda | |
| Bilingual (8.8 hrs. x \$165) | \$ 1,452.00 |
| W/MBE (123.3 hrs. x \$165) | 20,244.50 |
| Law Student | |
| Andre Madiera (38.2 x \$50) | 1,910.00 |
| Martha Raymond (15 x \$50) | 750.00 |
| Paralegal | |
| Judy Nakaso & Ruth Maurice (30 x \$35) | 1,050.00 |
| Experts | |
| Dr. Joseph James (1 day x \$400) | 400.00 |
| John Gamboa (bilingual) (1 day x \$400) | 400.00 |
| Costs | |
| Telephone, Travel (L.A.), Postage, Copying, etc. | <u>575.00</u> |
| Total Bilingual and W/MBE | \$26,781.50 |

In D.87-10-078 dated October 18, 1987 on AT&T Communications of California, Inc.'s D.85-11-029 for a general rate increase we awarded Advocates compensation in the amount of \$59,320.94 on a request for \$109,725.00. In deriving the amount of compensation, we used a rate of \$150 an hour for attorney Gnaizda. In this proceeding, he requests \$165 an hour, representing a 10% increase over the above award to reflect inflation from the 1985 and 1986 period covered by D.87-10-078.

We will keep the hourly rate for Gnaizda at \$150/hr., noting that for the vast majority of awards made for work in the 1987-early 1988 timeframe, attorneys before this Commission were being compensated at this level or less (D.88-03-023 in A.87-04-018, awarded \$135/hr. to UCAN for work in SDG&E's general rate case; D.88-07-025 in A.87-05-007 awarded \$125/hr. to Joel Singer for work in the SCE holding company case; D.88-11-025 in A.85-11-029 awarded TURN (Elliott) \$135/hr. for work in AT&T's general rate case; and D.88-07-025 in A.86-10-001 awarded NRDC (Cavanagh) \$150/hr. for work in our 3Rs investigation).

We have awarded TURN (Florio) \$160/hr. for work in 1987 in I.87-06-005 concerning restructuring the gas industry; however, this was pursuant to stipulation and was designed to recognize an outstanding level of skill in an untried environment. We noted there that for the future we expected to see any increases in hourly rates fully supported, since an uncontested settlement gives us no basis for finding an increased rate reasonable. We find very little in Gnaizda's request to justify such an increase. Relative to other compensation awards we have made, there was no showing that the level of performance justified the higher rate or that the subject matter was particularly difficult. There was no showing that the level of inflation over a two-year period even came close to the 10% increase Gnaizda is seeking. While the declarations of local attorneys supported a fee range of \$225-300 for someone of Gnaizda's experience, we think this probably represents the high

(or partner) level of billing by such firms and we consider it in making our award, we cannot justify asking the ratepayers to bear the additional burdens of compensating attorneys at this level absent a clear justification not present in this case. ✓

The rates set forth for law students and experts are the same as adopted for D.87-10-078 and will be accepted for this proceeding. The rates for paralegals at \$35.00 an hour appear reasonable and will be adopted. The miscellaneous costs of \$575.00 also appear reasonable. Attached to the request for compensation are a monthly breakdown by categories related to the bilingual and W/MBE issues and Gnaizda's daily contemporaneous time sheets supporting his costs.

Overall, the requests for remaining expenses appear reasonable and we will grant them.

Findings of Fact

1. Advocates has requested compensation totaling \$26,781.50 in connection with this proceeding, citing substantial contributions in the areas of Woman/Minority Business Enterprises (W/MBE) and bilingual issues.

2. Third Interim Opinion on this matter, D.89-01-015, found Advocates complies with the provisions of Rule 76.54 of Article 18.7 of our Rules of Practice and Procedure and is eligible for compensation.

3. Advocates sought to require GTEC to set specific, substantial long-term goals for the W/MBE issue and to have GTEC substantially increase its short-term achievements with respect to awarding contracts.

4. As a result of Advocates' participation in this matter, GTEC's President Anderson committed himself to increasing the dollar amount and percentage of contract by eight-fold from 1986 and signed an agreement providing for goals of 15% for minorities and 5% for white woman-owned businesses within five years.

5. The effects of Advocates' participation set forth in Finding of Fact 4 above constitute substantial contribution.

6. Advocates was the primary motivating force in the development of a bilingual agreement specifically tailored to meet the needs of GTEC and its customers.

7. There is little or no duplication of presentation by Advocates and DRA in this proceeding.

8. The rates, hours spent, and miscellaneous expenses set forth in Advocates' compensation request are reasonable, except for the rate requested for Attorney Gnaizda which is excessive.

Conclusions of Law

1. Advocates should be compensated for its substantial contribution to D.89-01-015 in the W/MBE and bilingual telephone areas. Attorney Gnaizda should be compensated at the rate of \$150/hr.

2. GTEC should be ordered to pay Advocates the sum of \$24,742.00 as compensation for Advocates substantial contribution to D.89-01-015.

3. The following order should be effective today because an award of compensation has been found reasonable for a participant's activity last year.

ORDER

IT IS ORDERED that:

1. Within 10 days of the effective date of this order, GTE California, Incorporated (GTEC, formerly General Telephone Company of California) shall pay Public Advocates, Inc. (Advocates) \$24,742.00 plus interest at the three-month commercial paper rate beginning on the 76th day after February 27, 1989. Pursuant to Rule 76.61, this award shall be allowed by this Commission as an expense for the purpose of establishing rates by way of a dollar-for-dollar adjustment to rates imposed by this Commission.


2. Advocates is placed on notice that it may be subject to audit or review by the Commission Advisory and Compliance Division pursuant to Rule 76.57; therefore, it shall maintain and retain adequate accounting records and other necessary documentation supporting all claims for intervenor compensation. It shall maintain such records in a manner that identifies specific issues for which compensation will be requested, the actual time spent by each employee, fees paid to consultants, and any other compensable costs incurred.

This order is effective today.

Dated JUN 21 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


Victor Weiss, Executive Director

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