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Decision 91-05-042 May 22, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ken W. Judson,

Complainant,

vs.

Southern California Edison Company,

Defendant.

ORIGINAL

Case 90-10-013
(Filed October 3, 1990)

OPINION

On March 20, 1991, the Legal Resource Center of Hanford (the Center) served a declaration requesting \$1,374.75 in compensation from the Advocates Trust Fund for the Center's efforts in representing complainant in this billing dispute proceeding. No opposition to the request has been received.¹

The Advocates Trust Fund of the California Public Utilities Commission (Advocates Trust Fund, or Trust) was established on October 11, 1982. The purpose of the Trust is:

"to receive, hold and, from time to time, disburse funds from either income or principal solely to defray expenses, including attorneys' fees and expert witness fees directly related to litigation or representation of consumer interests in 'quasi-judicial complaint cases,' as defined in Consumers Lobby Against Monopolies vs. Public Utilities Commission, 25 Cal.3d 891 (1979) where the California Public Utilities Commission...has jurisdiction to make attorney fee awards."

¹ There are no procedural guidelines for filing a request for compensation from the Advocates Trust Fund. The Center served its declaration on all parties in this proceeding. That procedure is adequate for our consideration of the request.

Most compensation requests brought before the Commission are filed under Rules 76.51 et seq. of the Rules of Practice and Procedure (Rules). These rules provide for compensation of intervenors "in any proceeding...to modify a rate or establish a fact or rule that may influence a rate." Hence, Rules 76.51 et seq. are not applicable here. Similarly, this is not a proceeding that involves electric rates or electric rate design. Thus, the compensation provisions of Rules 76.01 et seq. are not applicable.

The Advocates Trust Fund is designed to provide compensation where it might not otherwise be available. The Trust provides that:

"1.3 Attorneys fees may be awarded only where it is clearly and convincingly demonstrated that the private party has made a direct, primary and substantial contribution to the result of the case. Fees will be awarded from the Advocates Trust Fund where complainants have generated a common fund but that fund is inadequate to meet reasonable attorney or expert witness fees, where a substantial benefit has been conferred upon a party or members of an ascertainable class of persons but no convenient means are available for charging those benefited with the cost of obtaining the benefit, or where complainants have acted as private attorneys general in vindicating an important principle of statutory or constitutional law, but no other means or fund is available for award of fees.

"1.4 An award will be based upon consideration of three factors: (1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the complainant, and (3) the number of people standing to benefit from the decision. No award will be made without a specific finding by the CPUC of what would be a reasonable amount for advocates' attorneys', or expert witness fees, in view of the time spent, expenses proven, level of skill shown, and comparable fees paid to others practicing public utility law. No award should be made

where a party's own economic interest is sufficient to motivate participation."

The Center does not qualify for compensation under three of the stated tests of § 1.3 of the Trust. No common fund was generated in this case. No important principle of statutory or constitutional law was vindicated. No substantial benefit was conferred on an ascertainable class of persons.

The Center argues, however, that "a substantial benefit [was] conferred upon a party," i.e. complainant, because a settlement of the dispute was negotiated. Complainant's electrical service had been discontinued for alleged nonpayment. Service was restored pursuant to settlement when complainant agreed to pay a negotiated portion of the amount that the utility claimed was owed. The Center states that its representation of complainant was directly responsible for the settlement.

We agree that the Center, specifically Paralegal W. Al Cason, performed in exemplary fashion in representing its client.² We also agree that settlement of this complaint might not have taken place without the Center's efforts. With that said, however, the settlement itself did not confer any benefit that is not available to ratepayers generally. That is, the utility discontinued service for nonpayment; complainant and the utility agreed on a negotiated payment to resolve the nonpayment, and service was restored. No principles of law or procedure were affected. No utility practices were altered. While the Center raised innovative arguments on behalf of its client, the gravamen of the proceeding was a billing dispute that the parties agreed to settle.

² Unlike judicial proceedings, paralegals and nonattorneys are permitted to recover fees in specified proceedings before the Commission. (Consumers Lobby, 25 Cal.3d at 915.)

Settlement of an individual billing dispute, without more, does not rise to the level of "substantial benefit" directed by the Trust. In Consumers Lobby Against Monopolies, et al. v. Pacific Telephone and Telegraph Co., Decision (D.) 93251, issued on June 30, 1981, the Commission stated "that only in the most meritorious cases will a fee award be proper." (D.93251, at p. 3.) A review of cases in which fee awards from the Trust have been granted demonstrates the unusual level of contribution contemplated before an award of fees will be granted.

Thus, in D.93251, a settlement provided for a utility to pay \$400,000 for a beneficial public service. In Zermeno and Higgins v. Pacific Gas and Electric Co., D.86-12-008, a utility agreed to significantly modify its tariff rules regarding termination of consumer service. In Toward Utility Rate Normalization v. Pacific Bell Telephone Co., et al., D.89-07-063, the complaint contributed to a change in backbilling practices by telephone companies. In Re Citizens Utilities Company of California, D.90-06-055, there was a substantial contribution to a finding that a utility had improperly transferred certain property rights, resulting in a return of revenue to ratepayers. In Allied Temporaries, Inc. v. Pacific Gas and Electric Company, D.90-08-007, a utility was required to improve bidding procedures with respect to women- and minority-owned business enterprises.

The showing of "substantial benefit" required by the Advocates Trust Fund for an award of fees has not been met in this case. Since the Center does not qualify for fees under § 1.3, it is unnecessary to consider the additional showing required under § 1.4.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. The complaint in this proceeding alleged that Southern California Edison Company (Edison) had violated, among other

things, the notice provisions of its tariffs in terminating the service of complainant for nonpayment. Edison denied the allegation.

2. At hearing on January 16, 1991, the parties announced that they had reached a settlement agreement by which service to complainant would be restored and complainant would make monthly payments of a negotiated amount representing what the utility claimed was owed.

3. Complainant withdrew his complaint on April 22, 1991, and the complaint was dismissed.

4. The Center on March 20, 1991, served a declaration requesting compensation from the Advocates Trust Fund.

Conclusions of Law

1. This is a quasi-judicial complaint case.

2. The compensation provisions of Rules 76.51 et seq. and Rules 76.01 et seq. are not applicable to this case.

3. The Center does not qualify for compensation under any of the stated tests of § 1.3 of the Trust.

4. The Center's request that its professional fees be compensated from the Advocates Trust Fund should be denied.

5. Because the complaint in this proceeding has been dismissed, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

The request by the Legal Resource Center of Hanford for compensation from the Advocates Trust Fund of the California Public Utilities Commission is denied.

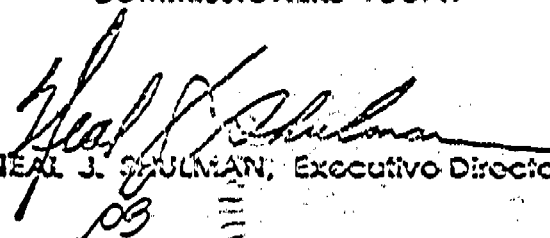
This order is effective today.

Dated May 22, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SCHULMAN, Executive Director