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Decision 91-07-034 July 24, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Allied Temporaries,

Complainant,

vs.

Southern California Edison Company,

Defendant.

ORIGINAL

Case 90-04-020
(Filed April 13, 1990)

SUPPLEMENTAL OPINION

This complaint was dismissed at the written request of complainant by Decision (D.) 91-03-081, dated March 29, 1991. On July 9, 1990, complainant's attorney and WMBE Advocates, Inc. filed a request for eligibility in this and three other similar proceedings. Defendant filed a response opposing the request. WMBE Advocates, Inc. is a corporation. Clarence Hunt is its president. He is also the president of complainant. The request for compensation is based on Rule 76.54(a) and the Advocate's Trust Fund.

This was not a proceeding which involved electric rates or electric rate design. Thus, the provisions of Rules 76.01 et seq. of the Commission's Rules of Practice and Procedure are not applicable. Since this case does not directly affect utility rates, complainant's request for compensation is considered with reference to the Advocates Trust Fund, established by the Commission on October 11, 1982.

The specific 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." 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 benefitted 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 Commission makes the following findings and conclusion.

Findings of Fact

1. The complaint in this matter was dismissed at the written request of complainant in D.91-03-081, dated March 29, 1991.

2. A hearing on defendant's motion to quash subpoenas was held on July 9, 1990. Procedural rulings were made at the hearing.

3. The matter was calendared for hearing on July 19, 1990, and removed from the calendar at the request of the parties. It was recalendared for hearing on December 3, 1990. At the further request of the parties it was removed from the calendar and recalendared to March 7, 1991. The matter was called for hearing on March 7, 1991. Complainant's request for dismissal was noted and defendant stipulated to the dismissal. No evidence was taken at the hearing.

4. No substantive rulings were made in this matter.

5. The Commission did not adjudicate any issue sought to be raised by the complaint.

6. The request for eligibility for compensation does not meet the requirements of Section 1.3 of the Trust.

Conclusion of Law

The request for eligibility for compensation should be denied.

SUPPLEMENTAL ORDER

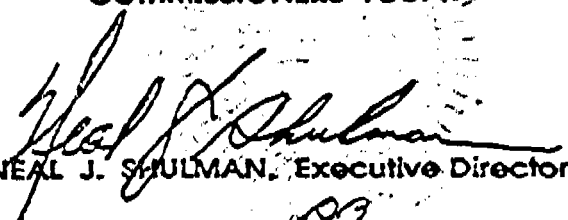
IT IS ORDERED that complainant's request that it or its attorney or its president or WMBE Advocates, Inc. be found eligible for compensation from the Advocates Trust Fund is denied.

This order becomes effective 30 days from today.

Dated July 24, 1991, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director