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Decision 91-11-005 November 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California Utilities Service, Inc. (U-418-S) for an order authorizing it to increase rates charged for sewer service, and to record a historical cost appraisal and accumulated depreciation requirement study.

ORIGINAL

Application 90-10-017
(Filed October 11, 1990)

OPINION ON MOTION OF JOHN D. READER
FOR COMPENSATION FROM ADVOCATES TRUST FUND

1. Summary

John D. Reader, retained as a consultant to represent seven homeowners' associations (Homeowners) in this proceeding, seeks \$2,500 from the Advocates Trust Fund, or pursuant to Rule 76.01, et seq., of the Rules of Practice and Procedure, as compensation for Homeowners' contribution in this general rate case proceeding. We find that Homeowners are not eligible for compensation under the Advocates Trust Fund and do not meet requirements for compensation under Rule 76.01. However, Homeowners may be eligible for compensation under Rule 76.51, et seq., and Homeowners are granted leave to file a Request for Finding of Eligibility for Compensation that is made in compliance with the Rules.

2. Background

California Utilities Service, Inc. provides sewer service to about 1,000 ratepayers in the Toro Park area four miles southwest of Salinas. In its first general rate case filing on October 11, 1990, the utility sought to increase rates from \$8.47 per month to \$33.78 per month to account for operating costs of a new waste water treatment plant and facilities. The amount of the increase was opposed by the Water Utilities Branch of the Commission Advisory and Compliance Division and by Homeowners, as

represented by Reader.¹ Reader participated in six days of hearing in San Francisco and Salinas, testified on behalf of Homeowners and submitted position statements and briefs. In particular, Reader analyzed and urged rate base adjustment for gross-up tax payments made to the utility by developers.

3. Compensation Request

On May 2, 1991, prior to the close of evidentiary hearings, Reader submitted a motion seeking compensation from the Advocates Trust Fund of the California Public Utilities Commission or, alternatively, through the compensation provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA), set forth in Rules 76.01-76.11.² Reader explained that his fees to Homeowners, at \$60 per hour plus expenses, were likely to exceed \$6,500, substantially more than his original estimate, because of the unanticipated length of the hearings. Reader's motion, accompanied by a statement of qualifications and a summary of billing to Homeowners, requests "\$2,500 from the Advocates Trust Fund in accordance with Commission Rule 76.01, et al., in order to keep my bill to the homeowners close to the [adjusted] \$4,500 level."

4. Discussion

There are three prescribed means by which a participant in post-1984 proceedings before the Commission may seek compensation. These are the Advocates Trust Fund, the PURPA provisions set forth in Rules 76.01-76.11 (Article 18.5), and the

1 Reader represents the Toro Hills Homeowners Association, the Palm Grove Homeowners Association, the Creekside Homeowners Association, Serra Village, the Meadows, Toro Park Estates, and the Villas Homeowner Association, along with approximately 20 individual homeowners.

2 These are the rules that implement Section 122(a)(2) of PURPA.

Intervenor's Fees and Expenses provisions set forth in Rules 76.51-76.58 (Article 18.7).

4.1 Advocates Trust Fund

The Advocates Trust Fund was established on October 11, 1982. Its purpose is to receive and hold funds and to disburse them

"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." (Trust Agreement, Art. 1.2.)

The Advocates Trust Fund is designed to provide compensation where it might not otherwise be available. By the express terms of the trust, however, fee awards are restricted to complaint cases or to proceedings that otherwise are "quasi-judicial" in nature. (Consumers Lobby, supra, at 908.) Fee awards are not available through the trust in "quasi-legislative" proceedings. A ratemaking case like the one in which Homeowners have taken part is a quasi-legislative proceeding. (Consumers Lobby, supra, at 909.) Therefore, the request for compensation through the Advocates Trust Fund cannot be granted.

4.2 PURPA Provisions

Rules 76.01-76.11 are intended "to establish procedures for awarding reasonable fees and costs to consumers of electric utilities pursuant to PURPA Section 122(a)(2)." (Rule 76.01.) A consumer is defined as "any retail electric consumer of an electric utility," or his or her representative. (Rule 76.02(d).)

In PURPA proceedings, a consumer seeking recovery of fees is required to file a Request for Finding of Eligibility for Compensation showing significant financial hardship and a statement of issues that the consumer intends to raise. (Rule 76.03.)

Following comments by other parties and a ruling by the Commission on eligibility, the consumer (if eligible) may then file a request for compensation in which the consumer must show a substantial contribution to the Commission's decision in the case. (Rules 76.04-76.06.) If a fee award is granted, it must be paid by the electric utility involved in the case. (Rule 76.09.)

Reader contends in his compensation request that while the PURPA rules refer to electric utilities, the rules have been the basis for recovery of fees in proceedings for other types of utilities. However, Reader refers us to no such decision, and our own research reveals no such PURPA recovery in recent years in a proceeding involving a water company or a sewer company. Even if such a recovery were permissible under Rules 76.01-76.11, Reader has not complied with requirements for showing of eligibility. Therefore, the request for compensation under Rules 76.01-76.11 cannot be granted.

4.3 Intervenor Compensation

Since 1984, reasonable advocate's fees have been available for participants in a proceeding who make a substantial contribution affecting a utility rate. Provision for this recovery is set forth in Rules 76.51-76.62.³ As in the PURPA provisions, an advocate seeking compensation must file a Request for Finding of Eligibility for Compensation showing, among other things, financial hardship and issues intended to be raised. (Rules 76.53-76.54.) Following comments by other parties, the Commission rules on whether the requirements of eligibility have been met. If an advocate is found to be eligible, he or she then may file and serve a request for compensation in which a "substantial contribution" to the proceeding must be shown.

³ Article 18.7. Intervenor's Fees and Expenses. (See Public Utilities Code §§ 1801, et seq.)

Any award made under the intervenor compensation rules must be paid by the public utility that is the subject of the hearing. The utility, in turn, may recover the amount of the award from ratepayers within a year's time through a dollar-for-dollar adjustment in rates. (Rule 76.61.)

While Reader's request for compensation states a colorable claim under the intervenor rules, the request fails to comply with the requirements stated in the Rules. Among other things, the motion is not a Request for Finding of Eligibility for Compensation pursuant to Rule 76.54(a), and it does not make a showing of significant financial hardship, as that term is defined in Rule 76.54(b) and Rule 76.52(f). More substantively, since the motion before us does not mention Rules 76.51-76.62, other parties are not placed on notice that Reader and Homeowners seek payment of \$2,500 directly from the utility under Rule 76.61.

5. Conclusion

The motion for compensation should be denied. However, we will grant leave to Reader and Homeowners, if they elect to do so, to file a proper Request for Finding of Eligibility for Compensation that complies with Rules 76.51-76.62. Since the original motion was timely filed under those rules, we will accept as timely a re-filed request, if it is submitted within 30 days of the date of this order.

Findings of Fact

1. Reader, representing seven homeowners' associations in this proceeding, filed a motion for compensation on May 2, 1991, which was prior to the end of evidentiary hearings.
2. Reader participated in six days of hearing and submitted position statements and briefs in this ratemaking proceeding.

Conclusions of Law

1. Reader and Homeowners should not be permitted to recover compensation through the Advocates Trust Fund because this proceeding is not a quasi-judicial complaint case.

2. Reader and Homeowners should not be permitted to recover compensation through the PURPA provisions set forth in Rules 76.01-76.11 because the motion does not comply with requirements set forth in Article 18.5.

3. Reader and Homeowners should not be permitted to recover compensation through the intervenor provisions set forth in Rules 76.51-76.62 in the absence of compliance with the provisions of Article 18.7.

4. Reader and Homeowners should be permitted to file a request for a finding of eligibility for compensation, provided that such filing complies with requirements of the Rules, and provided that such filing takes place within 30 days of the date of this order.

5. This order should be effective immediately so that a request for a finding of eligibility for compensation, if filed, can be acted upon promptly.

ORDER

IT IS ORDERED that:

1. The motion of John D. Reader for compensation from the Advocates Trust Fund is denied, with leave to amend and refile a Request for Finding of Eligibility for Compensation pursuant to Article 18.7 of the Commission's Rules of Practice and Procedure.

2. An amended filing by Reader must comply with the Rules of Practice and Procedure and must be filed and served within 30 days of the date of this order.

This order is effective today.

Dated November 6, 1991, at San Francisco, California.

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

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

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NEAL J. SHULMAN, Executive Director