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Decision 91-12-051 December 18, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
on the Commission's Own Motion)
into 976 Information Access Service.)

I.85-04-047
(Filed April 17, 1985)

In the Matter of the Application)
of Pacific Bell, a corporation,)
for authority to establish a tariff)
schedule for Information Calling)
Services.)

Application 88-04-004
(Filed April 1, 1988)

OPINION

This decision grants, in part, a petition by Public Advocates, Inc. for an award of attorney fees and expenses from the Advocates Trust Fund. We find that Public Advocates' participation in Investigation (I.) 85-04-047 qualifies for compensation under the terms of the Advocates Trust Fund. We find that Public Advocates' participation in Application (A.) 88-04-004 does not qualify for compensation from this fund.

In Decision (D.) 90-09-080, pursuant to Public Utilities Code §§ 1801-1807, the Commission awarded Public Advocates \$130,048 for its participation in I.85-04-047. The Commission found that Public Advocates was not eligible for compensation, under this intervenor compensation statute, for costs incurred prior to the commencement of I.85-04-047. The Commission also found that Public Advocates was not eligible for compensation for the costs incurred in participating in A.88-04-004. By D.90-12-107, the amount awarded in D.90-09-080 was increased to \$134,169.25.

On June 18, 1991, Public Advocates filed a "Petition by Minority/Low Income/Consumer Coalition for Award of Attorneys' Fees and Expenses from the Advocates Trust Fund." The petition requests

compensation for certain of those fees and expenses incurred by Public Advocates in I.85-04-047 and A.88-04-004 which were not authorized by D.90-09-080 and D.90-12-107.

On July 18, 1991, GTE California Incorporated (GTEC) filed an opposition to the petition by Public Advocates. GTEC contends that the petition is untimely and inappropriate. GTEC urges that the petition be denied.

Discussion

We find that the petition by Public Advocates is timely. The Advocates Trust Fund places no deadline on applications for awards from the fund.

The Advocates Trust Fund provides for compensation of attorney 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 [CLAM] (1979) 25 Cal 3d 891, where the California Public Utilities Commission has jurisdiction to make attorney fee awards." (Declaration of Trust, Section 1.2.)

Public Advocates asserts that both I.85-04-047 and A.88-04-004 were "quasi-judicial complaint cases." (Petition, p. 21.)

We find that A.88-04-004 was not a quasi-judicial proceeding as defined in CLAM. As the court explained:

"Considerations that militate in favor of recognizing equitable jurisdiction to award attorney fees in reparation cases, however, do not apply to ratemaking matters. The commission's duties, functions, and powers differ markedly in the two settings. 'There is a distinction between the power to fix rates and the power to award reparation. The former is a legislative function, the latter is judicial in its nature.' The fixing of a rate and the reducing of that rate are prospective in application and quasi-legislative in character. In contrast, reparation looks to the past with a view toward remedying primarily private injury, and is quasi-judicial in

nature." (25 Cal 3d 891, 901, citations omitted.)

In CLAM, the court held that a complaint filed by a customer seeking reparation was a quasi-judicial proceeding. On the other hand, the court found that an application filed by Pacific Bell to impose on its customers a new procedure "single message rate timing" (S.F. 23868) was a quasi-legislative proceeding.

This proceeding, A.88-04-004, is an application filed by Pacific Bell to provide a new service, and is almost identical in nature to S.F. 23868. Just as Toward Utility Rate Normalization was found by the Supreme Court not to be eligible for attorney fees for its participation in S.F. 23868, we find no basis for awarding Public Advocates attorney fees for its participation in A.88-04-004.

I.85-04-047 was a general investigation into the practices of the utilities. Although I.85-04-047 was not filed as a complaint case, it had a quasi-adjudicatory nature. The investigation was instituted in response to customer complaints, including complaints brought by Public Advocates. Case (C.) 85-04-021, a specific complaint requesting a refund for telephone calls to numbers with a 976 prefix, was consolidated with the investigation.

The Commission has previously made an award from the Advocates Trust Fund for participation in an investigation which was of a quasi-adjudicatory nature and which had been consolidated with a complaint. See D.90-06-055 in I.83-11-09/C.83-12-07.

We conclude, therefore, that I.85-04-047 was a "quasi-adjudicatory complaint case" as defined in CLAM.

We find that the efforts of Public Advocates between January and April 1985 made a direct, primary, and substantial contribution to the result of the case. The order instituting I.85-04-047 expressly cites the complaint which Public Advocates

filed on behalf of John Marshall Lipscomb as cause for initiating the investigation.

We further find that as a result of Public Advocates' efforts to initiate I.85-04-047, a substantial benefit has been conferred upon ratepayers generally. Much of the relief requested by Public Advocates at the outset of this investigation was granted in I.85-04-047, D.85-11-028, and subsequent decisions in this investigation.

We must once again note, however, that we found the time records maintained by Robert Gnaizda in support of this claim for compensation to be extremely vague and disorganized. While we will authorize compensation in this instance, Public Advocates is advised that it must maintain clear and accurate records to support future claims for compensation.

At the request of the administrative law judge, Gnaizda reviewed his contemporaneous timesheets and provided a corrected summary of Public Advocates' request for compensation for attorney time incurred between January and April 1985. As corrected, Public Advocates requests compensation for 96.61 hours. We will award compensation for 96.5 hours, at the hourly rate of compensation authorized by D.90-09-080 for Gnaizda's services during this time period (\$150.00). This results in a total award of \$14,475.

Findings of Fact

1. Public Advocates' attorney hours prior to April 17, 1985 made a direct, primary, and substantial contribution to the outcome of I.85-04-047.
2. As a result of Public Advocates' efforts to initiate I.85-04-047, a substantial benefit has been conferred upon ratepayers generally.
3. A.88-04-004 was an application filed by Pacific Bell to provide a new service.
4. I.85-04-047, a general investigation into the practices of the utilities, had a quasi-adjudicatory nature. The

investigation was instituted in response to customer complaints, including complaints brought by Public Advocates. C.85-04-021, a specific complaint requesting a refund of 976 charges, was consolidated with the investigation.

5. Public Advocates did not include an interest component in its request for compensation.

6. The Declaration of Trust for the Advocates Trust Fund does not provide for an interest component.

Conclusions of Law

1. A.88-04-047 was not a quasi-judicial proceeding as defined in CLAM.

2. The request of Public Advocates for an award of compensation from the Advocates Trust Fund should be granted in part, as set forth in the following order.

3. Interest should not be added to the award of compensation.

4. Because of the long period which has elapsed since the date these services were performed, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. The sum of \$14,475 shall be disbursed to Public Advocates, Inc. from the Advocates Trust Fund as compensation for its participation relating to Investigation 85-04-047.

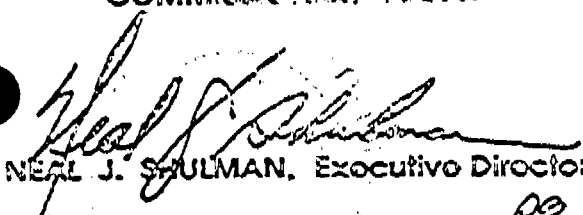
2. Public Advocates' request is granted in part. To the extent that it is not granted, the request is denied.

This order is effective today.

Dated December 18, 1991, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director