

MAY 20 1992

Decision 92-05-058 May 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Ex Parte)
Application of EOS (Petaluma) for)
finding of exemption from Public)
Utilities Commission Regulation.)

ORIGINAL
Application 91-07-046
(Filed July 31, 1991)

O P I N I O N

In this decision, we award attorney fees in the amount of \$17,115 representing 97.8 hours at \$175 per hour to Kathryn Burkett Dickson, Esq., and \$3,120 to her associate, Jeffrey A. Ross, Esq., representing 20.8 hours at \$150 per hour, together with costs in the amount of \$1,446.66, for a total of \$21,681.66 payable from the Advocates Trust Fund, as compensation for their representation of the Friends of Petaluma (FOP) and the Petaluma River Council (PRC), protestants in the underlying application proceeding.

On July 31, 1991, Envirotech Operating Services (Petaluma), Inc. (EOS) filed an application seeking a determination that a privatization project involving the construction and operation of a wastewater facility to serve the residents of the City of Petaluma was not a public utility within the meaning of Section 216 of the Public Utilities (PU) Code, and thus exempt from regulation by this Commission. FOP and PRC filed a formal protest opposing the granting of the application.

After compliance with the requirements of PU Code Section 10013, including hearings, this Commission denied the application in Decision (D.) 91-11-054 dated November 20, 1991. Thereafter, FOP and PRC requested an award of attorney fees pursuant to Article 18.7 of the Commission's Rules of Practice and Procedure (the Rules). That request for fees was opposed by EOS.

In D.92-03-033 issued March 11, 1992, we examined the fee request and the opposition thereto, and fully discussed the nature,

extent and quality of FOP's and PRC's contribution to the underlying proceeding and its outcome, and for that reason we need not repeat that discussion and the findings attendant thereto in this decision, but adopt the same by reference. We must note, however, that because of the nature of the underlying proceeding, we were compelled to find FOP and PRC ineligible for an award under Article 18.7 of the Rules. We did, however, find that an award from the Commission's Advocates Trust Fund was warranted. In the ordering paragraphs of the decision, we directed counsel for FOP and PRC to file a detailed time and expense record and afforded an opportunity for responses to be filed. Counsel have complied with our order and have filed the required time and expense record together with supporting documentation. The time for submission of responses to that filing has expired; however, no responses have been received.

In their joint application, counsel seek \$19,560 for services of Ms. Dickson based on 97.8 hours at \$200 per hour; \$3,640 for services of Mr. Ross based on 20.8 hours at \$175 per hour; and reimbursement of costs (out-of-pocket expenses) in the amount of \$1,446.66, for a total request of \$24,646.66.

Ms. Dickson and her associate, Mr. Ross, have requested that they be compensated for their work in this proceeding at hourly rates of \$200 and \$175 respectively. In support thereof, they have attached to their petition declarations from practicing attorneys familiar with counsel's reputations and the quality of their work. We have no question about either the quality of the work done by either of them or the number of hours expended by them in their representation of FOP and PRC. Our concern is that by the very nature of the proceeding, the services performed by counsel take on a pro bono publico aspect which in a sense argues that the work be done without charge. On the other hand, we recognize that altruism has its limits, and without some reasonable expectation of

compensation being available, protestants in this or in similar matters would be hard pressed to find representation.

While we do not expect counsel to work without compensation, we must weigh counsel's desire to be paid at the rate they think appropriate against the realism of what others providing similar services in other proceedings before this Commission have been paid. While a review of attorney fee cases may be of some limited interest in this instance, we feel it sufficient to state that attorney fees paid in the recent past fall within a range of \$135 to \$185 per hour for experienced counsel. We thus feel that based on the level of difficulty of the proceeding, the nature and quality of the work performed, and the results achieved in this matter, an hourly fee of \$175 for Ms. Dickson's services and \$150 for those of her associate, Mr. Ross, is appropriate.

Findings of Fact

1. Ms. Dickson and her associate, Mr. Ross, performed valuable services in this proceeding and, as noted in D.92-03-033 issued March 11, 1992, they are entitled to an award of attorney fees from the Advocates Trust Fund.
2. Attorney fee awards from the Advocates Trust Fund in recent matters before the Commission in which counsel's efforts have been reasonably similar to those furnished by counsel in this proceeding have fallen in a range of \$135 to \$185 per hour.
3. Based on the level of difficulty of the proceeding, the nature and quality of the work performed, and the results achieved in this matter, an hourly rate of \$175 for Ms. Dickson's services and \$150 for those of her associate, Mr. Ross, is appropriate.
4. The number of hours expended by Ms. Dickson and by Mr. Ross is unchallenged and appears reasonable under the circumstances here present.
5. The out-of-pocket expenses incurred by counsel are unchallenged and appear reasonable under the circumstances here present.

Conclusion of Law

The firm of Dickson and Ross should be awarded attorneys fees in the amount of \$21,681 representing 97.8 hours expended by Ms. Dickson at an hourly rate of \$175 and 20.8 hours expended by Mr. Ross at an hourly rate of \$150, together with \$1,446.66 out-of-pocket expenses incurred, all to be paid out of the Advocates Trust Fund.

O R D E R

IT IS ORDERED that the Firm of Dickson and Ross, 1970 Broadway, Suite 1045, Oakland, California 94612 is hereby awarded attorneys fees and expenses in the amount of \$21,681 to be paid out of the Advocates Trust Fund for services rendered on behalf of protestants in this proceeding.

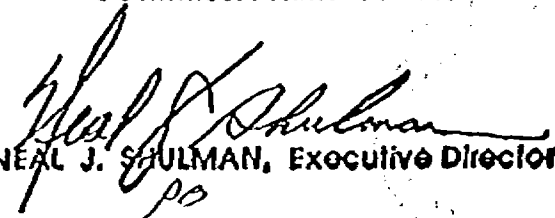
This order is effective today.

Dated May 20, 1992, at San Francisco, California.

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

Commissioner Patricia M. Eckert,
being necessarily absent, did not
participate.

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


NEAL J. SHULMAN, Executive Director