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Decision 92-07-051 July 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own)
 motion for the purpose of considering)
 a change to Paragraph 1.4 of the)
 Advocates' Trust Fund to allow the)
 Commission in its discretion to)
 consider an additional factor in)
 making compensation awards: the)
 magnitude of the party's own economic)
 interest in the litigation.)

ORIGINAL

R.91-09-001
(Filed September 6, 1991)

O P I N I O N

On September 6, 1991, the Commission issued the above-captioned Rulemaking, which proposed a modification to Paragraph 1.4 of the Advocates Trust Fund (Fund). In Decision (D.) 92-03-090, the Commission approved the modification to the Fund, and directed the Executive Director of the Commission to meet with Pacific Bell and the Trustee of the Fund to obtain their consent to the modification.

In a May 28, 1992 letter to the assigned Administrative Law Judge from the Executive Director, the Executive Director reported that representatives of the Donor of the Fund (Pacific Bell), the Trustee (Sumitomo Bank of California), and the Commission had consented to the change authorized in D.92-03-090. A document entitled "Consent to Modifications" (Consent) was executed by the three representatives. A copy of the Consent is attached to this decision as Appendix A.

The Consent also approved two other minor changes. The first change added a second paragraph to the introductory section of the Fund's Declaration of Trust. This addition reads as follows:

"THIS TRUST AGREEMENT, as modified by Decision 92-03-090 and the May 28, 1992 Consent to Modifications, reflects the subsequent changes to the Donor and Trustee of the Advocates Trust Fund. As modified, the Donor shall now read 'Pacific Bell, a California Corporation,' and the Trustee shall now read 'Sumitomo Bank of California, also a California Corporation.'"

Section 8.1 of the Declaration of Trust authorizes amendments of the Declaration of Trust "whenever necessary or advisable for the more convenient or efficient administration of this Trust..." and the Donor, Trustee, and Commission agree to such change. This change merely amends the Declaration of Trust to reflect the successor in interest to Pacific Telephone and Telegraph Company, and to reflect the name of the current Trustee.

The second minor change modifies Section 1 of Article 1 of the Fund's Bylaws to reflect the change in the Commission's principal office address. This type of change is permitted under Section 2 of Article 1 of the Bylaws.

In the interest of making the revised Declaration of Trust and the revised Bylaws readily available to everyone, a copy of the Declaration of Trust and the Bylaws, as modified by the May 28, 1992 Consent to Modifications, is attached to this decision as Appendix B.

Findings of Fact

1. The authorized representatives of the Donor, Trustee, and the Commission have consented to the modification of Paragraph 1.4 of the Advocates Trust Fund, as authorized in D.92-03-090.

2. The consent also makes a minor modification to the Fund's Declaration of Trust and to the Fund's Bylaws.

3. Since there are no other issues to be decided in this Rulemaking, this Rulemaking should be closed effective immediately.

Conclusion of Law

Both of the minor modifications are permitted under the Declaration of Trust and the Bylaws.

O R D E R

IT IS ORDERED that:

1. Appendix A and Appendix B of this decision shall serve as the revised Declaration of Trust and revised Bylaws of the Advocates Trust Fund.

2. The Executive Director shall retain the signed original of the Consent to Modifications in the Commission's files.

3. This Rulemaking shall be closed.

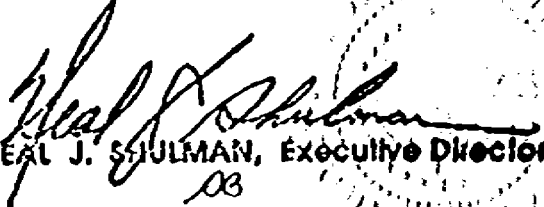
This order is effective today.

Dated July 22, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SCHULMAN, Executive Director

Consent to Modifications

The Declaration of Trust of the Advocates Trust Fund of the California Public Utilities Commission is modified in accordance with Article VIII of the Declaration of Trust to adopt the following changes:

Paragraph 1.4 of the Declaration of Trust of the Advocates Trust Fund is modified to incorporate changes to Paragraph 1.4 adopted March 31, 1992 by the California Public Utilities Commission in Decision 92-03-090.

In addition, a second paragraph has been added to the Declaration of Trust of the Advocates Trust Fund to reflect the change from Pacific Telephone and Telegraph Company to Pacific Bell, a California corporation (hereinafter referred to as the "Donor") and the change from Pacific Union Bank and Trust Company to Sumitomo Bank of California, also a California corporation (hereinafter referred to as the "Trustee"),.

In addition, Article 1, Section 1, of the Bylaws of the Advocates Trust Fund is modified to reflect the current Commission address at 505 Van Ness Avenue, San Francisco, CA 94102

IN WITNESS WHEREOF these modifications has been executed in the City and County of San Francisco, California by the duly authorized agent of the Donor, the Trustee and the Commission named herein.

PACIFIC BELL, Donor.



M.J. Miller
Regulatory Vice President

SUMITOMO BANK OF CALIFORNIA, Trustee



Thomas D. Benson
Assistant Vice President and Senior Trust Officer

CALIFORNIA PUBLIC UTILITIES COMMISSION



Neal J. Shulman
Executive Director

May 28, 1992

ADVOCATES TRUST FUND
of the
CALIFORNIA PUBLIC UTILITIES COMMISSION

DECLARATION OF TRUST

THIS TRUST AGREEMENT, made this Eleventh day of October, 1982, by and between the Pacific Telephone and Telegraph Company, a California corporation (hereinafter referred to as the "Donor"), and Pacific Union Bank and Trust Company, also a California corporation (hereinafter referred to as the "Trustee"), creates an ADVOCATES TRUST FUND for the purposes and under the conditions fully set out below.

THIS TRUST AGREEMENT, as modified by Decision 92-03-090 and the May 28, 1992 Consent to Modifications, reflects the subsequent changes to the Donor and Trustee of the Advocates Trust Fund. As modified, the Donor shall now read "Pacific Bell, a California Corporation", and the Trustee shall now read "Sumitomo Bank of California, also a California Corporation".

I. PURPOSE OF TRUST

1.1 This Trust is created solely for charitable purposes.

1.2 The specific purpose for which this Trust is created 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 (hereinafter the "CPUC"), has jurisdiction to make attorney fee awards.

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 four 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, (3) the number of people standing to benefit

from the decision, and (4) the magnitude of the party's own economic interest in the litigation. 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.

1.5 The property of this Trust is irrevocably dedicated to charitable purposes and no part of the Trust fund shall inure to the benefit of any private shareholder or individual. No part of the activities of this Trust shall consist of carrying on propaganda, or otherwise attempting to influence legislation, or of participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office. Notwithstanding any other provision hereof, this Trust shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization which is exempt from taxation under provisions of the California Revenue and Taxation Code Section 23701(d) and the Internal Revenue Code Section 501(c)(3) or by an organization contributions to which are deductible under Section 170(c)(2) IRC, and other applicable legislation and regulations as they now exist or may hereafter be amended.

Upon the dissolution or windup of this Trust, its assets remaining after the payment, or provision for payment, of all debts and liabilities shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its exemption from taxation under Section 501(c)(3) of the Internal Revenue Code, or to a public entity or agency of the State of California, as may be directed by the Public Utilities Commission of the State of California.

II. NAME OF TRUST.

The name of this Trust shall be the ADVOCATES TRUST FUND of the CALIFORNIA PUBLIC UTILITIES COMMISSION and so far as practicable the Trustee shall conduct the activities of the Trust in that name.

III. TRUST FUND

3.1 This Trust is created with an initial contribution from the donor in the amount of Ten Dollars (\$10.00) to be followed by a further contribution in excess of One Hundred Sixty Thousand Dollars (\$160,000.00), as specified in Decision (D.) 93251 of June 30, 1981 before the California Public Utilities Commission, Case No. 10066 (Filed March 6, 1976), in cash, receipt of which is hereby acknowledged by the undersigned Trustee. The Trustee is authorized to receive, from time to time, additional donations from the Donor or from any other source, in cash or in other property acceptable to the trustee. All donations so received, together with the income therefrom, shall be referred to as the Trust Fund and shall be held, managed, administered and paid out

by the Trustee pursuant to the terms of this Agreement and for no other purposes.

3.2 The Trustee hereby accepts the Trust subject to all of the terms and conditions of this Agreement. In carrying out each of the responsibilities under the Trust, the Trustee shall exercise the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

3.3 The Trustee shall be responsible only for the sums actually received by it as Trustee under this Trust Agreement, and shall be under no duty, and shall have no right, to dispute any amount to be paid to it pursuant to this Trust Agreement.

IV. DISBURSEMENTS COMMITTEE

4.1 There is hereby created a Disbursements Committee of the Trust which shall consist of all the current members of the California Public Utilities Commission. Each Commissioner shall automatically be a member of the Disbursements Committee for so long as he or she remains a member of the CPUC. Upon the conclusion of a member's term as Commissioner or should a Commissioner resign or be unable to serve for any reason the successor Commissioner shall automatically become a member of the Disbursements Committee of the Trust.

4.2 The Disbursements Committee of the Trust shall have sole power to authorize and direct the payment of funds from either income or principal of the Trust Fund. The Committee shall act by majority decision. Votes of members of the Committee shall be recorded on all matters decided.

4.3 The Disbursements Committee shall, from time to time, establish an investment policy for the management of the Trust Fund based upon its estimate of the short-term and long-term requirements for disbursements from the Trust Fund, which policy shall be communicated to the Trustee for the purpose of guiding its investment decisions.

V. POWERS OF TRUSTEE

5.1 The Trustee shall have the power to receive, hold, manage, administer the Trust Fund.

5.2 At such time and in such manner as directed by the Disbursements Committee, the Trustee shall pay over amounts from the Trust Fund, either income or principal, for the purposes set forth in Section I, paragraph 1.2, above.

5.3 The Trustee shall also be authorized to pay over such amounts representing reasonable administrative expenses directly

related to the management of the Trust as may be authorized and directed by the Disbursements Committee.

5.4 In furtherance of the investment policy of the Trust as determined periodically by the Disbursements Committee, the Trustee shall have the authority and responsibility to invest and reinvest and to acquire and dispose of assets of the Trust, and this authority and responsibility shall be exercised in accordance with the standard of care established in Section III, paragraph 3.3, above.

5.5 The Trustee shall have all the powers necessary to hold in trust and manage the assets of the Trust including, under the direction of the Disbursements Committee, the power:

(a) To collect and receive the income of the Trust and any and all property of the Trust;

(b) To manage, purchase, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease and otherwise deal with all property, in such manner, for such consideration, and on such terms and conditions as the Trustee may decide;

(c) To extend the time of payment of any obligation owing to the Trust and to deposit any property with and to delegate discretionary powers to any committee, including the power to pay expenses, compensation and assessments levied with respect to the deposited property;

(d) To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, to commence or defend legal proceedings for or against the Trust, and to represent the Trust in all proceedings in any court of law or equity or before any other tribunal;

(e) To create reserves of assets of the Trust for the payment of expenses, for distributions as required by the Trust, or for any other purposes of the Trust;

(f) To sue or defend in connection with any property held at any time by the Trust, the related costs and attorneys' fees to be a charge against the Trust;

(g) To appoint agents, including appraisers, actuaries, accountants, or legal counsel.

5.6 The Trustee shall incur no liability for any distribution it makes according to the directions of the Disbursements Committee. The Trustee shall not be responsible for the adequacy of the Trust assets to discharge any and all of the obligations of the Trust. Payments authorized and directed by the Disbursements Committee shall be made by check mailed to the address furnished by the Committee.

VI. BOOKS, RECORDS AND REPORTS

6.1 The Trustee shall keep accurate books and records reflecting receipts, investments and disbursements of the Trust, and any other transactions engaged in by the Trust. The books and records shall be open to inspection at all reasonable times

by the Disbursements Committee or their designated representatives.

6.2 Not less than quarterly the Trustee shall submit to the Disbursements Committee a full accounting and set of financial statements setting forth receipts, investments and disbursements of the Trust.

6.3 Annually, the Trustee shall prepare and submit to the Disbursements Committee a statement summarizing the investment history of the Trust and any recommendations for modification of the investment policy of the Trust.

6.4 The Disbursements Committee shall arrange for a yearly audit of the financial statements and affairs of the Trust and its distributions in such detail as may be requested by the CPUC or the Committee, and shall timely provide them with copies of the audit report.

VII. RESIGNATION OR REMOVAL OF TRUSTEE

The Trustee may resign at any time upon the giving of 30 days written notice to the Donor and the Disbursements Committee and the Committee may remove the Trustee at any time upon the giving of 30 days written notice to the Donor and the Trustee. The Committee (or the CPUC) shall thereupon appoint a successor Trustee or Trustees, which may be a corporation, one or more individuals, or a combination thereof, subject to approval by the CPUC. The resignation or removal shall become effective upon acceptance of the appointment by the successor Trustee(s) unless otherwise agreed between the Committee and the Trustee. Any successor Trustee(s) shall have the same rights, powers and duties as it would have had as an original Trustee.

VIII. AMENDMENT OF TRUST AGREEMENT; TERMINATION

8.1 This Agreement may be amended or modified from time to time by further Agreement between the Donor, the Trustee(s) and the CPUC, whenever necessary or advisable for the more convenient or efficient administration of this Trust or to enable the Trustee(s) to carry out the purpose of this Trust more effectively, but no such amendment or modification shall alter the intention of the donor that this Trust be operated exclusively for charitable purposes and in a manner which shall make this Trust tax exempt and the donations to it deductible from taxable income to the extent allowed by the provisions of the Internal Revenue Code and the California Revenue and Taxation Code and other applicable legislation and regulations as they now exist or as they may hereafter be amended. Every amendment or modification of this Agreement shall be made in writing, shall be signed by a duly authorized representative of the Donor and shall be furnished to the appropriate United States and State of California revenue and taxation authority in accordance with law.

8.2 This Trust may be terminated at any time pursuant to order of the CPUC, after notice to all parties to Case No. 10066 and an opportunity to be heard. Upon such termination, the assets of the Trust shall be distributed by the Trustee as and when directed by the Committee in accordance with the order of the CPUC. Until final distribution of the Trust assets, the Trustee shall continue to have all the powers provided under this Agreement as are necessary and expedient for the orderly liquidation and distribution of the assets of the Trust.

IX. COMPENSATION OF TRUSTEE; EXPENSES

9.1 The Trustee shall be entitled to reasonable compensation for its services as Trustee under this Agreement and for any extraordinary services at a rate to be agreed upon from time to time between the Trustee and the Committee.

9.2 The Trustee shall deduct from and charge against the assets of the Trust all administrative expenses of the Trust, including fees paid to appraisers, actuaries, accountants and legal counsel, taxes and fees imposed on the Trust, if any, any expenses incurred by the Disbursements Committee in its activities directly related to its responsibilities under this Agreement, and the compensation of the Trustee.

X. MISCELLANEOUS

The Trust shall indemnify and hold harmless the Trustee, its officers, employees, agents, successors and assigns, and the members of the Disbursements Committee and their successors against all liabilities, demands, claims, actions, losses, taxes, expenses (including reasonable attorney's fees) arising out of acts or omissions to act with respect to the purpose of this Trust except in the case of willful misconduct or gross negligence.

XI. SITUS; SEVERABILITY

This Agreement shall be construed in accordance with the laws of the State of California.

If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall not affect any other provision, and it shall be construed and enforced as if the invalid or unenforceable provision had not been included.

BYLAWS

for the regulation, except as otherwise provided by statute
or its Declaration of Trust
of

ADVOCATES TRUST FUND

of the

CALIFORNIA PUBLIC UTILITIES COMMISSIONARTICLE I. Offices

Section 1. The principal office of the Advocates Trust Fund is fixed and located at the offices of the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, San Francisco, CA 94102.

Section 2. The California Public Utilities Commission (hereafter referred to as the "CPUC"), is granted full power and authority to change said principal office from one location to another within the State of California. Any such change shall be noted on the Bylaws opposite this Section, or this Section may be amended to state the new location.

ARTICLE II. Trustee(s)

Section 1. The authorized number of Trustee(s) for the Advocates Trust Fund shall be as designated, from time to time, by the CPUC. The Trustee(s) so designated shall serve until:

- (a) removal by the CPUC;
- (b) resignation and replacement by the CPUC;
- (c) inability to serve for any reason.

Section 2. No Trustee(s) shall be personally liable for the debts, liabilities or other obligations of the Trust.

Section 3. If required by the CPUC, the Trustee(s) of this Trust shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the CPUC shall determine.

ARTICLE III. Disbursements Committee

Section 1. The number of members of the Disbursements Committee shall be equivalent to the number of CPUC Commissioners.

Section 2. The Disbursements Committee shall meet in the offices of the CPUC, in San Francisco, California.

Section 3. The Disbursements Committee shall hold an Annual Meeting for the purpose of reviewing activities of the Trust during the preceding year, assessing the activities of the Trustee(s), reviewing the Investment Policy of the Trust, and conducting such other business as may be brought before it. The Annual Meeting shall be held immediately following the first conference of the California Public Utilities Commission in each fiscal year. Notice of the Annual Meeting need not be given to members of the Committee, but shall be given to the public as required by law.

Section 4. Special meetings of the Disbursements Committee may be called for any purpose or purposes at any time by direction of the CPUC or by the joint request of the Trustee(s) and any member of the Disbursements Committee. Notices of such meetings shall be given by personal delivery at the office of each committee member at least 7 days in advance, or by first-class mail deposited at least 10 days in advance, and shall be noticed to the public as required by law. Such notice shall state the purpose or purposes for which the meeting is called, the time and place of the meeting, and whether the meeting is called by the CPUC or by request of the Trustee(s) and a member of the Committee.

Section 5. A quorum for the transaction of business by the Disbursements Committee shall be a majority of the members of the Committee as then constituted. Every act or decision done or made by a majority of Committee members present at a meeting duly held, at which a quorum is present, is the act of the Committee, unless the law, the Declaration of Trust of this Trust, or these Bylaws require a greater number.

Section 6. Notice of a meeting need not be given to any member who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such member. All such waivers, consents and approvals shall be filed with the Trust records as a part of the minutes of the meetings.

Section 7. Every member of the Disbursements Committee, and each and every Trustee(s) shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Trust.

Section 8. The Disbursements Committee shall have the authority, as required, to employ individuals or organizations in the role of consultant or expert in any subject relevant to the efficient management of the Trust or for the purpose of more efficiently achieving its public benefit goals.

Section 9. No member of the Disbursements Committee shall be personally liable for the debts, liabilities or other obligations of the Trust.

Section 10. No member of the Disbursements Committee shall receive any compensation from the Trust for his or her services as such Committee member.

Article IV. Officers

Section 1. The Disbursements Committee shall select, at its annual meeting, one of its members to act as the committee chairperson, and another to act as the official Secretary of the committee for purposes of certifying official records of the committee. The Committee may, in its discretion from time to time create other offices and appoint officers to said offices for this Trust. One person may hold two or more offices, except those of Chairperson and Secretary of the Committee.

Section 2. The duties of the chairperson shall be to conduct the meetings of the Disbursements Committee and to be the normal means of liaison between the Committee and the Trustee(s).

Section 3. The duties of the secretary shall be to certify and maintain the official records of the committee and to give notice of Committee meetings as required by law and these Bylaws.

Article V. Amendments

These Bylaws may be amended or repealed only by the California Public Utilities Commission.

Article VI. Fiscal Year

The Fiscal Year of the Trust shall be coterminous with the fiscal year of the California Public Utilities Commission.

Article VII. Construction

As used in these Bylaws:

(a) The present tense includes the past and the future tenses, and the future tense includes the present;

(b) The masculine gender includes the feminine and the neuter and the neuter includes both masculine and feminine;

(c) The singular number includes the plural, and the plural number includes the singular;

(d) The word "shall" is mandatory and the word "may" is permissive;

(e) The word "Trustee(s)" shall refer to one or more individuals who shall be designated by the CPUC, from time to time, to serve in that capacity for this Trust.

(END OF APPENDIX B)