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Decision 92-08-032 August 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mary Healy and Gary Healy,)
)
 Complainants,)
)
 vs.)
)
 Pacific Gas and Electric Company,)
)
 Defendant.)

ORIGINAL

Case 90-01-017
(Filed January 8, 1990)

Richard C. Burton, Attorney at Law, for
 Mary and Gary Healy, complainants.
Jefferson C. Bagby, Attorney at Law, for
 Pacific Gas and Electric Company,
 defendant.

OPINION GRANTING COMPENSATION FOR ATTORNEY'S FEES

Summary of Decision

The Commission grants Mary Healy and Gary Healy (complainants) reimbursement for their attorney's fees and costs from the Advocates Trust Fund (ATF).

Background

Complainants own the Willow Creek campground (Willow Creek) in Camptonville, California. Complainants requested an electric line extension for Willow Creek in accordance with free footage allowed under Rule 15(B)(1) of Pacific Gas and Electric Company's (PG&E) tariffs. PG&E agreed to build the Willow Creek extension only if complainants paid in advance the \$20,000 tree trimming costs associated with building the extension.

While PG&E required complainants to pay the tree trimming costs associated with the Willow Creek extension, it did not require other customers, similarly situated, to pay such costs for building their extensions.

Complainants found PG&E's offer unacceptable and filed this complaint seeking a Commission order requiring PG&E to build the Willow Creek extension without charging complainants the \$20,000 tree trimming costs. Complainants also requested compensation for their attorney's fees and costs from the ATF.

On December 19, 1990, the Commission issued Decision (D.) 90-12-081 in Case (C.) 90-01-017 ordering PG&E to build the line extension requested by complainants without charging them the tree trimming costs. However, in that decision we denied complainants' request for attorney's fees and costs.

In denying complainants' request for attorney's fees under the ATF, D.90-12-081 cited two deficiencies. First, complainants failed to provide any information which would enable the Commission to make a finding of what would be a reasonable amount for attorney's fees, in view of time spent, level of skill shown, and comparable fees paid to others practicing public utility law. The ATF requires such a finding before any award for compensation may be made.

Second, complainants failed to demonstrate that their own economic interest was not sufficient to motivate participation.

While D.90-12-081 denied complainants' request for attorney's fees, it allowed them to file supplemental information to receive attorney's fees from the ATF.

As allowed by the Commission, complainants, on February 1, 1991, filed a supplemental request for attorney's fees and costs from the ATF. The supplemental request provides information in response to the deficiencies cited in D.90-02-081. Following is a summary of the information provided by complainants.

Attorney's Fees

Complainants' attorney, Richard C. Burton, is a graduate of the School of Law of the University of California at Los Angeles. He has practiced law in California since 1970.

According to a declaration provided by Mr. Burton, he spent 43.4 hours working on this proceeding. His work involved time spent in consultation with clients, reviewing documents and transcripts, preparation for hearing, and approximately 8 hours of hearing time. The total charges can be summarized as follows:

Attorney's fee for 43.4 hrs. @ \$100/hr.	=	\$4,340.00
Paralegal Cost	=	148.50
Miscellaneous	=	<u>46.77</u>
		\$4,535.27

Complainants' Own Economic Interest

In February 1991 when complainants filed their supplemental request for attorney's fees, the ATF Declaration of Trust required that "No award should be made where a party's own economic interest is sufficient to motivate participation." (ATF Declaration of Trust, Section I, paragraph 1.4).¹ However, the Commission on March 31, 1992, issued D.92-03-090 in Rulemaking 91-09-001 which proposed to modify the ATF Declaration of Trust, Section I, paragraph 1.4 as follows:

"1.4 An award will be based upon consideration of three 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, and (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

¹ The Commission in D.93251 in C.10666, established the ATF following a finding in Consumer Lobby Against Monopolies vs Public Utilities Commission (CLAM) (1979) 25 Cal. 3d 891, that the Commission has jurisdiction to award attorney's fees. The specific purpose of the ATF is to hold and disburse funds solely to defray expenses, including attorney's fees and expert witness fees directly related to litigation or representation of consumer interest in "quasi-judicial complaint cases" as defined in CLAM.

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."~~

D.92-03-090 provided the following basis for modifying paragraph 1.4:

"Instead of barring parties automatically because of an economic interest in the litigation, the proposed changes will allow fee recovery to parties even if they have an economic interest in the proceeding if the Commission finds good cause for it."

(D.92-03-090, p. 2.)

These proposed modifications were adopted and incorporated into the Declaration of Trust by D.92-07-051.

Complainants' Justification
of Request for Attorney's Fees

Complainants contend that they were denied a line extension to which they were entitled. The delay in receiving service has caused them considerable economic hardship.² Complainants maintain that they are entitled to reimbursement for attorney's fees and costs because the legal expenses incurred by them were due to PG&E's error and not due to any wrongdoing on their part. According to complainants, other PG&E customers received their line extensions without incurring any legal expenses so the complainants should be treated similarly and awarded reimbursement for their attorney's fees.

² Complainants have provided copies of the profit and loss statements (IRS Schedule C Form 1040) for the years 1987, 1988, and 1989. According to the statements, Willow Creek lost \$16,669, \$10,486, and \$18,236 for 1987, 1988, and 1989, respectively.

Discussion

We believe that the 43.4 hours expended for the proceeding involving two days of hearing are reasonable. Other costs included in the supplemental request, which are less than 5% of the attorney's fees, are reasonable.

As to the rate of compensation of \$100/hour requested by complainants, we note that it is considerably below the current rate of compensation in the range of \$140 to \$175/hour being awarded to attorneys practicing before the Commission. However, considering Mr. Burton's limited experience in practicing public utility law, the requested \$100/hour is reasonable.

Next, we will consider the question of complainants' economic interest. It would appear that complainants stand to save \$20,000 in tree trimming costs by filing this complaint. However, complainants incurred legal expenses only because PG&E initially miscalculated their free footage allowance, which is evident from the following finding in D.90-12-081:

"Had PG&E not initially miscalculated the free footage allowance for Willow Creek, complainants would have qualified to receive an extension under the standard free footage allowance provision of Rule 15(B)(1) similar to the extensions received by Connelley, Cecchini, Burgess, and Pena." (Finding of Fact 24, D.90-12-081.)

It is clear from the above that complainants were denied service which they were entitled to in accordance with PG&E's tariffs. In addition, other PG&E customers, similarly situated, received their line extensions, without charge, as provided in Rule 15(B)(1) of PG&E's tariffs. Had PG&E provided complainants their line extension, without charge, in accordance with its tariffs, complainants would not have incurred any legal expenses.

After balancing the equities of this situation, we believe that there is good cause for allowing complainants to recover their attorney's fees and costs.

Findings of Fact

1. Complainants requested an electric line extension for Willow Creek in accordance with the free footage allowed under Rule 15(B)(1) of PG&E's tariff.
2. PG&E agreed to build the Willow Creek extension only if complainants paid in advance the \$20,000 tree trimming costs associated with building the extension.
3. PG&E did not require other customers, similarly situated, to pay tree trimming costs associated with building their line extensions.
4. Complainants filed C.90-01-017 seeking a Commission order directing PG&E to build the Willow Creek extension under the free footage allowance provisions without assessing complainants the \$20,000 tree trimming charge.
5. Complainants, in C.90-01-017, also requested compensation for attorney's fees and costs from the ATF.
6. The Commission issued D.90-12-081 in C.90-01-017 ordering PG&E to build the Willow Creek line extension without assessing complainants any charge for tree trimming.
7. D.90-12-081 denied complainants' request for attorney's fees and costs citing certain deficiencies.
8. D.90-12-081 allowed complainants to file a supplemental request for attorney's fees and costs.
9. On February 1, 1991, complainants filed a supplemental request for attorney's fees and costs in the amount of \$4,535.27.
10. The supplemental request provides additional information in response to the deficiencies cited in D.90-12-081.
11. Complainants' attorney, Mr. Burton, reasonably expended 43.5 hours to represent complainants.
12. The work performed by Mr. Burton is compensable at the rate of \$100 per hour.
13. The claimed paralegal and miscellaneous costs totaling \$195.27 were reasonably incurred.

14. Complainants were entitled to receive the line extension for Willow Creek under the free footage allowance of PG&E's tariffs.

15. Complainants would not have incurred any legal expenses had PG&E followed the rules in its tariffs.

16. Other customers, similarly situated, did not incur any legal expenses to receive their line extensions.

Conclusions of Law

1. Complainants should be awarded attorney's fees and costs totaling \$4,535.27.

2. Since complainants are not being allowed to accrue interest on the awarded attorney's fees, this order should be made effective today.

O R D E R

IT IS ORDERED that:

1. Complainants, Mary Healy and Gary Healy, shall be paid attorney's fees and costs in the amount of \$4,535.27 from the Advocates Trust Fund.

2. Since all outstanding issues in the proceeding have been resolved, Case 90-01-017 is closed.

This order is effective today.

Dated August 11, 1992, at San Francisco, California.

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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

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NEAL J. SHULMAN, Executive Director