

DEC 16 1992

Decision 92-12-036 December 16, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Kenneth Bates, Jr.,

Complainant,

vs.

GTE California,

Defendant.

And Related Matters.

ORIGINAL

Case 91-02-084
(Filed February 15, 1991)

Case 91-04-033
(Filed April 26, 1991)
I.90-02-047
(Filed February 23, 1990)

O P I N I O N

Complainant Kenneth Bates, Jr. seeks compensation from the Advocates' Trust Fund (Trust) in the amount of \$16,417.43. Bates requests compensation for his work in these complaints against GTE California Incorporated (GTEC).

This decision grants Bates \$11,092.41 in fees and expenses from the Trust.

1. Background of the Complaint

Bates filed two complaints against GTEC. The first, filed February 15, 1991, alleged GTEC improperly handled customer payments which had not been applied to customer accounts. The complaint asked the Commission to require GTEC to credit bills immediately upon receipt of proof of payment, to require GTEC to reopen walk-in facilities for resolving customer billing disputes, and to increase monitoring of GTEC's customer service quality.

The second complaint, filed April 26, 1991, alleged GTEC misencoded Bates' check and withdrew too much money from Bates'

bank account as a result. In that complaint, Bates sought tariff changes to provide for payment of interest on overcollected amounts and expenses incurred in resolving utility billing and collection errors.

In Decision (D.) 92-07-044, we ordered GTEC to credit payments to customer accounts immediately upon receiving proof of payment, to suppress billing notices in the interim, and to pay interest on overcollected amounts. We also stated we would further consider the need for walk-in facilities for GTEC's customers during our review of the new regulatory framework adopted in D.89-10-031.

2. The Appropriateness of Bates' Request for Fees from the Trust

Bates now seeks compensation from the Trust. The Commission created the Trust on November 11, 1982. Most compensation requests brought before us are filed under Article 18.7, rather than from the Trust. Article 18.7 permits compensation for participation in proceedings which affect rates. This case affects a utility's service quality. Because this case does not directly affect utility rates, Bates' request for compensation is appropriately made under the Trust.

The Trust is designed to reimburse intervenors in "quasi-judicial" complaint cases where funding might not otherwise be available. This complaint case is clearly quasi-judicial. Other compensation is not available to Bates in this case.

In order to qualify for fees from the Trust, several other conditions must be met.

The Trust requires that no award be made where a party's own economic interest is sufficient to motivate participation. In this case, Bates sought resolution of tariff issues after his own problem had been resolved. Bates had nothing material to gain from initiating these complaints. The record in these proceedings demonstrates that Bates pursued his complaints out of a sense of

fairness and in order to mitigate cost and inconvenience to other GTEC customers.

3. The Quality and Necessity of Bates' Participation in this Proceeding

Under the terms of the Trust, an intervenor may be entitled to fees where a private party has "made a direct, primary, and substantial contribution to the result of the case." It is clear that Bates made a substantial contribution to the outcome of the case, having filed the complaints and presented substantial evidence regarding the problems he perceived. We granted several of the recommended actions of Bates in D.92-09-045.

Three other criteria must be considered for an intervenor to receive an award from the Trust:

- a. The strength or societal importance of the public policy vindicated by the litigation. Bates' complaints addressed several tariff matters which appear to have been the source of substantial customer inconvenience and confusion. His presentation regarding walk-in customer facilities--while not adopted by the Commission--raised the issue for future, more detailed, consideration.
- b. The number of people standing to benefit from the decision. Bates comments that all of GTEC's customers stand to benefit from resolution of his complaints, noting that GTEC loses or misapplies over 20,000 payments annually, and incorrectly encodes over 1,800 checks every year. We agree that the resolution of Bates' complaints potentially affects many GTEC customers.
- c. The necessity for private enforcement and the magnitude of the resultant burden on the complainant. Bates took the initiative in his complaints to raise several service issues which had not been raised by Commission staff. These issues may have eventually been considered in the review of the new regulatory framework. However, we doubt that they would have been highlighted there in light of considering the many issues which the parties and the Commission intend to address. We therefore find that Bates' complaints were

likely to have been necessary to initiate review of the matters raised in the complaints.

The burden on the complainant was significant, especially for a nonexpert intervenor, although the issues raised were not highly technical in nature. The record also suggests that a substantial effort was required of Bates in order to obtain certain documents and develop his case.

4. The Reasonableness of Hours and Expenses Claimed by Bates

Bates seeks \$16,417.43 from the Trust. Of this amount, \$15,975 is for time spent by Bates at an hourly rate of \$75.00. The remaining \$442.41 is claimed for postage, photocopying, telephone calls, and other minor expenses. Bates does not seek reimbursement for time spent traveling or transportation expenses.

Bates is entitled to fees associated with reasonable time spent on the complaint. A review of Bates' accounting of requested hours shows that he has claimed a reasonable amount of time spent on the complaints. We will grant Bates' fees for 213 hours of work in these complaints. Bates' estimate of associated expenses is conservative and will be adopted.

5. The Reasonableness of Bates' Requested Fees

Bates proposes a rate of \$75 per hour for work in these complaints. Bates seeks \$75 an hour on the basis that he charges clients this amount for his work as a professional photographer.

Bates' proposed hourly rate is somewhat high. We do not doubt the veracity of Bates' assertion that he is paid \$75 an hour for work as a professional photographer. However, we do not generally base fees in our proceedings on a participant's "opportunity costs," that is, those costs which are foregone in order to participate in our proceedings. Rather, we consider the reasonable rates charged by comparable experts. We have granted between \$50 and \$150 an hour for the work of expert

witnesses participating in our proceedings in recent years. Bates is not an expert witness on matters regarding utility regulation. He did, however, become an expert on certain issues during the course of the proceeding. We believe it is reasonable to grant Bates an hourly rate of \$50.

6. Total Allowable Fees

Considering the above determinations regarding appropriate hours, activities, and fees, Bates is entitled to the following award from the Trust:

Intervenor Fees	213 hours at \$50 =	\$10,650.00
Expenses		= <u>442.41</u>
	Total	\$11,092.41

We will direct the Trustee to pay Bates this amount and commend Bates for his initiative in these complaints.

Findings of Fact

1. These complaints alleged that GTEC's tariffs should be changed to improve customer service.
2. In response to these complaints, D.92-07-044 directed GTEC to make several changes in its tariffs and stated our intention to consider the wisdom of GTEC reopening walk-in customer facilities.
3. Bates seeks compensation from the Trust in the amount of \$16,417.43 for its pursuit of these complaints.
4. This proceeding is quasi-judicial in nature.
5. Funding from other sources, such as that available under Article 18.7, is not available to Bates for pursuit of this complaint.
6. Bates' economic interest was not sufficient to motivate his participation.
7. Bates has otherwise fulfilled the requirements of the Trust.
8. Bates seeks an hourly rate of \$75 on the basis that this is the rate he is paid for services as a professional photographer.

Bates is not an expert witness in areas related to utility regulation.

Conclusions of Law

1. Bates' estimates of time and expenses in these complaints are reasonable.
2. A reasonable hourly rate for Bates is \$50.
3. Bates' request for compensation from the Trust should be granted to the extent set forth in this decision.

ORDER

1. The request of Kenneth Bates, Jr. for compensation from the Advocates' Trust Fund is granted in part as set forth in this decision.

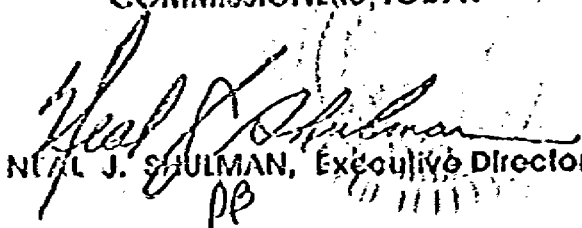
2. Trustee, Pacific Union Bank and Trust Company, shall pay to Bates \$11,092.41 plus interest at the three-month commercial paper rate commencing 60 days from the effective date of this decision and continuing until payment is made.

This order is effective today.

Dated December 16, 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. SHULMAN, Executive Director