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Decision 96-09-038 September 4, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Camp Meeker Water System, Inc., for recovery of extraordinary expenses to offset costs of importation of water.

ORIGINAL

Application No. 96-018 (Filed January 18, 1991)

In the Matter of the Investigation on the Commission's own motion of whether Camp Meeker Water System, Inc. has complied with Ordering Paragraphs No. 5 and 6 of D.89-10-033 relating to the filing of a notice of intent to preserve easements.

Application No. 92-07-031 (Filed July 22, 1992)

- by William E. Geary, Attorney at Law, for Camp Meeker Water System, Inc., applicant.
Joseph Baxter, Attorney at Law, and Paul Largent, for Camp Meeker Park and Recreation District; Randy Muelheim, for Alliance Redwood Conference Grounds; Gene Koch, We've Had Enough; Terry Anderson and David Grundman, for County of Sonoma Department of Public Works; and Mary Ann Egan, Attorney at Law, Martha Gretchen Hughes, and Eugene E. Murphy, for themselves; interested parties.
Ira Kalinsky, Attorney at Law, Arthur Jarrett, and Rahmon Momoh, for Division of Ratepayer Advocates.

OPINION

Summary of Decision

This decision finds that this proceeding is quasi-legislative in nature. Therefore, the request of Paul Largent and Camp Meeker Recreation and Park District (District) (petitioners)

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for compensation from the Advocates Trust Fund (Trust) must be denied since Trust funding is available only in quasi-judicial proceedings

WARRANT

I. History of the Proceeding

A. Request of CMWSI

Camp Meeker Water System, Inc. (CMWSI) filed this application on January 18, 1991, seeking recovery of water hauling expenses incurred ostensibly due to the severe drought California was experiencing at the time. The initial request was for \$77,015.25 for water hauled from August 24 through December 1990. CMWSI furnished a copy of an October 14, 1987 letter from B. David Clark, District Engineer for the Department of Health Services reminding CMWSI that Compliance Order 02-009 Provision 3:b. ...directs the CMWSI to provide supplemental water to any pressure zone in the distribution system which appears to be in danger of becoming dewatered...we must again insist that you continue to provide hauled water to the community.

An amendment to the application was filed on May 17, 1991, seeking recovery of additional water hauling expenses in the amount \$24,607.65 for the months of January and February 1991.

A second amendment to the application was filed on August 13, 1991, requesting that the Commission set up a memorandum account to record the additional expenses for required water hauling which began on August 13, 1991, and was expected to continue through October 1991. CMWSI then requested that it be allowed to recover these additional expenses.

On May 21, 1993, CMWSI filed a third amendment to the application which quantified the additional amount sought by memorandum account in the second amendment, as \$109,192.35 for the period from August 1991 through December 1992, the last month of water hauling.

The total amount of recovery sought by CMWSI was \$210,815.25.

B. Request of District
District filed a request for compensation from the Advocates Trust Fund on June 23, 1995. The total amount requested is \$21,885.94, consisting of \$21,270.00 in attorney fees and \$615.94 in costs and expenses.

The request is based on the time spent in participating in prehearing conferences and evidentiary hearings held on eight separate occasions from 1991 to 1994.

District believes that the Trust is the only means available for recovery of its costs of participation. District states that intervenor funding is not practically available since CMWSI is no longer a viable entity, having abandoned service to its customers.

No objections to the petitioners' compensation request have been received.

II. Pivotal Issue

Is Petitioners' Request for Compensation from the Trust Appropriate?

The Commission created the Trust on November 11, 1982, to be used for intervenor funds in "quasi-judicial" complaint cases as defined by Consumers Lobby Against Monopolies (CLAM) vs. Public Utilities Commission, 25 Cal. 3d 891 (1979)

The Trust was designed to provide compensation where it might not otherwise be available. By the express terms of the trust, fee awards are restricted to complaint cases or to proceedings that otherwise are "quasi-judicial" in nature.

"The commission's quasi-judicial proceedings closely resemble court proceedings." Procedures largely parallel to those of courts have been participated in the hearings and filed pleadings and briefs.

employed) there are identifiable parties (the plaintiff and defendant),... 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.... There are several salient differences between quasi-legislative and quasi-judicial proceedings. In adopting rules governing service and in fixing rates, (the) commission exercises legislative functions delegated to it and does not, in so doing, adjudicate vested interests or render quasi-judicial decisions.... Hence there may be a number of intervenors in such matters, representing a wide variety of public positions. The commission's primary task is to assimilate those views into a composite public interest, a give-and-take process often producing a result that cannot be deemed a clear-cut victory for any party.... Because of these marked contrasts between the two proceedings we hold that the commission's equitable jurisdiction to award attorney fees in quasi-judicial reparation actions does not extend to quasi-legislative ratemaking duties." (Consumers Lobby, *supra*, at 908, 909.)

We now consider whether this proceeding is quasi-judicial and thus qualifies for consideration of Trust funding.

This application was filed by CMWSI to seek reimbursement for water hauling expenses. Any authority to recover those expenses would be through rates, making this a ratemaking proceeding. The ratemaking is prospective in nature. The proceeding does not look to the past for reparations, and there are no identifiable plaintiffs or defendants.

We conclude that the proceeding is not quasi-judicial in nature, but rather quasi-legislative, which does not qualify for Trust funding.

Nevertheless, we note that District's participation would normally have been valuable to the Commission's District actively participated in the hearings and filed pleadings and briefs.

Absent CMWSI's abandoning service, we would have had the task of determining what level, if any, of water hauling expenses CMWSI and should be allowed to recover in rates. District's participation would have been valuable to us in this task. Its basic position was that if CMWSI had properly managed its resources, water hauling would not have been needed. Among other things, District presented evidence of a lot sale in the CMWSI watershed that included a well producing 30 gallons per minute (gpm). That level of production equates to about 127 gallons per day for each of the approximately 340 customers of CMWSI, a significant source and potentially larger than any single CMWSI source of supply at the time.

Comments

District filed comments opposing our determination that it is not eligible for Trust funding. District argues that this application was not based on any ratemaking authority and the Commission never exercised its ratemaking authority.

District also argues that this proceeding was essentially retroactive in nature, that the application was akin to reparations since CMWSI based its claim on being ordered to haul water by the Department of Health Services.

District further argues that D.95-03-012 is quasi-judicial in nature because it tried facts and essentially adjudicated a vested interest, i.e., whether CMWSI retained rights to its assets after abandoning service to its customers.

Regarding the first contention that the Commission has none, or has exercised no ratemaking authority in this matter, the Commission has ratemaking authority under Public Utilities (PU) Code § 727.5. We did not exercise ratemaking authority because applicant CMWSI had abandoned service before we resolved the issue of reasonableness of water hauling.

Next, contrary to District's claim that this is a retroactive proceeding, the application was filed to offset costs

for hauling water pursuant to the memorandum account authorized by the Commission in Decision 90-10-065, dated October 24, 1990. While some expenses of hauling water were incurred prior to establishing the memorandum account, only those expenses from that date forward would be considered for reimbursement. The purpose of establishing a memorandum account is to avoid the financial losses from unavoidable delays in the issuance of a decision on a request for reimbursement. Thus, this proceeding is not retroactive in nature. We disagree with District's final argument that because D.95-03-012 made this a quasi-judicial proceeding. In our view, that decision did not change the nature of this proceeding. Rather, it handled an issue that was relevant to the quasi-legislative nature of compensation for hauling water.

No changes to the proposed decision of the administrative law judge have been made as a result of the comments. **Findings of Fact**

1. Petitioners filed a request for compensation from the Trust for their participation in this proceeding.

2. Petitioners participated in hearings and submitted pleadings and briefs in this proceeding.

3. The purpose of the Trust is to provide compensation in quasi-judicial proceedings, in cases where funding would not otherwise be available.

4. This proceeding is quasi-legislative in character, not quasi-judicial.

5. Petitioners do not qualify for compensation from the Trust.

Petitioners filed comments on the proposed decision of the administrative law judge.

Conclusion of Law

The request of petitioners should be denied. Next, contrary to District's claim that this is a retroactive proceeding, the application was filed to offset costs

ORDER

IT IS ORDERED that the request of Paul Largent and Camp Meeker Recreation and Park District for compensation from the Advocates Trust Fund is denied.

This order is effective today.

Dated September 4, 1996, at San Francisco, California.

DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEPPER
Commissioners

President P. Gregory Conlon,
being necessarily absent, did not
participate.