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MAIL DATE
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Decision 96-11-063

November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the matter of the Application for)
Rehearing of Decision 95-10-050 by)
Utility Consumers' Action Network)
(UCAN) and Toward Utility Rate)
Normalization (TURN), and Dan Lacy,)
Attorney for complainant Milton Louis)
Grinstead.)

C.92-09-024
(Filed September 19, 1992)

DECISION ON REHEARING OF DECISION 95-10-050

The underlying case involves Grinstead's filing of a complaint on September 19, 1992, for reparations of overcharges against Pacific Gas & Electric Company ("PG&E"). Grinstead claimed that PG&E overcharged him because he should have been informed that he qualified for PG&E's TOU (Time of Use) rate schedules, which would have allowed him substantial savings on his bills had he known of this alternative rate schedule. We ruled that PG&E indeed had a duty and did breach this duty in failing to inform Grinstead of TOU's availability. Grinstead was thus entitled to the rate differential of what he actually paid and what he would have paid under the TOU rate schedules; the Commission awarded him \$3,518.00. This decision, D.94-07-065, was issued on July 20, 1994.

On May 5, 1995, Grinstead's filed a request for compensation (Grinstead II), which gave rise to D.95-10-050, the pertinent decision at issue here. In D.95-10-050, rendered on October 18, 1995, we rejected Grinstead's "Application for Award of Compensation" on several grounds. First, "to the extent that the application sought to revive the claim for expenses and fees" decided in D.94-07-065, the application was found by us to be untimely. Since the decision was issued on July 20, 1994, we

found that "the statutory period for seeking rehearing here or review in the Supreme Court of a decision ... has long since expired." (D.95-10-050 at p. 2.) Secondly, we also found that Grinstead's total failure to file a notice of intent to claim compensation (as mandated by Pub. Util. Code § 1804(a)(1) and Pub. Util. Code § 1804(a)(2)(A)(i) and (ii)) relating to alleged work and expenses subsequent to D.94-07-065 necessitated a rejection of his application. (D.95-10-050 at p. 3.) Thirdly, we further noted that an individual cannot be an "intervenor" for the purpose of Article 5 of the Public Utilities Code "in a case which he has initiated and which is being prosecuted to vindicate a personal grievance or in quest of a personal remedy." (D.95-10-050 at p. 4 (footnote omitted).) Thus, Grinstead's request was also denied on this basis.

Utility Consumers' Action Network (UCAN) with Toward Utility Rate Normalization (TURN) and Grinstead's attorney, Mr. Lacy have filed requests for a rehearing of D.95-10-050. Unlike Mr. Lacy, UCAN and TURN do not challenge the § 1804 rationale for rejecting Mr. Lacy's request for compensation. Rather, UCAN and TURN claim that we erred on our statutory interpretation of Article 5 in finding that an individual ratepayer seeking to redress a personal grievance is not eligible for compensation under Pub. Util. Code §§ 1801-1808 because the individual is not an "intervenor". PG&E filed a response, claiming all the reasons stated in D.95-10-050 for rejecting Grinstead's application for compensation are correct and that the applications for rehearing should be denied.

We correctly rejected Grinstead's application for compensation on the basis of untimeliness and failure to file a notice of intent to claim for compensation. Pursuant to Rule 85 of our Rules of Practice and Procedure, an application for "rehearing of a commission order or decision shall be served on all parties and accompanied by a certificate of service. The application shall be filed within 30 days after the date of issuance...." When D.94-07-065 was issued on July 20, 1994, we

did not award Grinstead's attorney fees or costs. (D.94-07-065 at p. 12, 15.) While PG&E timely filed an application for rehearing of D.94-07-065, Grinstead failed to do so. Grinstead did not file until May 5, 1995, well over the statutory period of thirty days. Thus, we were correct in holding that "to the extent that this application (May 5, 1995) seeks to revive the claim for expenses and fees asserted and rejected by us in D.94-07-065, it is untimely." (D.95-10-050 at p. 2.)

Further, Grinstead's application failed in that a bid for intervenor compensation must comply with Cal. Pub. Util. Code § 1804(a)(1), which mandates that "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all the parties to the proceeding a notice of intent to claim compensation." (Pub. Util. Code § 1804(a)(1).) Pub. Util. Code §§ 1804(a)(2)(A)(i) and (ii) further state that the intent to claim "shall include both of the following: (i) A statement of the nature and extent of the customer's planned participation in the proceeding as far as it is possible to set it out when the notice of intent is filed" and "(ii) An itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appears at the time." Grinstead's failure to comply with the provisions of these sections already precludes him from recovery under Section 1803.

On the third ground in D.95-10-050, we articulated our belief under Article 5, specifically Pub. Util. Code §§ 1801-1808, that an individual complainant is not allowed to recover costs if the complainant is pursuing a purely personal claim not representative of any public interests and not for the benefit of a class of customers.

Although California has several code sections providing for award of attorney's fees and costs, the pertinent sections for our purposes are found under Article 5 or Pub. Util. Code §§ 1801-1808. The original enactment of these sections occurred in 1985 and only pertained to ratemaking proceedings. The 1985

enactment was essentially an attempt by the Legislature to "fill the gap" left by the holding of Consumers Lobby Against Monopolies v. Public Utils. Comm'n (CLAM), 25 Cal. 3d 891, 906, (1979), which found that we had equitable power to award costs to participants in quasi-judicial proceedings, but not in quasi-legislative (or ratemaking) proceedings. (25 Cal. 3d at pp. 908-909.) Consequently, with the enactment of the original provisions in 1985, public interest group participants like TURN (which had been precluded compensation in the CLAM holding) finally qualified for reasonable attorneys' fees and costs in ratemaking proceedings.

The 1985 version of these sections was subsequently amended by Assembly Bill 1975 (AB 1975) in 1992; these amendments reflect the current version of these provisions. These statutory provisions provide for the compensation of advocate's fees, expert witness fees and other reasonable costs of "customers for participation or intervention in any proceeding of the commission." (Pub. Util. Code § 1801.) § 1801.3 states that the "provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process." "Customer" is defined as "any representative who has been authorized by a customer" or "any participant representing consumers, customers, or subscribers of [public utilities] subject to the jurisdiction of the commission...." (Pub. Util. Code § 1802.)

Under § 1803, "the commission shall award for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs or preparation in a hearing or proceeding to any customer who complies with § 1801 (notice of intent to claim compensation)" and satisfies the dual requirements of "substantial contribution to the adoption, in whole or in part, of the commission's order or decision" and a showing of "a significant financial hardship." (Pub. Util. Code § 1803 (emphasis added).)

§ 1801.3 also found that "this article shall be administered in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding." The statute articulates that when a customer helps another customer they still are "fully eligible for compensation..." if the "(P)articipation by a customer...materially supplements, complements, or contributes to the presentation of another party...." (Pub. Util. Code § 1802.5.) These statutory provisions have applied to customers in both judicial and quasi-legislative proceedings generally involving all types of utilities. (See, e.g., Pub. Util. Code § 1801.3 (a); Sonitrol of Fresno v. Pacific Bell, [D.86-01-041], 20 C.P.U.C. 2d 398; Re AT&T Communications of Cal., Inc., [D.86-11-079], 22 C.P.U.C 2d 329 (1986)).

We have reviewed D.95-10-050 and conclude that it correctly interprets Sections 1801.3, 1802 and 1802.5 of the Public Utilities Code. We remain convinced that the issue of eligibility is controlled by Section 1802.5. There in clear language we are informed that "[p]articipation by a customer that materially supplements complements, or contributes to the presentation of another party...may be eligible for compensation...." Grinstead's complaint case simply does not satisfy this fundamental criteria.¹

1. Nor are we of the view that our opinion in Turn v. Pacific Bell, [D.93-05-062], 49 C.P.U.C.2d 299 (1993) is at variance with the statutory conclusion we affirm today. In Turn the harm was alleged to have been suffered by ratepayers and the remedy was tailored to provide relief to the ratepayers. By contrast, Grinstead alleged a wrong done only to himself and requested and received purely personal relief.

CONCLUSION

For all the foregoing reasons, Grinstead's attorney, Mr. Lacy, TURN and UCAN's applications for rehearing are denied. We have reviewed all other allegations of the applications for rehearing and believe that there are no other grounds for rehearing as set forth.

Therefore, IT IS HEREBY ORDERED that rehearing of D.95-10-050 is denied.

This order is effective today.

Dated November 26, 1996 at San Francisco, California.

P. GREGORY CONLON
President
DANIEL WM. FESSLER
JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
Commissioners

Commissioner Henry M. Duque,
being necessarily absent, did not
participate.