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Decision Decision 97-08-052 August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Donna Matthews,
Complainant,
vs.

Meadows Management Company,
a partnership, James K. Krueger
and Rondell B. Hanson, its
partners, all doing business as
Plantation-On-The-Lake
Mobilehome Park,
Defendant.

ORIGINAL

Case 93-07-024
(Filed July 28, 1993)

Donna Matthews, for herself, complainant;
Richard L. Hamilton, Attorney at Law, for
Meadows Management Company, defendant.

O P I N I O N

Summary

This decision denies in part the complaint of Donna Matthews against Meadows Management Company doing business as Plantation-On-The-Lake Mobilehome Park (Meadows). We find that the rates of Meadows are reasonable based on three different tests of reasonableness - rate of return, operating ratio and a comparison of rates of a neighboring district.

Mobilehome Park History

Meadows' mobilehome park is located near Calimesa in Riverside County. It is ten years old and consists of 507 mobilehome park spaces on 170 acres of land which is dry and in a high fire risk area. The minimum size of a mobilehome in the park is 24 feet by 40 feet. Most of the mobilehomes have an attached

two-car garage. Approximately 269 spaces are currently occupied. Under federal law, the residents are limited to those 55 and over.

The park is being developed in three phases. Phase I, 208 spaces, was completed in 1984; Phase II, 110 spaces, was completed in 1990. Phase III, 189 spaces, is under construction. The park streets are wide and there are common area facilities including landscaping, two clubhouses with two swimming pools and two spas. All lots contain a front and back yard space where residents are required to plant and maintain landscaping.

The water system plant serving all tenants consists of:

1. one well, 15 inches in diameter and 483 feet deep;
2. one 100-horsepower (hp) well pump;
3. two 15-hp distribution booster pumps;
4. one 50-hp fire flow booster pump;
5. one 10,000 gallon hydropneumatic tank;
6. two steel storage tanks with capacities of 105,000 and 175,000 gallons;
7. underground distribution and service pipe lines;
8. thirty-five fire hydrants; and
9. water meters on each mobilehome lot.

The park has not received any customer complaints regarding water quality.

During the period 1984 to 1988, each mobilehome resident paid a flat monthly fee of \$15 for unmetered water. Individual water meters were installed in 1988 in order to conserve water and control leaks. Lakeside Water Company, which was operated by Meadows, terminated its alleged status as a mutual water company in 1989. Shortly thereafter, meters were installed and Meadows adopted the rates and charges of the neighboring Beaumont/Cherry Valley Water District (District) based upon its interpretation of

PU Code § 2705.5. Currently, these rates are \$7.50 monthly service charge plus \$.60 per hundred cubic feet (ccf) of water used. At these rates, the average bill is \$15.11 per month.

Prior History of Current Complaint

In a prior complaint proceeding filed by Donna Matthews against Meadows, Case (C.) 90-12-035, the Commission determined Meadows was not a public utility and dismissed the complaint. (Decision (D.) 91-10-035.)

In a modified decision denying rehearing of D.91-10-035, the Commission pointed to the enactment of Public Utilities (PU) Code § 2705.6 as the means for complainant to pursue her allegations and suggested that she file a new complaint.

(D.92-04-078.) PU Code § 2705.6 gives the Commission authority to resolve disputed water rate and service complaints against mobilehome parks which are otherwise exempt from our regulation.

Current Complaint

Matthews refiled her complaint under PU Code § 2705.6 resulting in this proceeding.

Matthews seeks a finding that Meadow's rates are unreasonable. Matthews also seeks a refund of an installation charge of \$100 per customer.

Procedural Summary

Prehearing conferences (PHCs) were held on May 9, October 2 and 25, and November 21, 1995, to clarify complainant's legal arguments, defendant's workpapers and outline the scope of the proceeding.

The parties also filed and responded to numerous motions.

Petition to Intervene

On August 5, 1993, 229 residents of Meadows signed a petition declaring that they disagreed with Matthews' allegations in the complaint and that she did not represent their interests. The petitioners requested that the complaint be dismissed. This

petition was interpreted by the assigned Administrative Law Judge (ALJ) as a Petition to Intervene in the complaint proceeding.

In a written ruling, the assigned ALJ denied the tenants' request to formally intervene because they did not indicate a desire to participate in the hearing or further proceedings. Official notice was taken of the declaration in the petition and it was forwarded to the official record. The petitioners were placed on the mailing list to receive a copy of the order in this proceeding.

Motion For Production of Documents

On May 17, 1995, complainant filed a Motion For Production of Documents and Legal Memorandum requesting all income and expense data for the entire park which formed the basis for Meadow's annual operating summaries for 1987 to 1994, including data not related to the water system. Matthews specified she was especially interested in depreciation, amortization and well expenses. Matthews also demanded Meadow's tax returns for prior years arguing that depreciation expenses collected from tenants was not a lawful tax deduction.

In its response to Matthews' motion and later in a verified exhibit, defendant represented that all data used to calculate 1994 water expenses and revenues had been disclosed.

The assigned ALJ denied the request for all park expenses and income unless the documents were specifically relevant to the calculation of the water rates in question.

Waiver of Evidentiary Hearing

After discovery was completed and a date set for an evidentiary hearing, complainant consulted the Commission Public Advisor's Office regarding the upcoming hearing. Matthews subsequently waived her right to an evidentiary hearing. The parties agreed that no facts and only legal issues were in dispute. Therefore, the case was submitted upon verified, undisputed facts

and concurrent Opening, Closing and Reply Briefs filed on December 15, 1995, January 17 and 29, 1996, respectively.

Motion to Strike

Defendant moves to strike the two exhibits attached to complainant's Opening Brief. Exhibit 1 is a letter from defendant to Betty Kurtz containing statements about her lease and Meadows' water charges. Exhibit 2 is a brochure of Plantation on the Lake Mobilehome Park. Meadows objects to receiving these documents as exhibits because they were not previously offered under the procedure outlined in this proceeding. Meadows also requests that Matthews' arguments in her Opening Brief on pages 1 and 4 relying on these exhibits be stricken.

We agree that the last minute submission of these exhibits without approval to do so undermines the process established to assure that no disputed facts were involved in this proceeding. Moreover, the letter addressed to someone other than Matthews raises the question of relevancy after the case has been submitted. Therefore, we agree that these two exhibits attached to Matthews' Opening Brief and the subsequent argument on page 1 (lines 1-5) and page 4 (lines 6-9) must be stricken.

Disputed Issues

The disputed issues are:

1. the applicability of the Mobilehome Parks Act to the facts in this proceeding;
2. the \$100 connection fee imposed by Meadows;
3. the reasonableness of the rates of the mobilehome park.

Mobilehome Parks Act

The purpose of the Act is to assure the health, safety, general welfare, and decent living environment of mobilehome park tenants. (Health & Safety (H&S) PU Code § 18250.) The Department of Housing and Community Development is authorized to promulgate

and enforce regulations pursuant to the Act. (H&S PU Code § 18015.)

Complainant, in her brief, argues that certain portions of the Act take precedence over Commission ratemaking policy. Complainant bases her argument on numerous statutes within the Act which allocate to the park owner the responsibility to provide utility service and safe, healthy facilities.

Complainant contends that water expenses to maintain "amenities" in the park must be excluded from rates based upon the Act, citing numerous sections of the Act and ensuing Department of Housing and Community Development regulations. The statutes cited, except for the ones discussed below, outline the general purpose and application of the Act. Because the Act requires the park to provide utility facilities,¹ complainant argues that the cost to

¹ Title 25 of the California Code of Regulations (CCR), Section 1328 provides:

"Prior to installation of a mobilehome for human habitation or occupancy, utility facilities for the mobilehome shall be provided on the lot or site. A sewer drain inlet connected to a sewage disposal system and when provided installations and equipment for supplying water, electricity and fuel for hearing purposes shall be completed and ready for connecting the mobilehome. All such connections shall comply with the requirements of this subchapter."

Title 25 of CCR, Section 1604 provides:

- "(a) The owner, or his designated agent of the mobilehome park, shall be responsible for the safe operation and maintenance of all electrical, gas and plumbing equipment and installations within the mobilehome park, under his or her ownership or control.
- "(b) When there is a violation of these regulations, the mobilehome park owner or operator or mobilehome owner, or any person responsible for the violation shall cause it

(Footnote continues on next page)

maintain these facilities, which is included in the tenant rent, cannot be duplicated in water system service charges. Complainant also cites Civil Code Section 798.31 as support for her argument.²

Defendant argues that the Act does not specify the treatment of costs for utility facilities. Defendant alleges that these costs are not included in rent, but are borne by the tenants as part of their utility bill.

As discussed below, the cost for water to maintain amenities is not charged to the water customer. However, we agree with Meadows that the Act and the ensuing regulation do not address the cost recovery for carrying out the responsibilities delegated to park owners by the Act. Therefore, holding the tenants who benefit from these amenities responsible for these water costs is reasonable.

Meter Fee

Matthews also alleges that defendant unlawfully charged each household \$100 for the purchase and installation of an individual water meter and unlawfully charges a monthly service charge of \$7.50, both patterned after the District. Complainant

(Footnote continued from previous page)
to be corrected within five days, or within other such longer period of time as may be allowed by the enforcement agency."

- 2 Section 798.31 provides, in pertinent part:
"A homeowner shall not be charged a fee for other than rent, utilities, and incidental reasonable charges for services actually rendered. . . ."

argues that the meter fee is unlawful and if the tenant now owns the meter, defendant should not be allowed to collect revenues from tenant property, nor depreciate tenant's property on its books.

Meadows admits that in 1989, it installed water meters and adopted rates based upon those of District. Meadows charged \$100 for the meters or allowed installment payments of \$2 per month. Defendant argues that since it is operating at a loss, it should not be required to refund this fee.

Water Division recommended that the \$100 meter fee be refunded because it is not the water utility policy to allocate this expense to the customer. We agree with the Water Division's recommendation.

Reasonableness of Rates

The parties presented opposing argument and analysis of the reasonableness of rates.

Matthews' Rate Analysis

Matthew's presented numerous arguments to support her contention that the rates are unreasonable and that assessing a meter installation fee is unlawful.

Complainant argues that comparison of the mobilehome park with District is inappropriate. Complainant alleges that the financial and operational risks of regulated utilities are different than those of a mobilehome park's well water system, but provides no basis for this conclusion. Complainant does not believe rate of return or operating ratio methodology should apply to a mobilehome park, but offers no evidence or analysis of this issue.

Complainant calculates that only 36% of the total annual water consumption is used by the tenants. Therefore, she argues that the remaining water costs should be paid by the park. While this is true, the gravamen of Matthews' argument is that Meadows may not charge water customers for water used for amenities in the

park. We disagree with this contention which is based upon Matthews' interpretation of the Mobilehome Parks Act.

Complainant asserts that the legislature passed §2705.6 to clarify laws governing mobilehome park utility installations, including water systems. However, as we discussed above, this statute and the Mobilehome Parks Act is silent on recovery of such costs by the park.

Matthews argues that the fee for the 64% water usage to maintain amenities is already included in the rent. Defendant responds that mobilehome park rents are set by the rental market and include no amount for water service.

Complainant, in analyzing C.92-10-037, the decision upon which Meadows' contends we approved their water rates, believes the most recent rate increase is not justified and violates the original tenant agreement and local law ordinances prohibiting water charges to be included in rents. We decline to review Meadows' rents since this issue is irrelevant to water rates and since we have no jurisdiction to investigate or change tenant rents.

Meadows' Rate Analysis

Meadows asserts it is only subject to Commission jurisdiction under § 2705.6(a), that is, upon a tenant's complaint regarding water service or water rates. Meadows denies that its rates or meter reading fees are unreasonable based upon its rate analysis.

Meadows shows that its rates are the same as the neighboring Beaumont/Cherry Valley Water District.

Meadows contends that since it is not normally regulated, it does not keep records according to the Commission's Uniform System of Accounts for regulated water utilities. Meadows has included in its rate analysis those accounts it considers most obviously related to the water system. Meadows' conclusions regarding its rates are contained in the following table:

Estimated 1994 Water System Costs and Revenues

<u>Category</u>	<u>Amount</u>
Operating Expenses	\$ 48,620
Depreciation	\$ 21,608
Taxes	\$ 17,790
Return	\$ 55,971
Total Revenue Requirement	\$143,989
Less Revenue at District Rates	\$ 48,817
Shortfall at District Rates	-\$ 95,172

Meadows sells approximately 41,011 ccf of water per year to residents and mobilehome companies displaying mobilehomes for sale. At the current rates and an occupancy level of 269 residents, defendant estimates the annual revenues as \$48,817 annually. Subtracting the estimated 1994 revenues (\$48,817) from the estimated 1994 revenue requirement (\$143,989), defendant concludes there is a 1994 deficit of -\$95,172. Thus under defendant's analysis, the rates are not excessive.

In addition, Meadows estimates that when the park is complete and all 507 spaces are filled, the existing water rates will result in a greater deficit of -\$116,261.

Water Division Rate Analysis

Pursuant to § 2705.6(d),³ the Water Division (Staff of former Commission Advisory and Compliance Division) conducted an investigation and issued a report on defendant's rates on April 4, 1995. The Water Division concluded that the existing rates fall 62% short of recovering the company's water expenses plus a reasonable rate of return.

³ PU Code § 2705.6 (d) provides that the public advisor created pursuant to Section 321 and necessary staff of the commission shall assist the complainant.

Water Division reviewed defendant's supporting workpapers to verify their calculations. Defendant's records show annual water sales of approximately 41,000 ccf. Each tenant pays an average monthly bill of just over \$15 a month for water use, based on the metered rates charged in July 1993 when this case was filed. The total annual income from these sales is approximately \$48,817. Water Division found the annual revenue generated by the rate increase in September 1994 is \$52,891. Water Division noted that at the rates filed in July 1993, the metered bills were almost exactly equal to the flat rates charged to each tenant prior to December 1989.

Water Division reviewed defendant's expenses, sales, and revenues from the years 1987 through 1993 and agrees with defendant's average expense figures as presented.

Assuming sales stay at this present rate, defendant shows that a revised revenue of \$143,989 is required to meet Commission standards for a reasonable rate of return. Water Division revises this estimate to 146,555 to meet the Commission standard of rate of return. This would require a raise in present rates of 177.1%. The difference between defendant and Water Division's return calculation is due to taxes. Thus, under the Commission's standard rate of return methodology, Water Division does not find the defendant's rates to be excessive.

In its rate analysis, Water Division also used the operating ratio method (ORM) as developed by D.92-03-093, as an alternate mode of reviewing the reasonableness of existing rates. ORM requires that all operating, maintenance, depreciation, and tax expense be recovered by the utility. In addition, ORM requires an approximately 20% return on the operating, maintenance, depreciation expenses. Water Division shows that an annual revenue of \$89,500 is required to pay all ORM expenses and returns. This would require a raise in present rates of 69.2%.

Water Division shows ORM only for comparison purposes. It is not readily feasible without a more complete field and office study to determine how much of current water plant is for Units 1 and 2, now operational, and how much is for future Unit 3. Therefore, it is not possible to allocate the cost for current and future use.

Water Division recommends ORM as the method to determine the reasonableness of rates since this method shows that rates in effect in September 1994 result in a loss of -\$36,609 to defendant; whereas, the standard rate of return method shows higher losses. However, under either method, Water Division finds complainant's allegation of excessive rates to be in error. We agree.

Eligibility For Compensation

In complainant's Motion For Production of Documents, Matthews requested intervenor compensation for pursuing this case. The assigned ALJ instructed Matthews to consult the Commission Public Advisor regarding the filing of a request for intervenor compensation from the Advocates Trust Fund. Complainant subsequently filed a Request for Finding of Eligibility for Compensation on March 11, 1996, to which defendant responded on March 25, 1996.

PU Code § 1804(a)(1) requires that a request for finding of eligibility for compensation must be filed within 30 days after the PHC. Telephonic PHCs were held in this proceeding on May 9, October 2 and 25, and November 21, 1995. Thus, this request is untimely and must be denied.

However, a request for intervenor compensation from the Advocates Trust Fund may be filed after the date of a final decision in this proceeding. In this filing a party must address the criteria established by the Trust Declaration attached as Appendix B. However, these criteria anticipate that a party prevails on the issue(s) in a proceeding, which is not the case here.

Findings of Fact

1. Defendant provides water service to residents of the mobilehome park and, on or about December 1989, charged a one-time individual meter fee of \$100 per customer, or, at the option of the customer, a \$2 per month fee.

2. At the time this complaint was filed, defendant's rates were \$7.50 monthly service charge and \$0.60 per ccf usage charge. At these rates, the average 1994 water bill was \$15.11 per month.

3. Defendant's rates have been the same as those of the neighboring Beaumont/Cherry Valley.

4. The mobilehome park opened in 1984 and is being built in three phases. Phase I, completed in 1984, consists of 208 mobilehome spaces; Phase II, completed in 1990, consists of 110 spaces. Phase III, 189 spaces, is under construction.

5. The water system plant for Phase I and II consists of: one well, 15 inches in diameter and 483 feet deep; one 100-hp well pump; two 15-hp distribution booster pumps; one 50-hp fire flow booster pump; one 10,000-gallon hydropneumatic tank; two steel storage tanks with respective capacities of 105,000 and 175,000 gallons; underground distribution and service pipelines; 35-fire hydrants; and, meters at each occupied mobilehome space.

6. In 1989, Meadows, installed meters at each space.

7. In November 1989, Meadows adopted the rates of District, including the \$100 per customer charge to install individual meters.

8. On January 1, 1992, PU Code § 2705.6 became effective mandating that this Commission investigate a mobilehome park tenant's complaint regarding water system rates or service, if the park provides water service only to its tenants from water supplies and facilities which it owns and are otherwise not dedicated to public service.

9. Exhibit 21 contains the excerpts from the record in the prior complaint which the parties in this proceeding agree to incorporate into this record.

10. Defendant's analysis of the water system expenses and revenues, result in the following shortfall in recovering the revenue requirement:

Operating Expenses	\$ 48,620
Depreciation	21,608
Taxes	17,790
Return	<u>55,971</u>
Total Revenue Requirement	\$143,989
Less Revenue at District Rates	<u>-48,817</u>
Shortfall	-\$ 95,172

11. Defendant's analysis of 1994 expenses and revenue does not include expenses or revenues for the uncompleted Phase III of the mobilehome park.

12. Defendant submitted to complainant and the Water Division its workpapers supporting its analysis of water system rates.

13. Defendant verified under penalty of perjury that it provided to its consultant relevant documents supporting the calculation of rates.

14. Pursuant to PU Code § 2705.6, Water Division provided a written analysis of defendant's rates, "Report On Results of Operation."

15. Water Division concludes that defendant charges the same rates as District and raised the rates in September 1994 to reflect increases in District rates and meter costs. The existing rates are \$8 per month service charge (an increase of \$0.50 per month for metering costs) and \$0.66 per ccf (an increase of \$0.06 per ccf).

16. Water Division finds that at the level of rates in July 1993, the metered bills were almost exactly equal to the flat rates charged prior to December 1989.

17. Based upon the ORM of calculating Class D water utility rates, Water Division finds that defendant is operating 40.9% below the revenue requirement which would require a raise in present rates of 69.2% to pay all ORM expenses and requirements.

18. Water Division recommends that the metering fee, \$100 per customer, be rescinded because this fee is not in accordance with standard Commission water policy, and that the remainder of the complaint be dismissed.

19. The parties stipulate to the admission of facts contained in documents listed in Appendix A.

20. After consultation with the Commission Public Advisor, complainant requested to cancel the scheduled evidentiary hearing and submit her case upon verified, undisputed facts and legal briefing. No party opposed this request.

21. Complainant submitted a request for eligibility to receive compensation which was not timely.

Conclusions of Law

1. The Mobilehome Parks Act does not govern the Commission's methodology for calculating the reasonableness of a mobilehome park's water rates.

2. The operating ratio method of calculating rates for Class D water companies is the appropriate method for analyzing defendant's rates.

3. Defendant's rates are not excessive.

4. Defendant should refund the \$100 meter charge.

5. Complainant's request for eligibility to receive compensation should be denied.

ORDER

IT IS ORDERED that:

1. Donna Matthews' (complainant) request to refund excessive rates and for eligibility to receive compensation are denied.

2. Complainant's request to refund the \$100 meter fee is granted. Within 90 days after the effective date of this order, Meadows Management Company shall refund to Matthews the \$100 meter fee.

3. Within 120 days after the effective date of this order, defendant shall submit to the Commission Water Division's Advisory Branch a written refund plan which refunds the \$100 meter fee with interest from the date of collection to other customers who have paid all or a portion of this fee.

4. Case 93-07-024 is closed.

This order is effective today.

Dated August 1, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

APPENDIX A (Revised 1/10/96)
Page -1

EXHIBITS

1. Complaint, filed July 13, 1993.
2. Complainant's Water Bills, dated October and November 1995.
3. Answer, filed August 16, 1993.
4. Defendant's Workpapers (Binder), submitted to CACD in March 1994.
5. Defendant's Supplemental Letter to Art Gallegos, CACD, dated October 12, 1994.
6. Defendant's Supplemental Letter to Art Gallegos, CACD, dated October 28, 1994.
7. Defendant's Supplemental Letter to Art Gallegos, CACD, dated November 9, 1994.
8. Defendant's Statement of Consultant's Duties.
9. Qualifications of Consultant, Richard M. Hairston.
10. Defendant's Verification of Workpapers Submitted to Consultant.
11. Defendant's "Water System Analysis" for 1994, by Richard M. Hairston, dated November 20, 1993.
12. CACD's "Report On Results Of Operation," by Art Gallegos, dated March 1995.
13. Complainant's Letter to Art Gallegos, CACD, dated April 26, 1995.
14. Complainant's Letter to Richard Hamilton, Esq., dated April 30, 1995.
15. Complainant's "Motion For Production Of Documents With Supporting Legal Memorandum," filed May 17, 1995.
16. Defendant's "Response To Complainant's Motion For The Production Of Documents And Legal Memorandum," filed May 24, 1995.
17. CACD "Response to CACD Questions in Ruling of August 7, 1995," dated August 25, 1995.

APPENDIX A
Page 2

18. "Defendant's Response To Administrative Law Judges August 7, 1993 (1995) Ruling," dated August 25, 1995.
19. Defendant's letter to complainant correcting Question 5.d, dated August 28, 1995.
20. "Complainant's Response To Defendant's August 25, 1995 Letter In Response To ALJ August 7, 1995 Ruling," dated September 5, 1995.
21. Complainant's Selected Excerpts from prior complaint, C.90-12-035, attached to letter to Judge Bennett dated October 26, 1995.
22. Defendant's statement of payments by Donna Matthews for water service.
23. Defendant's Selected Excerpts from prior complaint, C.90-12-035, attached to Letter to Judge Bennett dated January 3, 1996.
24. Selected pages from the current Tariff Schedules Applicable to Electric Service of the Southern California Edison Company.
25. Selected pages from the current Tariff Schedules Applicable to Gas Service of the Southern California Edison Company.
26. Selected excerpts from pro forma Tariff Schedules applicable to Water Service as published by the Public Utilities Commission.
27. Defendant's Verification of Exhibits.
28. Letter from Mrs. Kurtz to Judge Bennett dated January 27, 1995.
29. Complainant's Verification of Exhibits attached to letter to Judge Bennett, dated December 29, 1995.

(END OF APPENDIX A)

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

C.93-07-024

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

C.93-07-024

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 COMMISSION

ARTICLE 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.

APPENDIX B

Page 9

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)