

Decision 00-05-033 May 18, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Intervenor Compensation Program.

Rulemaking 97-01-009
(Filed January 12, 1997)

Order Instituting Investigation on the Commission's Intervenor Compensation Program.

Investigation 97-01-010
(Filed January 13, 1997)

OPINION AWARDING COMPENSATION

This decision grants the Spanish Speaking Citizens' Foundation, National Council of La Raza, and Oakland Chinese Community Council (jointly SSCF) an award of \$14,397.18, in compensation for their contribution to Decision (D.) 00-01-020.

1. Background of D.00-01-020

On April 28, 1998, the Commission issued D.98-04-059, *Interim Opinion Revising the Intervenor Compensation Program and Inviting Legislative Amendment Proposals*, which was subsequently modified after rehearing by D.99-02-039. In the primary order, we adopted a new approach for funding intervention in quasi-legislative or rulemaking proceedings. We recognized that the regulatory environment has changed for some of the industries to which the intervenor compensation program applies. As a result, an increasing number of utilities have a stake in our proceedings and may be the "subject of the hearing,

investigation, or proceeding...." (Pub. Util. Code § 1807.)¹ We determined that responsibility for the payment of awards of compensation should be more widely shared among regulated industry participants in quasi-legislative or rulemaking proceedings. For example, in the past, only the large, incumbent telephone utilities, like Pacific Bell, paid awards in rulemaking proceedings where telecommunications policy issues were addressed. Under the broader interpretation of §.1807 adopted in D.98-04-059, all California-jurisdictional telephone utilities participating in a quasi-legislative or rulemaking proceeding will now be responsible for sharing the costs of compensation awards. We stated that all energy, water, and telecommunications utilities participating in the proceeding will be required to pay the cost of any compensation awards unless the Commission names one or more utilities as respondent. One problem with implementing this broader interpretation of § 1807 was identified. Specifically, that problem is how to administer this requirement when participation by utilities occurs through associations whose membership may change during the course of the proceeding.

In D.00-01-020, we rejected our April 1998 proposal for determining the responsibility of certain utilities for payment of intervenor compensation awards. Instead, in quasi-legislative or rulemaking proceedings affecting an industry or multiple industries, we adopted an approach which will require all energy, telecommunications and water utilities in an affected industry to pay any compensation award, regardless of whether that utility participated in the proceeding. We established an intervenor compensation program fund for quasi-legislative or rulemaking proceedings that will be funded through the fees

¹ All future citations are to the Public Utilities Code unless otherwise noted.

collected on an annual basis from regulated energy, telecommunications, and water utilities under our Pub. Util. Code § 401 *et seq.* authority. This funding approach for quasi-legislative proceedings will be implemented beginning July 1, 2001.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Other sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable

costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. NOI to Claim Compensation

SSCF timely filed its NOI on May 19, 1997. On July 2, 1997, the Assigned Administrative Law Judge (ALJ) found the SSCF had demonstrated significant financial hardship. In D.00-02-044, the Commission found SSCF eligible for compensation in R.97-01-009/I.97-01-010.

4. Contributions to Resolution of Issues/Overall Benefits of Participation

A party may make a substantial contribution to a decision in one of several ways.² It may offer a factual or legal contention upon which the Commission relied in making a decision,³ or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.⁴ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁵ The

² Pub. Util. Code § 1802(h).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

Commission has provided compensation even when the position advanced by the intervenor is rejected.⁶

In addition, in D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, *mimeo.*, at 31-33, and Finding of Fact 42). In that decision, we discuss the fact that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

SSCF has made a substantial contribution to D.00-01-020. SSCF's participation occurred primarily following the release of a draft decision by the assigned ALJ in July 1999 that required utility associations to disclose membership and pay intervenor compensation awards. SSCF effectively analyzed and rebutted legal arguments set forth by the associations and provided useful information through its comments and reply comments about the public nature of membership lists of many associations. SSCF also commented on the alternate sponsored by Commissioner Neeper. SSCF's comments substantively affected the final decision which was modified from the

⁶ D.89-03-96 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

originally released alternate in response to comments. SSCF successfully argued that it was neither necessary nor desirable to make certain constitutional findings set forth in the original alternate. SSCF's participation assisted the Commission to develop an approach to intervenor compensation funding that is both equitable and avoids constitutional issues in its implementation. Other intervenors focused primarily on other aspects of D.00-01-020. We find that SSCF's contributions were unique and necessary for purposes of this proceeding.

5. Reasonableness of Requested Compensation

SSCF requests compensation of \$18,684.18 as follows:

Mark Savage (50.96 hrs @ \$275/hr)	\$14,014.00
Thorn Ndaizee Meweh (18.80 hrs @ \$190/hr)	\$ 3,572.00
Other Costs	<u>\$ 1,098.18</u>
Total	\$18,684.18

5.1 Hours Claimed

SSCF documented the claimed hours by presenting a daily breakdown of hours for Savage and Meweh. Because the decision for which SSCF seeks compensation was effectively a one issue case, no breakdown by issue is required. Savage spent most of his time (specifically, 44.29 hours) on the issue of who pays intervenor compensation in quasi-legislative proceedings. Given the scope of this decision and SSCF's participation, these hours are reasonable.

Of the total 69.76 hours claimed for Savage and Meweh, 25.47 hours (or 36.5% of the hours claimed) are related to preparation of the compensation request. Given that SSCF's participation concerned a single issue, 25.47 hours seem unusually high for preparation of a compensation request. Meweh is new to the proceeding and some of her time was spent familiarizing herself with the record and our procedures, in addition to drafting SSCF's showing of substantial contribution. Based on our review of her time records, 11.4 hours are associated

with preparation of the substantial contribution showing and declaration. Given that D.00-01-020 addressed a single issue, this amount of time appears excessive for preparation of SSCF's showing. Therefore, we will grant 9.4 hours for Meweh which is half of the amount requested. We consider the 6.67 hours spent by Savage on compensation matters to be excessive, given the work performed by Meweh and the similarity of Savage's declaration in this request to that presented in support of D.00-02-044. We find 2.5 hours for Savage associated with the compensation request to be reasonable.

We note further that SSCF used its resources efficiently by coordinating with The Utility Reform Network (TURN) to avoid duplication where possible.

5.2 Hourly Rates

For Savage, SSCF requests a 1999/2000 rate of \$275 for his hours associated with this decision. SSCF states that Savage has extensive experience in proceedings before the Commission, and analogous experience before the California Department of Insurance, California's superior and appellate courts, and federal courts. SSCF includes a declaration of Richard Pearl that was prepared for Case No. 987374 before the Superior Court of San Francisco as justification for a billing rate of \$275/hour.

SSCF states that the Commission previously awarded Savage an hourly rate of \$250 for work performed in 1998. (See D.00-02-044.) We find it reasonable to increase Savage's hourly rate for work performed in 1999 and 2000. In setting this rate, we take into consideration the previous rate applied by this Commission to Savage's work, the results of the *Of Counsel* survey, the informal survey of rates included in the request, and the information contained in the request regarding Savage's training and experience. We also take into consideration the quality of Savage's work product as demonstrated in the

various pleadings SSCF filed. We expect a senior attorney awarded an hourly rate in the middle of the partner-level range to provide high quality product, in compliance with our requirements. We find SSCF's work product, especially its comments filed on the substantive issues in this case, to be of high quality. We set the hourly rate for work performed by Savage in 1999 and 2000 (for purposes of this proceeding) at \$275. We will apply half this hourly rate for time spent preparing the compensation request.

We have not previously established a rate for attorney Meweh of Public Advocates. SSCF requests an hourly rate of \$190 for Meweh for work performed in 2000. Meweh is a 1996 graduate of Hastings College of Law. She was admitted to the California Bar in July 1997. Prior to joining SSCF, Meweh worked as a staff attorney for Legal Services for Prisoners with Children as well as working as a labor attorney. She also was an extern for United States District Court Judge Marilyn Hall Patel and was a summer law clerk at the Southern Poverty Law Center.

We compare Meweh's credentials to those of Paul Stein of TURN who was also a 1996 law school graduate. Stein has appeared in Commission proceedings since 1997 and thus, although he has practiced for a similar period of time as Meweh, he has more relevant Commission experience than Meweh. Thus, in setting a rate for Meweh, we look to the initial compensation rate for Stein's work before the Commission. We established an initial 1997 rate for Stein at \$160/hour in D.98-09-032 and D.98-12-058. All of Meweh's work in this case took place in 2000. Accounting for the passage of time, we set Meweh's hourly rate for work performed in 2000 at \$165. However, given that all her time was spent preparing the compensation request, consistent with D.98-04-059, we reduce the hourly rate applied to Meweh's hours to half of the authorized rate (\$82.50/hour).

5.3 Other Costs

SSCF seeks \$1,098.18 in other costs. SSCF's request for compensation itemizes its messenger, copying and postage costs and an estimate associated with preparing this compensation request. We have previously deducted certain costs requested by SSCF for the use of messenger services; in this case, however, because of the quick turnaround times for replies, we find the use of messenger services and other miscellaneous costs reasonable.

6. Award

SSCF is awarded \$14,397.18 as calculated below.

Mark Savage (44.29 hrs @ \$275/hr)	\$12,179.75
Compensation Request (2.5 hrs @ \$137.50/hr)	\$ 343.75
Thorn Ndaizee Meweh (9.4 hrs @ \$82.50/hr)	\$ 775.50
Other Costs	<u>\$ 1,098.18</u>
Total	<u>\$14,397.18</u>

AT&T Communications of California, MCI Telecommunications Corp., Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company, Pacific Gas and Electric Company, Pacific Bell, and GTE California Incorporated should each pay an equal share of the award within 30 days of the effective date of this order. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing May 21 (the 75th day after SSCF filed its compensation request), and continuing until the full payment of the award is made.

As in all intervenor compensation decisions, we put SSCF on notice that Commission staff may audit their records related to this award. Thus, SSCF must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. SSCF's records should identify specific

issues for which compensation is requested, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

7. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on May 8, 2000 by MCI WorldCom Network Services, Inc. and AT&T Communications of California, Inc. (Joint Commenters).

The issues raised by Joint Commenters were recently addressed by the Commission in D.00-05-028 which dealt with an application for rehearing by the same parties. D.00-05-028 affirms the treatment set forth in the draft decision. We make no changes to the draft decision as a result of these comments.

No reply comments were filed.

Findings of Fact

1. SSCF has made a timely request for compensation for its contribution to D.00-01-020.
2. SSCF contributed substantially to D.00-01-020.
3. \$275 per hour is a reasonable compensation rate for Savage's professional services considering his experience, effectiveness, and rates paid other experts.
4. We have not previously set an hourly rate for Meweh.
5. \$165 per hour is a reasonable rate of compensation rate for Meweh's professional services considering her experience, effectiveness, and rates paid other experts.
6. The miscellaneous costs incurred by SSCF are reasonable.

Conclusions of Law

1. SSCF has fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.
2. SSCF should be awarded \$14,397.18 for its contribution to D.00-01-020.
3. This order should be effective today so that SSCF may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Spanish Speaking Citizens' Foundation, National Council of La Raza, and Oakland Chinese Community Council are awarded \$14,397.18 jointly in compensation for their substantial contribution to Decision 00-01-020.
2. AT&T Communications of California, MCI Telecommunications Corp., Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company, Pacific Gas and Electric Company, Pacific Bell, and GTE California Incorporated shall each pay an equal share of the awards granted in Ordering Paragraph 1 within 30 days of the effective date of

this order. These utilities shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13. Interest shall be calculated beginning on the 75th day from the filing of a completed request and continuing until full payment is made.

3. Rulemaking 97-01-009 and Investigation 97-01-010 are closed.

This order is effective today.

Dated May 18, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners