

Decision 00-06-062 June 22, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

George M. Sawaya,

Complainant,

vs.

Pacific Bell and Sprint Communications
Company,

Defendants.

Case 99-04-037
(Filed April 16, 1999)

OPINION AWARDING INTERVENOR COMPENSATION

This decision grants George M. Sawaya an award of \$8,199.80 in compensation for his contribution to Decision (D.) 00-04-058.

1. Discussion

D.00-04-058 resolved a complaint filed by Sawaya against Pacific Bell (Pacific) and Sprint Communications Company (Sprint). The complaint alleged that Pacific violated Pub. Util. Code § 2890(b) by billing for and generating charges on Sawaya's January and February 1999 telephone bills that were unauthorized. Sawaya also alleged that Pacific was not in compliance with Pub. Util. Code § 2890(e)(2)(A) by failing to provide a clear and intelligible description of the service for which Sprint's presubscribed line charge was imposed. Additionally, Sawaya alleged that Pacific was not in compliance with Pub. Util. Code § 2890(e)(2)(B) by failing to provide the addresses of the billing telephone company and of the service provider for the purpose of presenting and resolving billing disputes. Sawaya complained that Pacific's monthly residential

bills provided addresses only for mailing customers' payments to Pacific's payment centers.

A prehearing conference (PHC) was held on June 18, 1999. At the PHC Pacific admitted that Sawaya had been charged a presubscription line charge erroneously as alleged. Additionally, Pacific admitted to not being in full technical compliance with Pub. Util. Code § 2890 since Sawaya's January and February 1999 telephone bills did not contain a mailing address for Sprint. In response, Pacific proposed to modify its billing procedures to comply with Pub. Util. Code § 2890, and Pacific also offered, in consultation with Sawaya and Commission Staff, to submit to the Commission a stipulation stating the manner and date by which it would be in compliance with Pub. Util. Code § 2890.

As a consequence of Sawaya's complaint, Pacific did modify its billing procedures to comply with Pub. Util. Code § 2890. No hearings were held in this matter.

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 §§ 1801-1812.¹ Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the PHC 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.

¹ All statutory citations are to the Pub. Util. Code.

Other code 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

Sawaya timely filed his NOI after the first PHC and was found to be eligible for compensation in this proceeding by a ruling dated September 9, 1999. The same ruling found that Sawaya had demonstrated significant financial hardship.

4. Substantial Contribution to Resolution of Issues

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 Administrative Law Judge (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 Commission has provided compensation even when the position advanced by the intervenor is rejected.⁶

Sawaya brought to the Commission's attention evidence that Pacific was not in compliance with newly enacted legislation (Pub. Util. Code § 2890). Pacific did not contest, but rather cooperated with both the Commission and Sawaya to ensure compliance with § 2890. Sawaya contends that he substantially contributed to D.00-04-058 because he alleged violations of the Public Utilities

² Pub. Util. Code § 1802(h).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ D.89-03-063 (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). See also, D.89-09-103, order modifying D.89-03-063 (in certain exceptional circumstances, the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utilized only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include 1) an extraordinarily complex proceeding, and 2) a case of unusual importance. Additionally, the Commission may consider the presence of a proposed settlement.)

Code which were affirmed by D.00-04-058 and resulted in penalties against Pacific. We agree: D.00-04-058 affirmed the validity of Sawaya's allegations and absent Sawaya's efforts, Pacific's noncompliance may have continued for a longer period of time.

We agree that Sawaya made substantial contributions to D.00-04-058 in the areas he identifies. We adopted key recommendations in whole or in part and benefited from Sawaya's discussion on all of the issues he addressed.

5. The Reasonableness of Requested Compensation

Sawaya requests compensation in the amount of \$8,199.80. In particular, Sawaya seeks \$8,010.78 for 70.27 hours of advocacy at a rate of \$114 per hour and \$189.02 for costs.

5.1 Overall Benefits of Participation

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 requirement 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.

Sawaya contends that as a direct result of his complaint and the Commission's actions upon it, the telephone customers of this State who receive telephone bills from defendants now receive the benefits of the safeguards legislated by Pub. Util. Code § 2890.



We find Sawaya's participation was productive in that the costs it claims for its participation were less than the consumer protection benefits realized. Through Sawaya's participation, the Commission had a record on which to direct compliance with Pub. Util. Code § 2890, and to direct the payment of \$2,500 in fines. It is difficult to put a dollar figure on the benefits Sawaya realized for ratepayers, aside from the \$2,500 fine. However, consumer protection is one of the fundamental policy interests that underlie public utilities regulation. Through Sawaya's complaint, telephone customers will have greater ability to quickly assess the accuracy of charges appearing on their bills. This ability will result in a savings of customers' time and money, compared to which the costs Sawaya claims are miniscule.

5.2 Hours Claimed

Sawaya documented the claimed hours by presenting a daily breakdown of his hours with a brief description of each activity. The hourly breakdown presented by Sawaya reasonably supports his claim for total hours. Given Sawaya's analysis and resulting contributions, we believe that the time spent by Sawaya was well spent.

5.3 Hourly Rates

In D.00-02-044 we awarded Sawaya compensation at a rate of \$110 per hour for work performed in the years 1996 through 1998. In D.00-02-044, we observed

"Sawaya stands out, however, as a participant who submitted clear, well-reasoned argument at a cost considerably below that of all other parties. Given the effectiveness, productivity, and efficiency of Sawaya's work, we find it reasonable that he receive rates approaching those of high paralegals. Therefore, \$110 per hour is a reasonable rate."

Similarly, in this proceeding, we have found that Sawaya's participation was effective and efficient. Sawaya's requested increase of 3.6% is reasonable to account for inflation and increased experience. Thus, we find Sawaya's requested hourly rate of \$114 per hour for work performed in 1999 to be reasonable.

5.4 Other Costs

Sawaya requests \$189.02 for other costs (e.g., copying postage, telephone). Sawaya includes careful documentation of these costs. We have reviewed these costs and they appear reasonable.

6. Award

We award Sawaya \$8,199.80, calculated as described above.

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 July 11, 2000 (the 75th day after Sawaya filed his compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put Sawaya on notice that the Commission Staff may audit Sawaya's records related to this award. Thus, Sawaya must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Sawaya's records should identify specific issues for which he requested compensation, the actual time spent, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the period for public review and comment regarding this decision is waived.

Findings of Fact

1. Sawaya has made a timely request for compensation for his contribution to D.00-04-058.
2. Sawaya has made a showing of significant financial hardship by demonstrating he could not afford without undue hardship to effectively participate in this proceeding.
3. Sawaya contributed substantially to D.00-04-058.
4. Sawaya has requested an hourly rate that is no greater than the market rates for individuals with comparable training and experience.
5. Sawaya has requested an hourly rate of \$114 per hour that is a reasonable compensation rate for his work considering his experience, effectiveness, and rates paid individuals with comparable training and experience..
6. The miscellaneous costs incurred by Sawaya are reasonable.

Conclusions of Law

1. Sawaya has fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.
2. Sawaya should be awarded \$8,199.80 for his contribution to D.00-04-058.
3. This order should be effective today so that Sawaya may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. George M. Sawaya is awarded \$8,199.80 in compensation for his substantial contribution to Decision 00-04-058.
2. Pacific Bell shall pay Sawaya \$8,199.80 within 30 days of the effective date of this order. Pacific Bell 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, with interest, beginning July 11, 2000 and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated June 22, 2000, at San Francisco, California.

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

President Loretta M. Lynch, being necessarily absent, did not participate.