

Decision 99-04-052 April 22, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Revise  
General Order 156.

Rulemaking 93-09-026  
(Filed September 17, 1993)

**OPINION DENYING COMPENSATION**

This decision denies the request of Greenlining Institute (Greenlining) for compensation for its contributions to Decision (D.) 95-12-045, D.98-11-030 and D.98-12-048 in which we revised General Order (GO) 156. GO 156 governs the utilities' programs to encourage the participation of women and minority-owned business enterprises in contracting. We deny compensation in this case because Greenlining failed to comply with the notice requirements of Section 1804(a).<sup>1</sup>

**1. Background of Changes to GO 156**

The Commission initiated this rulemaking to review the provisions of GO 156 in 1993 after holding an informational hearing on the then-existing rules. We solicited the comments of utilities and interested parties with regard to such matters as program goals, outreach and reporting requirements. Following workshops and comments, D.95-12-045 proposed several minor changes to GO 156. Subsequently, D.98-11-030 adopted several changes to GO 156 on the basis of a proposal submitted by active parties.

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<sup>1</sup> Greenlining requested \$141,392.75 in its filing dated December 29, 1998.

## 2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Public Utilities (Pub. Util.) Code Sections 1801-1812.<sup>2</sup> § 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 compensation and may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. § 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." § 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 on 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."

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<sup>2</sup> All future references to code sections are to the Pub. Util. Code unless otherwise noted.

Section 1804(e) requires the Commission to issue a decision which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. 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. Eligibility for Compensation and Timeliness of Requests**

Greenlining filed a NOI to claim compensation in this proceeding on February 20, 1996. It states it originally filed an NOI in other proceedings prior to the initiation of this rulemaking and subsequently filed its February 1996 NOI as a "precaution" after changing its legal name.

Section 1803 provides that the Commission shall award compensation "to any customer who complies with Section 1804" and other requirements.

Section 1804(a) requires 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 parties to the proceeding a NOI to claim compensation." The statute provides for exceptions to the rule in cases where no prehearing conference is held or the Commission provides for alternative procedures. The Commission held a prehearing conference in this proceeding on November 21, 1994. Greenlining did not file an NOI in this proceeding until over a year later and more than two months after the issuance of one of the orders for which it seeks compensation.

Greenlining failed to comply with the statute requiring it to provide notice of its participation. Recently, we addressed a similar circumstance where an intervenor failed to file a timely NOI. D.98-04-027 found that "granting (the intervenor's) request would require us to violate the letter and spirit of Section 1804(a)," and that an intervenor "may not waive its responsibility to notify parties and the Commission of its intent to claim compensation." We

denied any funding on that basis. Greenlining states that it filed NOIs in several general rate cases during the mid-1980s. Those NOIs, however, do not fulfill the statutory requirement that Greenlining file an NOI in this proceeding. We addressed a nearly identical circumstance in D.98-04-027 by finding that "the statute (Section 1804) does not permit an intervenor (to file) or the Commission to accept an NOI filed in one proceeding as a substitute for an NOI in another."

Because Greenlining failed to file a timely NOI in this proceeding, we deny an award of compensation pursuant to Section 1801 *et seq.* We therefore do not need to reach the question of whether and the extent to which Greenlining made substantial contributions to the decisions in this proceeding or the level of funding Greenlining requests.

Although we deny compensation for Greenlining's failure to comply with Section 1804(a), we nevertheless provide some guidance here regarding the substance of Greenlining's request. If Greenlining had met the threshold procedural requirements, we would have disallowed the bulk of its requested funding. The reasons are several. Greenlining seeks funding for activities that do not qualify, fails to allocate activities by issue, and proposes hourly attorney rates that are not justified.

Greenlining requests funding for activities that do not qualify under our compensation rules. For example, Greenlining requests funding for work undertaken prior to the initiation of the proceeding. We do not compensate such work. Greenlining requests funding for the time its attorney spent setting up meetings with Commissioners. D.98-11-049 clarifies that professional fees assume the costs of administrative activities. Greenlining seeks funding for the time its attorney spent preparing for and attending legislative hearings. D.98-12-048 provides that we do not compensate such work. A substantial portion of Greenlining's request seeks funding for work on a federal writ of

review. The federal lawsuit did not directly challenge a decision in this proceeding. Accordingly, work on the lawsuit does not qualify for compensation, consistent with our policy expressed in D.98-12-048 and D.97-05-040.

Greenlining fails to allocate its attorney's time by issue. We have repeatedly admonished Greenlining for its failure to do so (see for example, D. 98-04-059, D.90-09-080, and D.89-07-049). In this case, the failure to allocate by issue is crucial because Greenlining fails to demonstrate that it made a significant contribution to the resolution of all of the issues for which it seeks compensation. It argues, for example, that it promoted the idea of providing the utilities with positive incentives to promote women and minority business contracting. The Commission did not adopt such incentives, however, choosing instead to eliminate the prospect of penalties in cases where the utility can demonstrate good faith efforts to meet policy objectives. Greenlining takes credit for the utilities' stated commitment to pursuing "maximum practical utilization of WMDVBE's and their commitment to increase their annual WMDVBE procurement results." Greenlining, however, provides no evidence of its influence over the utilities' commitment. Greenlining makes a reasonable case that it effectively promoted a simpler utility reporting process and that it contributed to the Commission's decision to retain most program elements. In general, however, it has not made a compelling case that it should be compensated for almost 500 hours of attorney time.

Finally, Greenlining seeks hourly attorney rates that it does not justify. It seeks \$325 an hour for Robert Gnaizda and \$250 an hour for Susan E. Brown. These rates are substantially higher than the rates the Commission has approved for these attorneys for work undertaken during comparable periods. For example, Mr. Gnaizda was awarded \$260 an hour in D.98-04-025 and D.96-08-040

for work undertaken between 1995 and 1997. Most of Mr. Gnaizda's work in this proceeding was undertaken between 1993 and 1996. D.98-04-025 granted Ms. Brown \$240 an hour for work undertaken in 1997 and \$225 an hour for work undertaken in 1995 and 1996. Her work in this proceeding was undertaken in 1995 and 1996. Although Greenlining seeks large increases in rates over past decisions, it offers no justification for the higher rates. We therefore would deny the increases and grant rates that have been approved for the periods in question, consistent with our policy stated in D.98-12-048.

#### **4. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Only Pacific Bell filed comments. Its comments support the proposed decision.

#### **Findings of Fact**

1. Greenlining filed an NOI in this proceeding on February 20, 1996.
2. Section 1804(a) requires that intervenors who intend to seek compensation file an NOI within 30 days of the first prehearing conference in a proceeding. The first prehearing conference in this proceeding was held on November 21, 1994.
3. Greenlining failed to file a timely NOI in this proceeding pursuant to Section 1804(a).

#### **Conclusions of Law**

1. Filing an NOI in another proceeding does not fulfill the filing requirements of Section 1804(a) applicable to this proceeding.
2. Greenlining is not entitled to compensation under Section 1801 *et seq.*

**O R D E R**

**IT IS ORDERED** that:

1. The request for intervenor compensation filed by Greenling Institute in this proceeding is denied for the reasons set forth herein.
2. This proceeding is closed.

This order is effective today.

Dated April 22, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners