Date of Issuance
December 23, 2014

Decision 14-12-085 December 18, 2014

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc., and its Effect on California Ratepayers and the California Economy.	I.11-06-009 (Filed June 9, 2011)

ORDER MODIFYING DECISION (D.) 13-05-031
AND D.14-06-026 AND DENYING REHEARING, AS MODIFIED

I. INTRODUCTION

In this Order, we dispose of the applications for rehearing of Decision (D.) 13-05-031[1] and D.14-06-026 (collectively "Decisions") filed by New Cingular Wireless, for the reasons discussed below.[2]

II. BACKGROUND

On April 21, 2011, AT&T and Deutsche Telekom AG (T-Mobile USA, Inc.'s parent company) filed applications with the Federal Communications Commission ("FCC") seeking FCC consent to transfer control of the licenses and authorizations held by T-Mobile USA, Inc. and its subsidiaries to AT&T. On June 9, 2011, the Commission opened Order Instituting Investigation ("OII") (I.) 11-06-009, to investigate and analyze information relevant to the proposed purchase and acquisition of T-Mobile by AT&T

[1] D.13-05-031was modified by D.13-08-020 to correct Ordering Paragraph No. 2, which involves entities who were responsible for paying intervenor compensation. No rehearing application was filed on D.13-08-020.

[2] All citations to Commission decisions are to the official pdf versions which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx, unless otherwise specified.

("merger"). The purpose of the OII was to determine the specific impact of the merger on California. (I.11-06-009, p. 2.)

On August 23, 2012, the Commission issued D.12-08-025, and determined that intervenors participating in the OII should be eligible for an award of intervenor compensation despite the fact that the Commission was not issuing a decision on the merits of the case. (D.12-08-025, p. 1.) Specifically, in D.12-08-025, the Commission granted the motion to dismiss, as moot, the investigation into the proposed purchase and acquisition of T-Mobile USA, Inc. by AT&T because they abandoned their planned merger and withdrew their related application with the FCC. Both The Utility Reform Network ("TURN") and the Center for Accessible Technology ("CforAT") filed timely claims for intervenor compensation.

In D.13-05-031, the Commission awarded $255,944.03 in intervenor compensation to TURN for its substantial contribution in response to the numerous issues raised in the OII and D.12-08-025 even though the Commission did not issue a final decision on the merits. Similarly, in D.14-06-026, the Commission awarded $20,246.82 to the CforAT in intervenor compensation for its contribution to the same proceeding.

New Cingular Wireless timely applied for rehearing of both Decisions. New Cingular raises similar allegations in both applications for rehearing, which are as follows: (1) the awards are made in violation of the Public Utilities Code sections 1801, et seq.; (2) the Commission ignores Rule 17.4(a) of the Commission's Rules of Practice and Procedure; (3) the Commission failed to make adequate findings of fact and conclusions of law; and (4) the Commission acted in excess of its authority under Public Utilities Code sections 1705 and 1757.[3] TURN and CforAT filed a response to the application for rehearing of D.13-05-031 and D.14-06-026, respectively.

We have carefully considered the arguments raised in the applications for rehearing, and are of the opinion that both Decisions should be modified to further clarify

[3] Unless otherwise specified, all statutory references are to the Public Utilities Code.

our discussion regarding TURN's and CforAT's substantial contribution in this proceeding. We otherwise do not find good cause for granting rehearing. Accordingly, we deny the applications for rehearing of D.13-05-031 and D.14-06-026, as modified, because no legal error has been shown.

III. DISCUSSION

1. The Intervenor Compensation provisions in sections 1801, et seq. permit the Commission to authorize intervenor compensation under the circumstances of this proceeding.

New Cingular claims that because the merger in this case was abandoned, there is no resulting order or decision of the Commission, and thus the prerequisite required by Section 1802(i) does not exist in this case. (Rehearing App., D.13-05-031, pp. 2-7 & Rehearing App., D.14-06-026, pp. 2-9, citing Pub. Util. Code, §§ 1801 et seq.)[4] New Cingular argues for an extremely literal construction of section 1802(i).

However, we disagree that the language in section 1802(i) should be construed so literally. Part of the regulatory scheme includes the legislative intent set forth in section 1801.3(b) which states that the Intervenor Compensation statutes should be "administrated in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process."[5] To not award the intervenors that spent time and resources to aid in the Commission's investigation on the applicant's merger would be to discourage effective and efficient participation. (See D.12-08-025, pp. 8-11.) It would be simply unfair and inequitable to these intervenors that spent so much time, and contrary to the Legislature's intent as set forth in section

[4] New Cingular cites various cases in support of its contention that the Commission ignored basic fundamentals of statutory construction in its reading of section 1802(i). (Rehearing App., D.13-05-031, p. 6 & Rehearing App., D.14-06-026, pp. 6-7.) We disagree for the reasons discussed below.

[5] See also Pub. Util. Code § 1801.3(d), which states that "Intervenors be compensated for making a substantial contribution to proceedings of the commission, as determined by the commission in its orders and decisions."

1801.3(b) merely because through no fault of the intervenors an application is withdrawn that results in the dismissal of the OII.

Accordingly, there appears to be a conflict between section 1801.3(b) and section 1802(i). The law is clear, where there is conflict, the agency charged with the interpretation of the regulatory statutory scheme should harmonize the conflicting statutes, so that the Legislative intent can be achieved. (See e.g., *Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, 311; *Tuolumne Jobs & Small Business Alliance v. The Superior Court of Tuolumne County* (2014) *59 Cal.4th 1029, 1037*.) In such a case, courts generally will not disturb our interpretation of the Public Utilities Code unless it fails to bear a reasonable relation to the statutory purposes and language. (*Greyhound Lines, Inc. v. Public Utilities Commission*, (1968) 68 Cal.2d 406, 410; see also, *Southern California Edison Company v. Peevey* (2003) 31 Cal.4th 781, 796.)

We note that what happened here was a very unique circumstance that was not necessarily contemplated in the enactment of statutory language related to substantial contribution. Here, the Commission did not issue a decision on the merits because of the withdrawal of the merger application at the FCC. Yet, we invited the interested parties, including the intervenors, to participate in our investigation. These parties expended much time and resources to participate in this proceeding, and to say no compensation would not comport with Legislature's intent to "encourage the effective and efficient participation" (Pub. Util. Code, § 1801.3(b).)[6]

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[6] We initiated the examination of the proposed merger to determine the specific impact of the merger on California as part of our responsibility to protect California customers, and for six months, the intervenors, in good faith, dedicated their efforts to assist in the evaluation of the proposed merger. (D.13-05-031 pp. 4-21 & D.14-06-026, pp. 4-12.) The dismissal of this proceeding followed six months of concentrated effort to evaluate the transaction while adhering to the timetable set for the FCC's evaluation and the intervenors actively participated up until the time the merger was withdrawn. The intervenors undertook their evaluation in good faith that their efforts could be considered for compensation, and New Cingular has failed to demonstrate otherwise. In fact, the intervenors contributed to the development of a robust record on almost all issues and helped us review the application despite

(*footnote continued on the next page*)

New Cingular's advocacy for a literal construction would result in a disregard of relevant case law, which cautions against applying a ridged literal interpretation of statutory language. In fact, statutory principles direct that interpretations should not lead to an absurd result and/or frustrate the overall purpose and intent of the statute. (*PG&E v. Dept. of Water Resource* (2003) 112 Cal.App.4th 477, 496.)[7] In the end, we "must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977-978.) A statute's overall intent and purpose will take precedence, such that the meaning should not be dictated by any single word or sentence, and a literal construction will not prevail if it is contrary to the legislative intent apparent in the statute. (*Latkins v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 658-659.)

Courts do not consider statutory language in isolation; rather they look to the entire substance of the statute. (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) The statute must be harmonized, and "words must be construed in context, and the statute must be harmonized both internally and with each other, to the extent possible." (*Tuolumne Jobs & Small business Alliance v. The Superior Court of Tuolumne County*,

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(*footnote continued from the previous page*)

that we did not reach a final decision on the substantive merits of the case. (D.13-05-031 pp. 4-21 & D.14-06-026, pp. 4-12.)

New Cingular's approach advocates for denying compensation under circumstance such as this, which is inconsistent with the intent expressed in section 1801 et seq., and creates a barrier to effective participation in Commission proceedings for intervenors like TURN and CforAT who have a stake in the public utility regulation process. New Cingular's approach also places intervenors who participated in good faith and at great expense in our proceedings in perpetual jeopardy of having a particular proceeding dismissed upon the whim of an applicant, which New Cingular failed to demonstrate that the Legislature envisioned or intended.

[7] *Honchariw v. County of Stanislaus*, (2013) 218 Cal.App. 4th 1019, 1027-1028.

supra, 59 Cal.4th at p. 1037.) Therefore, contrary to New Cingular's claim, the meaning of section 1801 et seq. may not be determined from a single word or sentence. Instead, the words must be construed in context, and provisions relating to the same subject matter or that are part of the same statutory scheme must be read together and harmonized to the extent possible. (*Harbor Regional Center v. Office of Administrative Hearings*, *supra*, 210 Cal.App.4th at p. 311.) Therefore, the Commission must select a construction that best fits the Legislature's apparent intent; promotes instead of defeats the statute's general purpose; and avoids absurd or unintended consequences.

Thus, in our interpretation of the Intervenor Compensation statutes (section 1801, et seq.), we avoided an overly literal reading of section 1802(i) that would produce absurd consequences which the Legislature clearly did not intend or frustrate the manifest purpose which appears from the provisions of the legislation when considered as a whole in light of its legislative history. Accordingly, we must harmonize the conflicting statutes so as to effectuate the Legislature's intent.

Here, we interpret the spirit and purpose of section 1801 et seq. to be reasonably straightforward, and our construction of the statute is entirely consistent with this statutory purpose. The purpose of the Intervenor Compensation statute is to administer the program in a manner that encourages the effective an efficient participation of intervenors that have a stake in the public utility regulation process. (Pub. Util. Code § 1801.3.) Our interpretation is consistent with the legislative mandate to interpret the statutory provisions to encourage intervenor participation. Common sense and practicality therefore dictate that New Cingular's interpretation discourages rather than promotes the legislative intent to encourage participation, which contravenes the spirit of the act, and the overall purpose of the law. (Pub. Util. Code § 1801.3; *Lungren v. Deukmejian*, *supra*, 45 Cal.3d at p. 735.) In New Cingular's view, the statute would not, in any situation, permit an intervenor from seeking compensation when an application is withdrawn through no fault of the intervenor, and no decision on the merits issues despite the level of work or participation provided by the intervenor. However, this interpretation is unreasonable and in direct conflict with the legislative intent, and

would frustrate our ability to effectuate the spirit, purpose and intent of the Intervenor Compensation statute.

Our interpretation has resulted in harmonizing the conflicting statutes in a manner that accommodates the unusual circumstances not envisioned by the Legislature and advances the underlying purpose of the intervenor compensation program. Therefore, our practical application of the statute is warranted in this case, and is reasonable and is consistent with our past practice in unique situations like this. (*S*ee discussion, *infra*.)

Therefore, it is obvious that we acted consistent with the Legislature's intent that the Intervenor Compensation statute be administered "in a manner that encourages the effective an efficient participation of intervenors that have a stake in the public utility regulation process." (Pub. Util. Code § 1801.3.) Thus, we reject the request in the rehearing application for us to interpret the statute in a way that thwarts the Legislature's intent to promote participation which contravenes the spirit of the act, and the overall purpose of the law. (Pub. Util. Code § 1801.3; *Lungren v. Deukmejian*, *supra*, 45 Cal.3d at p. 735.) Consequently, because of the uniqueness of the circumstances that we were confronted with, a practical application of the statute is warranted in this instant proceeding. (*Schlessinger v. Rosenfield, Meyer & Susman,* (1995) 40 Cal.App.4th 1096, 1103 [an overly literal interpretation would contradict a common sense interpretation and the intent of the lawmakers].)

2. The Commission has acted consistently in awarding intervenor compensation in similar unique situations.

In past decisions, our interpretation of sections 1801, et seq., have resulted in the harmonizing of conflicting intervenor compensation provisions, and thus, have lawfully permitted us to award compensation where the underlying proceeding was dismissed due to circumstances beyond the intervenor's or the Commission's control. Specifically, we have awarded compensation in other unique situations, where intervenors devoted substantial amounts of time and effort until the proceeding was

closed through no fault of their own. (*Opinion Granting Intervenor Compensation to TURN* [D.07-07-031] (2007) __Cal.P.U.C.3d__, pp. 2-10 (slip op.).)[8] Although not specifically stated as harmonizing, we explained:

> [I]f the Commission were to deny compensation because application of the typical standards of review yield the conclusion that there was no "substantial contribution," it would in effect be assigning to eligible intervenors the risk that a proceeding might bog down and subsequently never reach its expected conclusion due to events or inaction that no party could have reasonably anticipated or prevented from occurring.

(*Id*. at p. 7 (slip op.).) We further noted:

> [P]articipation of intervenors in our proceedings is vital to our ability to make reasoned decisions, and if we prohibit

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[8] See also, *Application of Pacific Gas and Electric Company to Market Value Hydroelectric Generating Plants* [D.07-07-031] (2007) __Cal.P.U.C.3d__; *Order Instituting Rulemaking on the Commission's Own Motion* [D.06-11-010] (2006) __Cal.P.U.C.3d__; *In the Matter of the Joint Application of SBC Communications Inc., and AT&T Corp. for Authorization to Transfer Control* [D.06-09-011] (2006) __Cal.P.U.C.3d__; *Application of Southern California Edison Company* [D.06-06-026] (2006) __Cal.P.U.C.3d__, pp. 5-6 (slip op.); *In the Matter of the Application of Pacific Bell Telephone Company for Authority for Pricing Flexibility and to Increase Recurring Charges for Business Access Line* [D.05-12-038] (2005) __Cal.P.U.C.3d__; *In the Matter of the Application of Southern California Edison Company for Authority to Value its Hydroelectric Generation Assets* [D.04-03-031] (2004) __Cal.P.U.C.3d__; *Application of Pacific Gas and Electric Company Submitting Electric Rate Proposal for Direct Access Services* [D.03-06-065] (2003) __Cal.P.U.C.3d_; *Application of Pacific Gas and Electric Company to Revise its Electrical Marginal Costs, Revenue Allocation and Rates at the End of the Rate Freeze* [D.03-05-029] (2003) __Cal.P.U.C.3d__; *Application of Southern California Edison Company for Approval of New Rates to be Implemented* [D.02-08-061] (2002) __Cal.P.U.C.3d__; *In Re Request of MCI Worldcom, Inc. and Sprint Corporation for Approval to Transfer Control of Sprint Corporation's California Operating Subsidiaries to MCI* [D.02-07-030] (2002) __Cal.P.U.C.3d__; *Application of Southern California Edison Company for Authority to Market Value and Retain the Generation-Related Portions of SSID* [D.02-03-034] (2002) __Cal.P.U.C.3d__; *Application of Southern California Edison Company for Approval of Agreements to Sell Its Interests in Four Corners Generating Station and Palo Verde Nuclear Generating Station* [D.02-03-035] (2002) _Cal.P.U.C.3d__; see *In Re Request of MCI WorldCom, Inc. and Sprint Corporation for Approval to Transfer Control of Sprint Corporations California Operating Subsidiaries to MCI Worldcom, Inc*. [D.01-02-040] (2001) __Cal.P.U.C.3d__.) We note that these decisions are final and nonappealable. (See Pub. Util. Code, §§ 1709 & 1731, subd. (b).)

> compensation where the proceeding might go away for reasons unrelated to the intervenors' actions, we might discourage participation in some of our most important proceedings.
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> ….
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> If we denied compensation for substantial efforts on transactions that-through no fault of the intervenor-were not consummated, we would discourage intervenors…from participating in such proceedings. Every large controversial transaction presents some risk of not being consummated by virtue of its very largeness and level of controversy….Such large transactions are precisely the ones on which the Commission most needs the views of intervenors….We should encourage such participation in proceedings of such magnitude.

(*Id*. at p. 7 citing [D.02-07-030], *supra*, at p.14.)[9] Thus, our awards in past decisions have been consistent with the Legislature's intent set forth in section 1801.3.

3. The Commission's determinations in D.13-05-031 and D.14-06-026 are consistent with its long-standing implementation of the Intervenor Compensation statute, pursuant to the authority given to the Commission by the Legislature.

In the unique circumstances before us, our statutory application of the provisions in the Intervenor Compensation statute has been consistent. (See fn. 8, *supra*.) We have acted reasonably and within our authority as given to us by the Legislature. The statute specifically authorizes the Commission to determine reasonable intervenor compensation. (Pub. Util. Code, § 1802, subd. (a).) The Legislature specifically charged the Commission with the duty to develop intervenor compensation standards, and

[9] See also fn. 8, *supra*.

explicitly relies on the Commission to determine substantial contribution and reasonable fees. (Pub. Util. Code, §§ 1801.3 &, 1802.)[10]

We have lawfully exercised this duty that has been delegated to us by the Legislature. Our harmonizing of the conflicting provisions in the Intervenor Compensation Statute is reasonable, and even courts would give us great deference,[11] and would not disturb our determinations in D.13-05-031 and D.14-06-026 because our interpretation is reasonable and does not cause absurd results or thwarts the legislative intent of encouraging effective participation. (*Pacific Bell v. Public Utilities Commission, supra*, 79 Cal.App.4th at p. 283.) Furthermore, "[i]n general, an agency's interpretation of statutes within its administrative jurisdiction is given presumptive value as a consequence of the agency's special familiarity and presumed expertise with satellite legal and regulatory issues." (*PG&E Corp. v. Public Utilities Commission* (2004) 118 Cal.App.4th 1174; *Yamaha Corp. v. State Board of Equalization,* (1998) 19 Cal.4th 1, 7.) We have made these determinations based on our expertise in awarding Intervenor Compensation and in the lawful exercise of our authority given to us by the Legislature.

Moreover, a long-standing and consistent interpretation should generally not be disturbed unless it is clearly erroneous. (*Sheet Metal Workers' International Association, Local 104 v. John C. Duncan* (2014) 229 Cal.App.4th 192, 206, citing *Yamaha Corp. of America v. State Bd. of Equalization*, *supra,* 19 Cal.4th at p. 21 (conc. Opn. of Mosk, J.).) In similar unique situations such as this, we have acted consistently in our administration of the Intervenor Compensation statute, and have awarded intervenors for their substantial participation to the proceeding despite the fact the

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[10] The Commission's interpretation of the Public Utilities Code, as the agency constitutionally authorized to administer its provisions, is entitled to great weight. (*Southern California Edison Co. v. Peevey*, *supra*, 31 Cal.4th at p. 796; *Greyhound Lines, Inc. v. Public Utilities Commission*, *supra*, 68 Cal.2d at p. 410 ["the commission's interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language…"] .)

[11] In *Greyhound*, the Court established a specific deference principle that applies to judicial review of the Commission's reasonable interpretations of the Public Utilities Code. (*Southern California Edison Co. v. Peevey, supra,* 31 Cal.4th at p. 796, citing *Greyhound, supra*, at pp. 410-411.)

proceeding was dismissed through no fault of the their own and the Commission did not issue a decision on the merits.[12]

The Legislature is also presumed aware of an agency's long-standing implementation. (*Sheet Metal Workers' International Association, Local 104 v. John C. Duncan, supra,* 229 Cal.App.4th at p. 206; *El Dorado Oil Works v. Charles McColgan* (1950) 34 Cal.2d 731; 739 "[S]uch long-continued practice in the handling of thousands of allocation problems since the cited year…was presumably within the knowledge of the Legislature and yet it made no modification in ….the act which would require a different construction as to defendant's authority there under---a strong factor indicating that the administrative practice was consistent with the Legislatures intent relative to the commissioner's power in carrying out the allocation principle of the section.") Thus, because the Legislature is presumed to be aware of our long-standing implementation of the Intervenor Compensation statute for awarding intervenor compensation in situations where there was no decision on the merits, and the fact that the Legislature has not acted to prevent the Commission from awarding intervenor compensation in such circumstances, there is a strong indication that the Commission's implementation was consistent with the Legislature's intent, and that the Legislature has acquiesced to our implementation. [13]

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[12] See also fn. 8, *supra*, wherein the Commission has followed a long-standing practice with regard to awarding intervenor compensation to intervenors for their substantial contribution despite the fact that the proceeding was dismissed through no fault of their own and no decision on the merits issued. An agency's interpretation is also given greater credit when it is consistent and long-standing whereas a vacillating position is not entitled to deference by the courts. (*Yamaha Corp. of America v. State Bd. of Equalization*, *supra*, 19 Cal.4th at p. 13.)

[13] See also *Shirley Thorton v. Lonnie Carlson* (1992) 4 Cal.App.4th 1249, 1257; *El Dorado Oil Works v. Charles McColgan*, *supra*, 34 Cal.2d at p. 739; *Steelgard Inc. v. David Jannsen* (1985) 171 Cal.App.3d 79, 88, citing *People v. Southern Pac. Co*. (1930) 209 Cal. 578, 594-595 ["It is a well-established rule of statutory construction that the contemporaneous and practical construction of a statute by those whose duty it is to carry it into effect, while not controlling, is always given great respect. And a contemporaneous interpretation long acquiesced in by all persons who could possibly have an interest in the matter, has been held to be sufficient to justify a court in resolving any doubt it might have as to the meaning of ambiguous language employed by the [L]egislature, in favor of sustaining such long unquestioned interpretation."].)

In this case, we complied with the law, and acted within our powers and jurisdiction. Thus, pursuant to *Greyhound*, deference is warranted and our interpretation is reasonable and does not result in absurd results.[14] For the reasons discussed above, New Cingular is wrong in asking the Commission to ignore a reasonable interpretation of the Intervenor Compensation statute, and to act contrary to the Commission's long-standing implementation of all the provisions in this statute with regard to awards made absent a decision on the merits. As discussed, the Legislature is presumed to know about our implementation in those situations, and thus, has acquiesced in this interpretation. Further, there is no law that prohibits this long-standing implementation or interpretation.

4. Under Section 1801 et seq. the Commission has the discretion to award intervenor compensation in this case.

Contrary to New Cingular's claim, the dismissal of the merger does not eliminate our obligation to encourage the underlying purpose of the statute, and our discretion to award intervenor compensation in this case. For example, statutory language supports the conclusion that the Legislature conferred upon the Commission the discretion in awarding intervenor compensation. The various statutes indicate that substantial contribution is to be determined by the Commission. (See Pub. Util. Code, § 1802, subd. (i) [using the words: "[i]n the judgment of the commission"] & § 1801.3, subd. (d) [using the words: "as determined by the commission"].)

New Cingular's interpretation renders a nullity to the statute's reference to the "Commission's discretion" to award intervenors, because pursuant to the statute, it is the Commission who determines whether an intervenor has substantially contributed. (Pub. Util. Code § 1801, et seq.) Pursuant to section 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment, and in

[14] As discussed, it is reasonable for the Commission to conclude that the intervenors made a substantial contribution since the Commission is charged by the Legislature to implement the Intervenor Compensation statute, which includes making determinations in unique instances where proceedings would be dismissed.

this case, the intervenors made a substantial contribution despite there being no decision on the merits and the Decisions make clear this point. (D.13-05-031 & D.14-06-026.)

New Cingular fails to demonstrate that we exceeded our authority under the statute or that our construction of the statute bears no "reasonable relation to statutory purpose and language." (*SCE v. Peevey*, *supra*, 31 Cal.4th at p. 796.) We are given considerable deference to our interpretation of the code and New Cingular has not demonstrated that we exceeded this authority. In view of these facts, we conclude that while we did not issue a decision or order on the merits of this case, an award of compensation is justified under the regulatory scheme set forth in section 1801, et seq.

5. New Cingular does not establish legal error with respect to the Decisions' findings of fact and conclusions of law.

New Cingular wrongly contends that the Decisions violated the Public Utilities Code by failing to make adequate findings of fact and conclusions of law on issues material to the Decisions. (Rehearing App., D.13-05-031, pp. 7-8 & Rehearing App., D.14-06-026, pp. 8-9.) This claim lacks merit.

There is no legal requirement that our decisions discuss or make findings on each and every issue raised by a party. We need only make findings and conclusions to dispose of those issues necessary and relevant to our decision. (*Goldin v. Public Utilities Commission* (1979) 23 Cal.3d 638, 670.) Here, the Commission complied with the statutory requirements on all issues material to the Decisions. (Pub. Util. Code, § 1705.) However, for clarity, we modify the Decisions as set forth below.

IV. CONCLUSION

For the reasons stated above, D.13-05-031 and D.14-06-026 are modified as set forth below. The applications for rehearing of D.13-05-031 and D.14-06-026, as modified, are denied as no legal error has been shown.

THEREFORE, IT IS ORDERED that:

1. D.13-05-031 and D.14-06-026 are modified as follows:

(a) The third full paragraph on page 18 of Section C of D.13-05-031 and the second paragraph, Comment No. 2 on page 9 of D.14-06-026 are modified to state:

In previous decisions involving proceeding dismissals at the request of the applicant, such as D.01-02-040, the Commission has awarded intervenor compensation. See also, D.02-07-030 for a discussion of the authority to allow intervenor compensation awards in a major application following dismissal. In these situations, the Commission has acknowledged that many of the general principles on which the Commission typically relies in evaluating whether a customer made a substantial contribution to a proceeding do not apply, since the Commission never issued a decision on the merits in that case, and has explained that:

> Denying compensation in this proceeding because circumstances beyond its control led to the dismissal of the application would be both unfair and inconsistent with the intent of intervenor compensation statutes…simply because there was no decision or order addressing the merits of substantive participation, we could create an inappropriate incentive for intervenors to argue for the continued processing of cases where discontinuation of the proceeding is the better outcome.

(*Order Instituting Rulemaking Into the Commission's Own Motion* (2006) [D.06-11-010] __Cal.P.U.C.3d__, p. 6.)

The Commission has further recognized that:

> [I]f the Commission were to deny compensation because application of the typical standards of review yield the conclusion that there was no 'substantial contribution,' it would in effect be assigning to eligible intervenors the risk that a proceeding might bog down and subsequently never reach its expected conclusion due to events or inaction that no party could have reasonably anticipated or prevented from occurring.

([D.07-07-031], *supra*, at. p. 6.)

Similarly, the Commission has determined that:

> participation of intervenors in our proceedings is vital to our ability to make reasoned decisions, and if we prohibit compensation where the proceeding might go away for reasons unrelated to the intervenors' actions, we might discourage participation in some of our most important proceedings.

(*Id*. at p. 7.)

> If we denied compensation for substantial efforts on transactions that-through no fault of the intervenor were not consummated, we would discourage intervenors…from participating in such proceedings. Every large controversial transaction presents some risk of not being consummated by virtue of its very largeness and level of controversy…Such large transactions are precisely the ones on which the Commission most needs the views of intervenors…We should encourage such participation in proceedings of such magnitude.

(*Id*.; citing D.02-07-030, *supra*, at p. 9; D.07-07-031, *supra*, at p. 7.)

Thus, the fact that the applicant's withdrew their merger has no bearing on the intervenors' entitlement to intervenor compensation, and the Commission's rationale in those cases provides ample justification for an award of compensation here. Moreover, we have consistently determined that we see no reason to increase an intervenor's risk by denying compensation in a proceeding that is prematurely terminated for reasons that are not reasonably foreseen and are beyond the intervenors control. Nor has New Cingular demonstrated the Legislature intended such an impractical and unlikely result. Therefore, denying intervenors compensation solely on the fact that we did not issue a decision on the merits because the merger was withdrawn, would be inconsistent with a series our decisions recognizing that the risk of unanticipated dismissal should <u>not</u> be assigned

> to intervenors. Similarly, here we see no reason to increase the intervenor's risk by denying compensation in a proceeding that is prematurely terminated for reasons that are not reasonably foreseen and are beyond its control.
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> Further, we recognize that such a limited view of substantial contribution would frustrate the objective behind the code, which is to encourage participation. Such a narrow view could also lead to incongruous results never intended by the Legislature, and New Cingular fails to demonstrate that the Legislature intended such an impractical and unlikely result.
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> Here, the Commission initiated the examination of the proposed merger as part of its responsibility to protect California customers, and for six months, the intervenors, in good faith, dedicated their efforts to assist in the evaluation of the proposed merger. The intervenors undertook their evaluation in good faith that its efforts could be considered for compensation, and New Cingular has failed to demonstrate otherwise. In fact, the intervenors intensively worked towards the development of a robust record on almost all issues for the Commission's review in the OII despite the fact that the Commission did not reach a final decision on the substantive merits of the case. (See Generally D.12-08-025, pp. 10-11.)
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> Accordingly, and consistent with our policy, we correctly determined that intervenor compensation is warranted in this case. By contrast, New Cingular's set interpretation of the statute which advocates for not awarding compensation under circumstance such as this is inconsistent with the intent expressed in section 1801 et seq., and creates a barrier to effective participation in Commission proceedings for intervenors like TURN and CforAT who have a stake in the public utility regulation process.

2. In D.13-05-031, Findings of Fact No. 1-5 are deleted and replaced as follows:

(a) Finding of Fact No. 1:

Decision 12-08-025 allows any party deemed eligible for intervenor compensation in Investigation 11-06-009 to request compensation.

(b) Finding of Fact No. 2:

TURN timely filed its request for compensation for its contributions to this proceeding.

(c) Finding of Fact No. 3:

TURN participated continuously and extensively in this proceeding until the applicants withdrew their merger application and the proceeding was subsequently dismissed in D.12-08-025.

(d) Finding of Fact No. 4:

Claimant is an eligible party and made a substantial contribution to Investigation 11-06-009 and Decision 12-08-025.

(e) Finding of Fact No. 5:

The Commission has awarded intervenor compensation to eligible parties for their work in other proceedings that were dismissed through no fault of the intervenor.

(f) Finding of Fact No. 6:

The requested hourly rates for The Utility Reform Network's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.

(g) Finding of Fact No. 7:

The claimed costs and expenses are reasonable and commensurate with the work performed.

(h) Finding of Fact No. 8:

The total of reasonable contribution is $255,944.03.

3. In D.13-05-031, Conclusion of Law No. 1 is modified as follows:

Pursuant to Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, TURN is entitled to intervenor compensation.

4. In D.14-06-026, Findings of Fact No. 1-4 are deleted and replaced as follows:

(a) Finding of Fact No. 1:

Decision 12-08-025 allows any party deemed eligible for intervenor compensation in Investigation 11-06-009 to request compensation.

(b) Finding of Fact No. 2:

CforAT timely filed its request for compensation for its contributions to this proceeding.

(c) Finding of Fact No. 3:

CforAT participated continuously and extensively in this proceeding until the applicants withdrew their merger application and the proceeding was subsequently dismissed in D.12-08-025.

(d) Finding of Fact No. 4:

Claimant is an eligible party and made a substantial contribution to Investigation 11-06-009 and Decision 12-08-025.

(e) Finding of Fact No. 5:

The Commission has awarded intervenor compensation to eligible parties for their work in other proceedings that were dismissed through no fault of the intervenor.

(f) Finding of Fact No. 6:

The requested hourly rates for CforAT's representatives, adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.

(g) Finding of Fact No. 7:

After the adjustments made herein, the remaining hours and costs are reasonable, commensurate with the work performed, and warrant compensation.

(h) Finding of Fact No. 8:

The total of reasonable compensation is $20,246.82.

5. In D.14-06-026, Conclusion of Law No. 1 is modified as follows:

Pursuant to Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and CforAT is entitled to intervenor compensation.

6. Rehearing of D.14-06-026, as modified, is hereby denied.

7. Rehearing of D.13-05-031, as modified, is hereby denied.

This order is effective today.

Dated December 18, 2014, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
MICHAEL PICKER
Commissioners