

Decision \_\_\_\_\_

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

Order Instituting investigation on the Commission's own motion into the rates, charges, and practices of water and sewer utilities providing service to mobilehome parks and multiple unit residential complexes and the circumstances under which those rates and charges can be passed to the end user.

Investigation 98-12-012  
(Filed December 17, 1998)

**OPINION ON REQUEST FOR INTERVENOR COMPENSATION**

This decision grants Golden State Mobile Home Owners League (GSMOL) \$29,731.57 in compensation for its contribution to Decision (D.) 01-05-058.

**1. Background**

This investigation addressed concerns about the legitimacy of charges for water and sewer services imposed on tenants by the owners of multiple unit residential complexes and mobilehome parks (MHPs). Applying quasi-legislative procedure, we reviewed information obtained about the current practices of owner/operators of MHPs and multiple unit residential complexes that bill tenants for water and sewer services separately from rent. In D.01-05-058, we stated our policy in this area and resolved a critical issue under various statutes and court decisions, namely, the extent to which our jurisdiction encompasses the ability to deal with billing issues as they arise in the various situations under investigation.

## 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.<sup>1</sup> Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (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. In establishing eligibility, the intervenor must show that it is a "customer" as defined in § 1804(b), and that its participation in the proceeding without compensation for its fees and costs would impose a "significant financial hardship." (§ 1803 (b).)<sup>2</sup>

Other sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request within 60 days of issuance of a final order by the Commission in the proceeding. GSMOL timely filed its request for an award of compensation. Section 1804(c) also 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,

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<sup>1</sup> Unless otherwise indicated, all subsequent citation to sections refer to the Public Utilities Code, and all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

<sup>2</sup> The terms "intervenor" and "customer" are used interchangeably in the statute, and we will follow that usage in today's decision.

“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**

By the August 18, 1999 Assigned Commissioner’s ruling, GSMOL’s NOI was considered timely filed, but GSMOL was required to provide additional information in its request for compensation regarding its customer status and significant financial hardship. The ruling also required GSMOL to submit a declaration with its request stating:

- a. what percentage of the total membership consists of persons who reside in a member-owned mobilehome park;
- b. who controls the provision of and billing for water and sewer services at those member-owned mobilehome parks; and
- c. whether the organization is claiming to represent such residents of member-owned mobilehome parks in this

proceeding, and if so, how such persons meet the § 1802(b) definition of customer.

GSMOL filed its request for compensation on July 13, 2001, with a supplement filed on September 4, 2001, and included a declaration by its president, Steve Gulage. GSMOL states that it represents tenants in MHPs that have submetered utility systems (electric, gas and water). These tenants are normally considered customers of the park owners and customers of the serving utilities. In the declaration, Gulage states that there are 180 resident owned parks (ROPs) in which GSMOL has 1,043 members or about 3% of the total membership of 29,338. He further states that the 3% of GSMOL membership who reside in ROPs should not diminish GSMOL's presence before the Commission. We agree. We find that GSMOL meets the statutory requirements of a customer, in that it is a participant representing consumers, customers, subscribers of any electrical, gas, ". . . or water corporation" that we regulate. (Section 1802(b).)

#### **4. Financial Hardship**

Section 1802 (g) provides in relevant part that "significant financial hardship" in the case of a group such as GSMOL means that the economic interest of the individual members is small in comparison to the costs of effective participation.

GSMOL states in its July 13, 2001 request for compensation that it is a voluntary nonprofit mutual benefit corporation that depends entirely upon membership dues and voluntary contributions for its existence. Membership is \$15.00 per year, which entitles its approximately 30,000 members to receive a newsletter that is published every month and representation in cases such as this investigation. GSMOL states that for the calendar year 1999 its donations and

membership fees were approximately \$495,000, and its total expenses, which included most of its cost of participation in this proceeding, were approximately \$508,000. It is clear to us that GSMOL has a financial hardship under § 1802(g). Even were GSMOL to devote itself primarily to participating in this proceeding, there would be little remaining in its budget for any other activity. Furthermore, the cost of effective participation would greatly exceed any possible benefit as reflected in the bills of individual members.

#### **5. Contribution to Resolution of Issues/Overall Benefit of Participation**

Under Pub. Util. Code § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the presiding officer or Commission adopted. 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. When appropriate, the Commission has provided compensation even when the position advanced by the intervenor is rejected.<sup>3</sup>

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

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<sup>3</sup> D.89-03-096 (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).

Fact 42.) In that decision, we note 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.

To begin this review, we note that GSMOL is a membership organization formed at the request of many mobilehome residents throughout the state. It represents tenants of MHPs that have submetered utility systems (electric, gas and water). GSMOL participated actively in the pre-workshop exchanges and in the workshop held on September 15, 1999. It continued to participate in informal written exchanges, and it filed briefs and comments that ultimately led to D.01-05-08.

GSMOL focused on the following:

- Factual and procedural history of the dispute at DeAnza MHP in Santa Cruz;
- Commission jurisdiction and the Legislative History of Pub. Util. Code § 2705.5;
- The definition of “prevailing rate”;
- MHPs as sewer corporations; and
- Contribution to the Water Division Workshop Report.

GSMOL was the only party to address the legislative history of Pub. Util. Code § 2705.5.<sup>4</sup> In D.01-05-058, p. 14 mimeo., we note GSMOL’s contribution.

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<sup>4</sup> “Any person or corporation, and their lessees, receivers, or trustees appointed by any court, that maintains a mobilehome park or multiple unit residential complex and

*Footnote continued on next page*

The Commission partially agreed with GSMOL on the “prevailing rate” issue, and agreed with GSMOL’s interpretation of “prevailing rate” related to sewer corporations. We believe GSMOL satisfies the “substantial contributions” requirements of § 1803(a). Many of GSMOL’s contributions were original and persuasive and we find that GSMOL did make a substantial contribution to D.01-05-058.

However, some aspects of GSMOL’s efforts did not result in a substantial contribution. For example, although GSMOL presented a factual and procedural history of *De Anza vs. City of Santa Cruz*, we relied on D.98-12-097 to inform our inquiry in this investigation rather than GSMOL’s history. GSMOL also spent time discussing the case with the media which is not compensable per D.96-06-029.

GSMOL notes that while the Commission did not adopt all of its recommendations in their entirety, portions of its recommendations were adopted in the final decision as well as in the workshop report and the three preliminary decisions that led to D.01-05-058. GSMOL states that the final decision actually gives more generous rate treatment for tenants than what was originally proposed. GSMOL states that one of its fundamental positions in this proceeding has been that tenants in submetered parks should be treated no differently from residential customers who are directly served by water companies. To this end, GSMOL recommended “prevailing rate” treatment,

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provides, or will provide, water service to users through a submeter service system is not a public utility and is not subject to the jurisdiction, control, or regulation of the commission if each user of the submeter service system is charged at the rate which would be applicable if the user were receiving the water directly from the water corporation.”

which the Commission adopted. GSMOL actively participated in the workshop, provided operations and maintenance cost data and other actual examples of discrepancies in park billing and operational practices. GSMOL claims that it did not duplicate other parties' analysis in this proceeding. We agree for the most part. GSMOL requested 100% of its costs, and an hourly rate for its attorney of \$150/hour, which it characterized as being below a "market rate" of \$250/hour.

It is often difficult to assign specific ratepayer savings to contributions by intervenors in quasi-legislation proceedings such as this one, and it is difficult here also. GSMOL contributed to this proceeding's outcome, and it is clear that, at a minimum, ratepayers in MHPs have benefited from GSMOL's contributions on the issues through ensuring that submetered tenants are treated comparably to other utility customers. We do not know precisely how much that benefit might amount to in dollars, but we have an idea from the record how many customers might be affected. Conservatively, there are about 5,000 MHP in California with about 400,000 spaces. Not all are submetered, and not all those are served by regulated water or sewer utilities, but even after allowing for these factors, we find that GSMOL's participation benefited tens of thousands of tenants in addition to GSMOL's own members. GSMOL's expenditure for the most part seems productive in terms of its results and the number of tenants who benefit from those results.



## **6. Reasonableness of Requested Compensation**

GSMOL claims its costs for participating in this proceeding totaled \$43,334.93.<sup>5</sup> GSMOL notes that it did not prevail on all issues, yet did provide a substantial contribution to the final decision.

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<sup>5</sup> GSMOL never actually totaled its costs for us in its request and supplement. We calculated this figure by adding up the elements of its requests. We note that the supplemental request includes costs that were also included in the original request.

GSMOL requests \$43,334.93 for its participation, as follows:

254.17 <sup>6</sup> hours professional time, at \$150 per hour	\$ 38,125.00
Expert Consultant fee for Barkovich and Yap	\$1,000
Transcripts, Copies & Duplication	\$1,806.61
Courier and Postage	\$1,446.12
Legislative Intent Research	\$ 957.20
Sub-total (other)	<u>\$ 5,209.93</u>
<b>Total Request</b>	<b>\$ 43,334.93<sup>7</sup></b>

### 6.1. Hours Claimed

GSMOL documented the claimed hours by presenting a daily breakdown of hours with a brief description of each activity. Our review of the billing records shows that 188.25 hours were spent on professional activities and 8.0 hours on travel and compensation related time. GSMOL did not provide us with a detailed breakdown of time allocated by each issue it addressed, so it is necessary for us to make that allocation. In our judgment, 10 hours were associated GSMOL's presentation of the history contained in D.98-12-097 for which we find GSMOL did not make a substantial contribution. We also remove 3.0 hours of time associated with Scharf discussing the case with the media.<sup>8</sup>

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<sup>6</sup> This is a derived figure based on the total claim of \$38,125 for attorney fees in GSMOL's request, which included substitute counsel. Based on our review of the billing records, the claim should actually be for 188.25 hours of professional time, 8.0 hours of travel/compensation related time, and \$1,006 for outside counsel.

<sup>7</sup> We have also corrected for minor arithmetic errors.

<sup>8</sup> In D.96-06-029, 66 CPUC2d 351, 360 we found "Communicating with the news media does not constitute participation in our proceedings within the meaning of Section 1801

*Footnote continued on next page*

GSMOL reported travel and compensation request preparation hours separately from professional time, but charged these hours at the full hourly rate, which we discuss below. With those adjustments, the resultant hours (175.25 professional, 8.0 travel/compensation) are reasonable.

## **6.2. Hourly Rate**

GSMOL requests an hourly rate of \$150 for professional work performed during 1998 through July 2001 by its attorney, Benjamin H. Scharf. This is the first time we are setting a rate for Scharf. Scharf has been practicing law since 1972. This is the third time he has appeared before the Commission. All three appearances related to mobilehome parks. GSMOL states a \$150/hour rate is below that which would ordinarily be charged to clients for this level of service. GSMOL states that a “market” or comparable rate would approximate \$250/hour. We agree that Scharf’s legal experience warrants at least the “discounted” \$150/hour rate. We adopt \$150/hour as the billing rate for Scharf for 1998-2001.

Our normal practice is to compensate at half the full hourly rate time spent on travel or preparation of the intervenor compensation request. (D.98-04-059, 79 CPUC2d 628, 688.) Therefore, we reduce the hourly rate by one-half, consistent with past Commission practice for travel time and for preparation of this compensation request.

GSMOL requests reimbursement for a \$1,000 “expert consultant fee” from Barkovich and Yap, an energy and utility regulatory consultant but no

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et seq. Accordingly, we shall not grant compensation for the time spent on these activities.”

documentation or information regarding the expert were provided. When queried about the charge by the ALJ, Scharf indicated only that the \$1,000 fee was for approximately seven hours of telephonic advice. Scharf later stated that Ms. Yap and her firm were identified as the experts who were familiar with the technical issues surrounding this type of proceeding. Without written documentation about the services provided, we cannot evaluate whether any substantial contribution derived from this consultation. Without further documentation, we cannot allow this cost.

### **6.3 Cost for Substitute Counsel**

At the time scheduled for the PHC, Scharf had a pre-scheduled vacation. He retained the services of Austin Comstock, Esq., a Santa Cruz attorney with many years of trial experience. Scharf claims that Comstock has substantial experience as an arbitrator in mobilehome park rent control cases, under the Santa Cruz County ordinance. Scharf believes that Comstock's should be compensated for his fees, \$1,006, or at the very least for the time that Scharf would have been compensated for the time he would have spent at the PHC.

Comstock included time spent with Scharf, preparation hours, three hours at the PHC and a "post mortem" with Scharf, and \$6.00 parking for a total of \$1,006. He charged GSMOL \$500 for one hour to prepare for the PHC and \$500 for the one hour "post mortem." Had Scharf attended the hearing we would have compensated Scharf for five hours travel at \$75/hour and three hours hearing time at \$150/hour and parking at \$6.00, a total of \$831.00, the reasonable charge for the services provided. We will allow \$831.00 for substitute counsel costs.

#### **6.4 Other Costs**

GSMOL originally stated that other costs necessary for participation in this proceeding were out-of-pocket expenses for copies, postage, and research amounting to \$4,209.93. \$957.20 was for legislative intent research which we noted was of value to us in arriving at our decision.

GSMOL reduced its request for postage and courier costs reimbursement from \$1,446.12 to \$703.02, based on actual receipts provided. Other costs documented were out-of-pocket expenses for copies, postage, and Federal Express delivery of \$352.85, resulting in \$1,055.87 for these costs. The total of \$2,013.07 is reasonable considering the duration and substance of the proceeding.

#### **7. Award**

We award GSMOL \$29,731.57, calculated as described above and detailed below.

Advocate	Year	Hours	Rate	Amount
Scharf, Professional	1999, 2000	175.25	\$150.00	\$26,287.50
Scharf, Travel and Compensation filing	1999, 2000	8	\$ 75.00	\$600.00
Barkovich and Yap Consulting				0.00
Substitute Counsel				\$831.00
Other Costs				\$2,013.07
			<b>Total</b>	<b>\$29,731.57</b>

Although the Commission's initial order in this proceeding names only Class A and Class B water utilities as respondents, D.01-05-058 affects the entire

regulated water and sewer utility industries. As such, we find it appropriate to authorize payment of the award from the intervenor compensation program fund, as described in D.00-01-020, rather than requiring a proportional payment allocated among the designated respondents.

Consistent with previous Commission decisions, we will order that interest be paid on the award (calculated at the three-month commercial paper rate), commencing September 24, 2001 (the 75th day after GSMOL filed its compensation requests), and continuing until full payment of the award is made.

Intervenors that have never received payment of an award from the Commission must provide their taxpayer identification number to ensure payment along with a completed STD 204 Payee Data Record form, available at <http://www.documents.dgs.ca.gov/osp/pdf/std204.pdf> to the below address.

For assistance completing Section 1 of STD 204, call the phone number below.

California Public Utilities Commission  
Attention: Fiscal Office  
505 Van Ness Avenue, Room 3000  
San Francisco, CA 94102  
(415) 703-2306

As in all intervenor compensation decisions, we put GSMOL on notice that the Commission staff may audit its records related to this award. Thus, GSMOL must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. These records should identify specific issues for which it requests compensation, 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.

This is a compensation decision per § 1801 (Rule 77.7(f)(6)). Accordingly, the otherwise applicable 30-day period for public review and comment is being waived.

## **7. Assignment of Proceeding**

Loretta Lynch is the Assigned Commissioner and Jean Vieth was the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. GSMOL is a customer as defined in § 1804(b).
2. GSMOL made a timely request for compensation for its contribution to D.01-05-058.
3. GSMOL demonstrated significant financial hardship.
4. GSMOL contributed substantially to D.01-05-058.
5. GSMOL did not duplicate any other party's analysis in this proceeding.
6. For work performed by Scharf, an hourly rate of \$150 per hour is reasonable.
7. The consultant fee for Barkovich and Yap is not justified.
8. The cost of substitute counsel is not reasonable; it should not be more than if Scharf had attended the Prehearing Conference himself.
9. The miscellaneous costs described hereon incurred by GSMOL are reasonable.

## **Conclusions of Law**

1. GSMOL fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.
2. GSMOL should be awarded \$29,731.57 for its contribution to D.01-05-058.
3. The award should be paid out of the intervenor compensation program fund, as described in D.00-01-020.

4. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

5. This order should be effective today so that GSMOL may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED** that:

1. Golden State Mobilehome Owners League (GSMOL) is awarded \$29,731.57 for its substantial contribution to Decision (D.) 01-05-058.

2. The award shall be paid from the intervenor compensation program fund, as described in D.00-01-020.

3. Payment of the award shall include interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning September 24, 2001 and continuing until full payment is made.

4. The comment period for today's decision is waived.

5. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.



**COMPENSATION DECISION SUMMARY INFORMATION**

<b>Compensation Decision(s):</b>	
<b>Contribution Decision(s):</b>	D0105058
<b>Proceeding(s):</b>	I9812012
<b>Author:</b>	ALJ Vieth
<b>Payer(s):</b>	Commission

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason/Change Disallowance</b>
Golden State Mobile Home Owners League	7/13/01	\$43,334.93	\$29,731.57	Failure to discount travel or intervenor compensation preparation time, undocumented costs; unproductive effort/excessive hours.

**Attorney and Expert Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Benjamin	Scharf	Attorney	Golden State Mobile Home Owners League	\$150.00	1999-2000	\$150.00