

Decision **DRAFT DECISION OF ALJ O'DONNELL** (Mailed 11/2/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Robert Hambly, for Himself and, on Behalf of the
Residents of Los Robles Mobilehome Park,

Complainant,

vs.

Hillsboro Properties, a California Limited
Partnership, and the City of Novato,

Defendants.

Case 00-01-017
(Filed January 14, 2000)

**OPINION DENYING INTERVENOR COMPENSATION
TO GOLDEN STATE MOBILEHOME OWNERS LEAGUE, INC.
FOR ITS CONTRIBUTIONS TO DECISION 01-08-040 AND
DECISION 04-06-007 IN CASE 00-01-017**

1. Summary

This decision denies the request of Golden State Mobilehome Owners League, Inc. (GSMOL) for intervenor compensation for its contribution to Decision (D.) 01-08-040 and D.04-06-007 in Case (C.) 00-01-017. GSMOL represented the complainant, Robert Hambly, et al. (Hambly), and also intervened in its own right. The request does not identify which of the expenditures were incurred by GSMOL, the intervenor, as opposed to those necessary for its representation of Hambly, the complainant.¹ After reviewing

¹ The amount requested is \$100,916.13.

the expenditures and work performed, we find that the work performed was either necessary for the complainant, Hambly, to meet the burden of proof, was outside of the scope of the proceeding, or had no impact on the outcome of the proceeding. Therefore, GSMOL's costs as an intervenor are not compensable under the intervenor compensation program. To the extent that GSMOL acted for Hambly, such costs are not compensable because Hambly is not eligible to seek intervenor compensation and did not do so. We also find that GSMOL does not qualify as a customer as defined in Pub. Util. Code § 1802(b). For these reasons, the request is denied.

2. Background

C.00-01-017 was filed by Hambly, against the defendant, Hillsboro Properties (Hillsboro), the owner of the Los Robles Mobilehome Park (Los Robles), and the City of Novato (Novato). Hambly claimed that Hillsboro assessed the Los Robles tenants annual rent increases that, though approved by Novato under its rent control authority, resulted in higher charges for submetered natural gas and electric service than Pub. Util. Code § 739.5(a) permits.²

On May 17, 2000, the assigned Commissioner issued a Scoping Memo. It identified the following issues:

² All section references are to the Public Utilities Code unless otherwise stated. Section 739.5(a) provides in part:

“The commission shall require that, whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer shall charge each user of the service at the same rate which would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation.”

- Issue 1. Whether operation of Novato's "Calculation of Net Operating Income" formula (Mobilehome Rent Control Ordinance, 1999, Section 20-12.A.3.) results in higher gas and electricity charges for submetered mobilehome tenants than the rates applicable to mobilehome customers directly served by Pacific Gas and Electric Company;
- Issue 2. Whether Hillsboro has improperly included in its rent increase petitions any expenses for maintenance, repair or upgrade of the Los Robles submeter system; and
- Issue 3. Whether expenses for installation, maintenance, and upgrade of electric pedestals are included within the master-meter discount.

On June 30, 2000, GSMOL filed a petition to intervene on Issues 1 and 3. On July 13, 2000, the assigned Administrative Law Judge (ALJ) issued a ruling granting the petition. On August 11, 2000, GSMOL filed a notice that it would also be representing Hambly.³ The notice stated that where appropriate or necessary, separate briefs would be submitted on behalf of Hambly and GSMOL to avoid confusion as to which was speaking.

On August 23, 2001, the Commission issued D.01-08-040 in favor of Hambly. Hillsboro was directed to calculate the reimbursements owed its tenants, and to file and serve a report with the calculations. Thereafter, Hambly and Hillsboro were ordered to meet and confer to discuss the calculations in a good faith effort to explore and reconcile any differences between them. Hambly was then required to file a notice of acceptance of the calculations or to file separate calculations performed in accordance with the Commission's

³ Hambly, *et al.* are GSMOL members.

determinations. If Hambly filed a notice of acceptance of the calculations, the Commission's Executive Director was to close the proceeding. Otherwise,

additional proceedings were to be held as necessary to resolve the discrepancies between the parties. Once the refunds were quantified, Hillsboro was required to reimburse the tenants. The parties were unable to reach agreement on the refunds at that time.

On September 24, 2001, the Western Manufactured Housing Communities Association (WMA) filed an application for rehearing of D.01-08-040 that was denied by D.02-01-043. On February 11, 2002, Hillsboro and WMA filed for a writ of review and for a writ of mandate. These filings were consolidated and heard by the Court of Appeal, First Appellate District, Division Two (Court). On April 1, 2003, the court issued its opinion upholding D.01-08-040.⁴

On April 7, 2004, Hambly and Hillsboro filed a motion to close C.00-01-017. They stated that they had resolved the issues regarding quantification of the refunds, and that no further Commission action was necessary.⁵ By D.04-06-007, the Commission closed C.00-01-017.

3. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

⁴ 108 Cal. App. 4th 246; 133 Cal. Rptr. 2d 343; 203 Cal. App. LEXIS 632.

⁵ C.00-01-017 was consolidated with Order Instituting Rulemaking (R.) 03-03-017 and Order Instituting Investigation (I.) 03-03-018 for further proceedings as necessary, and D.01-08-040 was stayed. By D.04-06-007, the Commission deconsolidated this proceeding from R.03-03-017 and I.03-03-018, removed the stay of D.01-08-040, and closed C.00-01-017.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
2. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

Because of the unique nature of this request, we discuss Item 5 (substantial contribution) first, followed by a discussion of Item 1 (definition of a customer). Because we find that the work performed by GSMOL was either necessary for the complainant, Hambly, to meet the burden of proof, was outside of the scope of the proceeding, or had no impact on the outcome of the proceeding, we do not address whether the requested compensation was reasonable or based on market rates. We also find, regarding Item 1, that GSMOL is not a “customer” within the meaning of the statute.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁶

Even where the Commission does not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution.

⁶ D.98-04-059, 79 CPUC2d, 628 at 653.

A complaint case where an intervenor also represents the complainant raises unique issues in the evaluation of substantial contribution.⁷ In its petition to intervene, GSMOL stated that it wanted to address Scoping Issues 1 and 3 (identified in the Background section, above) because it believed that “resolution of both issues will have statewide impact, beyond the dispute between the instant parties now before the Commission.” It stated that the only “new issue” it wished to address, beyond those included in the scoping memo, was that this complaint case was not the forum to resolve the issue of whether costs for replacement of electric pedestals and common area trenching were not covered by the discount on a statewide basis. As noted previously, the ALJ’s ruling granted intervention only regarding Scoping Issues 1 and 3 but did not revise the scoping memo to include other issues. As a result, GSMOL may be eligible to claim compensation for Scoping Issues 1 and 3, only to the extent that there is a statewide impact.

This complaint addressed whether the rents, set by Novato and charged by Hillsboro, improperly included recovery of expenditures for electric pedestals

⁷ We note that GSMOL did not file a NOI on behalf of Hambly and does not seek compensation for representing Hambly and the other Los Robles tenants in this proceeding. After reviewing the statute and Legislative intent, the Commission previously has determined that:

[A]n individual cannot be an “intervenor” for the purpose of Article 5 of the Public Utilities Code “in a case which he has initiated and which is being prosecuted to vindicate a personal grievance or in quest of a personal remedy.” (Citation omitted; footnote omitted in original.) ... [A] “complainant acting solely in an individual capacity and seeking a personal remedy is not entitled to claim compensation as an intervenor in a Commission proceeding as provided in Article 5 (§§ 1801-1808 of the Public Utilities Code.” (D.98-04-059, slip op., p. 22, quoting D.95-10-050, p. 4 and Conclusion of Law 4.)

and common area trenching, among other things. This required a determination of whether the Commission had previously excluded any types of expenditures for the submetered system from the discount, specifically electric pedestals and common area trenching. These were issues for which Hambly, as the complainant, had the burden of proof. In order to meet that burden, Hambly needed to prove the following:

- The Commission had the necessary jurisdiction.
- The rent increase granted by Novato was based on a calculation that included the discount, and costs for replacement of electric pedestals and common area trenching.
- Novato's calculation resulted in higher rents, due to inclusion of the discount and costs for replacement of electric pedestals and common area trenching, than would otherwise have been the case (rent increment).
- The rent increment had the effect of increasing the rates paid by the tenants for energy in violation of § 739.5(a).

As Hambly's representative, GSMOL was obligated to do all things necessary to assure that Hambly met the burden of proof. Expenditures associated with GSMOL's efforts to meet that burden are attributable to Hambly, and not recoverable by GSMOL as intervenor compensation. For expenditures to be compensable for GSMOL, they must supplement Hambly's showing on Scoping Issues 1 and 3 by establishing the statewide impact or significance of those issues. We look to the filings in this proceeding to determine what portion, if any, of GSMOL's efforts were not required for Hambly to meet the burden of proof, and whether those efforts resulted in a substantial contribution.⁸

⁸ This complaint was initially filed by Hambly representing GSMOL Chapter 393, of which Hambly et al. are members. It was subsequently revised to exclude any reference

Footnote continued on next page

With this guidance in mind, we turn to the claimed contributions GSMOL made to the proceeding. The issues and activities GSMOL pursued varied during different time periods, so we examine GSMOL's efforts by time period.

4.1. June 2000-July 2000

GSMOL's efforts during this period were prior to its representation of Hambly and appear to have been related to preparation of its motion to intervene, and its subsequent decision to represent Hambly. As such, they are general expenses and will be allocated to the other time periods in proportion to the expenditures during each period, if an award is made.

4.2. August 2000-August 2001

This is the period leading up to the issuance of D.01-08-040. GSMOL did not provide written testimony specifying its interests as distinct from Hambly or sponsor any witnesses at hearing. Contrary to the affirmative representation that it would not merge the costs of its dual representation, GSMOL's request for compensation does not separate its costs for work on behalf of Hambly from work performed on issues of statewide importance. From its briefs, we conclude that GSMOL's statewide concern is that there are numerous submetered mobilehome parks (MHP) that are subject to rent control where the owner could seek and obtain rent increases based in part on inclusion of the discount and/or expenditures covered by the discount in the rent increase formula. In its reply

to GSMOL at GSMOL's request. In fact, as D.01-04-040 states, GSMOL made a special appearance at the prehearing conference (PHC) to challenge complainants' right to bring an action in the Chapter's name. The PHC occurred a month and a half before GSMOL filed its intervention.

brief⁹, GSMOL stated that in both its opening and reply brief, it addressed only issues whose resolution may have a statewide impact on MHP tenants who reside in submetered MHPs. Therefore, we turn to the opening and reply briefs filed by GSMOL prior to D.01-08-040 to identify issues it advanced that had statewide impacts.

In its opening and reply briefs, GSMOL took the following positions:

1. The Commission has the jurisdiction to set the discount and to determine what the discount covers, and local rent control agencies do not.
2. This complaint case is not the forum to resolve the issue of whether costs for replacement of electric pedestals and trenching were not covered by the discount on a statewide basis, and therefore chargeable to tenants as rent.
3. If the Commission wishes to make a determination that electric pedestals and common area trenching are not covered by the discount, it should modify the discount or the line extension rules rather than allow the increase in rents.

The issue of jurisdiction was resolved in the scoping memo, before GSMOL intervened and, therefore, GSMOL's briefs on this topic had no impact on the outcome of the complaint. Consideration of the second issue GSMOL addressed in briefs, whether the Commission should specify what types of expenditures related to the submetered system are or are not covered by the discount, was not an issue in this proceeding, and could not be addressed on a statewide basis as a matter of law, because the affected parties (for example, other MHP owners, utilities, tenants) were not provided notice and an opportunity to be heard in this park specific complaint. Likewise, the third issue

⁹ Briefs were filed separately for Hambly.

raised by GSMOL's brief was also not within the scope of this complaint because of the notice issue.

In any event, even had these issues been within the scope, GSMOL's own expert identified several local jurisdictions that excluded electric and gas expenses in calculating allowable rent increases pursuant to their MHP rent control ordinance, calling into question the accuracy of GSMOL's premise that this was a statewide problem.¹⁰ In addition, D.01-08-040 addressed only the specifics of the complaint and did not take up the statewide issues.

Because these issues of statewide significance were either resolved in the scoping memo or were beyond the scope of the complaint, GSMOL's efforts independent of its representation of Hambly in this portion of the case did not result in a substantial contribution and are not compensable. GSMOL's efforts on behalf of Hambly to meet the complainant's burden of proof are also not compensable.

4.3. September 2001- January 2002

WMA filed a petition for rehearing of D.01-08-040 that was denied by D.02-01-043. GSMOL and Hambly filed a joint response that addressed whether a calculation of the ordered refunds could or should be obtained by requesting Novato to recalculate the rents, or whether the Commission should oversee the

¹⁰ "The policies of Carson and Escondido in the treatment of gas and electricity expenses are significant because both of the cities require rent increase petitions for all rent increases. This is in contrast to most jurisdictions with mobilehome park rent ordinances which provide for annual across-the-board rent increases (usually based on the Consumer Price Index) and generally receive very few petitions for rent adjustments for individual parks (which require review of the income and expenses of the particular park.)" [Exhibit 24, Report of Kenneth Barr, J.D., Ph.D., In Rebuttal of Testimony of Michael St. John, Ph.D., pp. 4-5.]

calculation of the refunds. The joint response also addressed the applicability of previous Commission decisions that Hillsboro and WMA cited in their allegations of legal error. Nothing in the joint response indicates that any portion of it relates particularly to GSMOL's interests rather than Hambly's. The rehearing request and response thereto concern whether the Presiding Officer's Decision (POD) properly found that Hambly had met the burden of proof. Therefore, any costs associated with work on the joint response are properly attributable to Hambly.

Other than responding to the petition for rehearing, the only other activities necessary during this period were related to the calculation of the refunds that Hambly was to receive. Such activities would be properly billed to Hambly.

For all of the above reasons, we find that the expenditures during this period are all attributable to Hambly and not subject to reimbursement through the intervenor compensation program.

4.4. February 2002 – April 2003

On February 11, 2002, Hillsboro and WMA filed petitions for a writ of review and for a writ of mandate that was consolidated and heard by the court. On April 1, 2003, the court issued its decision upholding the Commission's decision.

The petitions by Hillsboro and WMA addressed matters related primarily to the Commission's jurisdiction as opposed to Novato's jurisdiction, and the Commission's interpretation of § 739.5. GSMOL filed a response to the petitions. The response identifies "Robert Hambly, for Himself and, the Residents of Los Robles Mobilehome Park, and the City of Novato" as "Real Parties in Interest", and identifies the attorneys who filed it as "Attorneys for Real Parties

in Interest Robert Hambly, et al.” The introduction to the response states that “Real Party in Interest, Hambly, submits this brief...” The only mention of GSMOL in the response is a statement that it “intervened on behalf of Hambly.” GSMOL did not file a separate response on its behalf. The only mention of GSMOL in the court’s opinion is a statement that it intervened in C.00-01-017 in support of Hambly. Therefore, we find that all expenditures related to the responding to the petitions were attributable to Hambly.

Other than responding to the petitions, the only other activities necessary during this period were related to the calculation of the refunds that Hambly was to receive. Such activities would be properly billed to Hambly.

For all of the above reasons, we find that the expenditures during this period are all attributable to Hambly and not subject to reimbursement through the intervenor compensation program.

4.5. May 2003-June 2004

During this time period, the only remaining issues in C.00-01-017 pertained to quantification of the refunds due to Hambly and the other tenants of Los Robles Mobilehome Park. Such expenditures are attributable solely to Hambly.

On March 13, 2003, R.03-03-017 and I.03-03-018 were initiated, C.00-01-017 was consolidated with those proceedings, and D.01-08-040 was stayed. R.03-03-017 and I.03-03-018 dealt with issues related to the discount, and two issues directly related to this proceeding. The common issues with C.00-01-017 were:

- Should the Commission revise the refunds ordered in D.01-08-040?

- What mechanism should be implemented to ensure refunds, ordered in D.01-08-040, are appropriately made to MHP submetered tenants?

Subsequent to the issuance of R.03-03-017 and I.03-03-01, GSMOL attended prehearing conferences (PHCs) and a related workshop. The above issues related to this proceeding were not addressed in the PHCs or workshop. Any expenditures GSMOL may have incurred related to R.03-03-017 and I.03-03-018 are not compensable in regards to this complaint.

The only activities during this period related to C.00-01-017 were the preparation of responses to two ALJ rulings. The first, dated August 8, 2003, posed two questions as follows:

1. “Assuming that pedestals and common area facilities are found in R.03-03-017 and I.03-03-018 to not to be covered by the mobile home master meter discount, how should D.01-08-040 be changed, if at all?”
2. “Assuming D.01-08-040 is unchanged, what is the appropriate amount of the refund, and how should it be calculated?”

On September 8, 2003, a brief was filed in response to the ALJ ruling on behalf of the complainants. It was titled “Complainants Brief and Calculations Supporting their Request for Refund.” It was signed “Attorney for Complainant.” Nothing in this filing indicates it was for anyone other than the complainant, “Robert Hambly, for Himself and on Behalf of the Residents of Los Robles Mobilehome Park.” The reply brief, filed on October 2, 2003, was titled “Complainant, Robert Hambly, et al.’s Reply Brief to Hillsboro Properties’ Response to Questions One and Two.” It was filed by “Attorneys for Complainant.” GSMOL did not file briefs. Therefore, expenditures related to these briefs are attributable to Hambly.

An October 16, 2003 ALJ Ruling addressed the calculation of the refunds. Neither Hambly nor GSMOL responded to the ruling. However, subsequent to the ruling, the parties filed a joint motion to close the proceeding. As a result, D.04-06-007 deconsolidated this proceeding from R.03-03-017 and I.03-03-018, removed the stay of D.01-08-040, and closed C.00-01-017.

For all of the above reasons, we find that the expenditures during this period are all attributable to Hambly and not subject to reimbursement through the intervenor compensation program.

4.6. Summation

In summary, D.01-08-040 exclusively addresses the rates charged to the Los Robles tenants. GSMOL's efforts to establish issues of statewide impact did not substantially contribute to D.01-08-040. Moreover, the procedural developments after D.01-08-040 issued (appeal of the presiding officer's decision, application for rehearing, appeal in the courts) concerned specific findings *vis a vis* Los Robles, not issues of statewide impact. Approximately 82% of the claimed attorneys' fees were incurred after D.01-08-040 issued.

5. Status as a Customer and Other Procedural Issues

The prehearing conference in this matter was held on May 10, 2000. GSMOL filed its NOI on June 12, 2000 and by ruling on July 13, 2000, the ALJ found the filing timely. On July 13, 2000, ALJ Vieth issued a ruling that preliminarily found GSMOL to be a customer under the Public Utilities Code. The ruling also indicated that GSMOL had not yet met the significant financial hardship condition and would be required to address that issue in its request for compensation. GSMOL filed its request for compensation on July 21, 2004, within the required 60 days of D.04-06-007 being issued. In its NOI, GSMOL asserted financial hardship. On August 26 and 27, 2004 PG&E and WMA filed

responses to GSMOL's request. On September 10, 2004, GSMOL filed a reply to these responses. PG&E and WMA contend that GSMOL represented tenants of submetered MHPs in this proceeding. Since such tenants are not utility customers, PG&E and WMA state that GSMOL does not meet the definition of a customer in § 1802(b). Therefore, PG&E and WMA recommend denial of the request. In its reply, GSMOL represents that it does qualify as a customer, and that it was previously awarded intervenor compensation in D.03-02-024.

As explained in prior sections of this decision, we find that GSMOL's efforts in this proceeding were exclusively on behalf of complainant Hambly or addressed matters beyond the scope of the proceeding. For this reason, we find that GSMOL's efforts in this complaint case were not compensable under the Commission's intervenor compensation program. However, because of the earlier award to GSMOL in D.03-02-024, we need to explain the "customer" finding underlying that award and to distinguish that decision from the circumstances in this complaint proceeding. Although the ALJ here made a preliminary finding that GSMOL met the definition of customer, we take this opportunity to reverse that ruling.

Pub. Util. Code § 1802 (b)(1)(C) defines a customer as a group or organization authorized by its articles of incorporation or bylaws to represent the interests of residential customers. GSMOL is an organization authorized to represent MHP tenants. This proceeding had to do with tenants of a submetered MHP, and § 739.5. Had we found that GSMOL made a statewide impact in this proceeding, it would pertain only to tenants of submetered MHPs. Such tenants are provided electricity and gas by the MHP owner, not the utility that serves the MHP owner. As a result, such tenants are not utility customers. Because these

tenants are not utility customers, GSMOL does not meet the definition of customer for purposes of eligibility to claim intervenor compensation.

In addition, § 1807 provides that “Any award made under this article shall be paid by the utility that is the subject of the...proceeding...” In this instance, no utility is the subject of the proceeding. Therefore, there is no utility to pay intervenor compensation, had we found GSMOL’s efforts compensable.

We acknowledge that in I.98-12-012, GSMOL filed a notice of intent to seek compensation, and was ultimately awarded compensation in that proceeding. I.98-12-012 addressed concerns about the legitimacy of charges for water and sewer services imposed on tenants by the owners of MHPs and multiple unit residential complexes. The Commission looked at statewide information about the practices of owners of MHPs and multiple unit residential complexes that bill tenants for water and sewer services separately from rent. In that case, GSMOL was found to have met the qualifications for customer status, and was granted compensation by D.03-02-024.¹¹ Because I.98-12-012 was initiated to address matters directly related to tenants of MHPs and multiple unit residential complexes that bill tenants for water and sewer services separately from rent, in order for tenants to have a voice in that policy-making proceeding, it was appropriate to allow GSMOL, who represented such tenants, the opportunity to request intervenor compensation. Compensation was paid out of a special fund established in D.00-01-020 for payment of intervenor compensation in proceedings where the Commission establishes policy affecting an industry, or

¹¹ D.03-02-024 did not explain its finding that GSMOL qualified for customer status.

all regulated industries (generally quasi-legislative proceedings) where no specific respondent utilities are named.

Unlike I.98-12-012, this proceeding is an adjudicatory complaint case. As such, it is not a policy-making proceeding, and does not meet the requirements of D.00-01-020. In addition, no utility is a defendant, respondent, or party. Therefore, notwithstanding the ALJ ruling which preliminarily found GSMOL to be a customer, we have no means to award compensation in this proceeding had such an award been found appropriate.

6. Conclusion

As discussed above, the expenditures incurred by GSMOL in this proceeding are attributable to Hambly, were outside of the scope of the proceeding, or had no impact on the outcome of the proceeding. Additionally, GSMOL does not qualify as a customer. Therefore, none of GSMOL's request is reimbursable under the intervenor compensation program.¹² As a result, we will deny the request. If there had been compensable expenditures, there would be no means for paying them because there is no utility to pay them, and this proceeding does not qualify under the requirements of D.00-01-020.

7. Comments on Draft Decision

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment may be waived because this is an intervenor compensation decision. However, in this case, we allowed comments under the normal 30-day comment

¹² Because we find that GSMOL's efforts in this proceeding are either attributable to Hambly, outside the scope, or did not result in a substantial contribution, the general expenditures for June and July 2000 are also not compensable.

period. Comments were filed by GSMOL. GSMOL's comments were considered, and changes were made where necessary to provide clarification. The outcome was unchanged.

8. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

Findings of Fact

1. GSMOL's request for intervenor compensation did not identify which of the expenditures were attributable to GSMOL as opposed to Hambly.
2. On May 17, 2000, the assigned Commissioner issued a scoping memo that identified the following issues: (1) whether operation of Novato's rent control formula results in higher gas and electricity charges for submetered MHP tenants than the rates charged by PG&E; (2) whether Hillsboro has improperly included in its rent increase petitions any expenses for maintenance, repair or upgrade of the submeter system; and (3) whether expenses for installation, maintenance, and upgrade of electric pedestals are included within the discount.
3. GSMOL's intervention was limited to Issues 1 and 3.
4. On August 11, 2000, GSMOL filed a notice that it would be representing Hambly and that, where appropriate or necessary, separate briefs would be submitted on behalf of Hambly and GSMOL.
5. Hambly, et al. are GSMOL members.
6. On August 23, 2001, the Commission issued D.01-08-040 in favor of Hambly.
7. On September 24, 2001, WMA filed an application for rehearing of D.01-08-040 that was denied by D.02-01-043.

8. On February 11, 2002, Hillsboro and WMA filed for a writ of review, and for a writ of mandate.

9. On April 1, 2003, the court issued its opinion upholding D.01-08-040.

10. By D.04-06-007, the Commission deconsolidated this proceeding from R.03-03-017 and I.03-03-018, removed the stay of D.01-08-040, and closed C.00-01-017.

11. In order to obtain an award of intervenor compensation, among other things, the intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(h), 1803(a).)

12. In its petition to intervene, GSMOL stated that it wanted to address Scoping Issues one and three because it believed that "resolution of both issues will have statewide impact, beyond the dispute between the instant parties now before the Commission." It also stated that the only "new issue" it wished to address, beyond those included in the scoping memo was that this complaint case was not the forum to resolve the issue of whether costs for replacement of electric pedestals and common area trenching were not covered by the discount on a statewide basis.

13. The ALJ's ruling granted intervention only regarding Issues 1 and 3, and did not revise the issues listed in the scoping memo.

14. In this proceeding, the Commission had to determine whether it had previously excluded any types of expenditures for the submetered system from the discount, specifically electric pedestals and common area trenching. This was an issue for which Hambly had the burden of proof.

15. In order to meet the burden of proof, Hambly must prove: (1) the Commission has the necessary jurisdiction; (2) the rent increase granted by Novato was based on a calculation that included the discount, and costs for replacement of electric pedestals and common area trenching; (3) Novato's calculation resulted in higher rents, due to inclusion of the discount and costs for replacement of electric pedestals and common area trenching, than would otherwise have been the case; and (4) the rent increment had the effect of increasing the rates paid by the tenants for energy in violation of § 739.5(a).

16. Since GSMOL represented Hambly, it was obligated to do all things necessary to assure that Hambly met the burden of proof.

17. GSMOL's expenditures to meet Hambly's burden are attributable to Hambly, and not recoverable by GSMOL as intervenor compensation.

18. For expenditures to be compensable for GSMOL, they must supplement Hambly's showing on Scoping Issues one and three by establishing a statewide impact or significance of the issue.

19. The expenditures for June 2000 through July 2000 were related to preparation of GSMOL's motion to intervene, and its decision to represent Hambly.

20. The expenditures for June 2000 through July 2000 are general expenses, and will be allocated to the other time periods in proportion to the expenditures during each period, if an award is made.

21. August 2000 through August 2001 is the period leading up to the issuance of D.01-08-040.

22. GSMOL did not provide written testimony specifying what it believed to be its interests as distinct from Hambly's.

23. In its reply brief filed prior to D.01-08-040, GSMOL stated that in both its opening and reply briefs it addressed only issues whose resolution may have a statewide impact on submetered MHP tenants.

24. In its opening and reply briefs filed prior to D.01-08-040, GSMOL took the following positions: (1) the Commission has the jurisdiction to set the discount and to determine what the discount covers, and the local rent control agencies do not; (2) this complaint case is not the forum to resolve the issue of whether costs for replacement of electric pedestals and common area trenching were not covered by the discount on a statewide basis, and therefore chargeable to tenants as rent; and (3) if the Commission wishes to make a determination that electric pedestals and common area trenching are not covered by the discount, it should modify the discount or the line extension rules rather than allow the increase in rents.

25. The first issue, the issue of jurisdiction, was resolved in the scoping memo, before GSMOL intervened.

26. The second issue, whether the Commission should specify what types of expenditures related to the submetering system are or are not covered by the discount, was not an issue in this proceeding, and could not be addressed on a statewide basis, as a matter of law, because the affected parties were not provided notice, and an opportunity to be heard.

27. The third issue, concerning modification of the discount or the line extension rules, is beyond the scope of this proceeding.

28. GSMOL's expert identified several local jurisdictions that excluded electric and gas expenses in calculating allowable rent increases pursuant to their MHP rent control ordinance, calling into question the accuracy of GSMOL's premise that this was a statewide problem.

29. Decision 01-08-040 addressed only the specifics of the complaint, and did not take up the statewide issues.

30. Subsequent to the issuance of D.01-08-040, WMA filed a petition for rehearing of D.01-08-040 that was denied by D.02-01-043.

31. GSMOL and Hambly filed a joint response to WMA's petition that addressed whether a calculation of the ordered refunds can or should be obtained by requesting Novato to recalculate the rents, or whether the Commission should oversee the calculation of the refunds. In addition, it addressed the applicability of previous Commission decisions cited by Hillsboro, and WMA in their allegations of legal error.

32. Nothing in the joint response indicates that any portion of it relates only to GSMOL's interests rather than Hambly's.

33. The issues addressed in the joint response relate to this proceeding, concern whether the POD properly found that Hambly had met the burden of proof, and are properly attributable to Hambly.

34. Other than responding to the petition for rehearing, the only activities necessary during the period September 2001 through January 2002 were related to the calculation of the refunds that Hambly was to receive, and are attributable to Hambly.

35. On February 11, 2002, Hillsboro and WMA filed petitions for a writ of review, and for a writ of mandate that was heard by the court.

36. On April 1, 2003, the court issued its decision upholding D.01-08-040.

37. The petitions addressed matters related primarily to the Commission's jurisdiction as opposed to Novato's jurisdiction, and the Commission's interpretation of § 739.5.

38. GSMOL filed a response to the petitions that identifies “Robert Hambly, for Himself and, the Residents of Los Robles Mobilehome Park, and the City of Novato” as “Real Parties in Interest”, and identifies the attorneys who filed it as “Attorneys for Real Parties in Interest Robert Hambly, et al.” The introduction to the response states that “Real Party in Interest, Hambly, submits this brief...”

39. The only mention of GSMOL in the response is a statement that it “intervened on behalf of Hambly.”

40. GSMOL did not file a separate response on its behalf.

41. The only mention of GSMOL in the court’s opinion is a statement that it intervened in C.00-01-017 in support of Hambly.

42. All expenditures related to the petitions for writ of review and writ of mandate were attributable to Hambly.

43. Other than responding to the petitions, the only activities necessary for this proceeding during the period February 2002 through April 2003 were related to the calculation of the refunds that Hambly was to receive. Such activities are attributable to Hambly.

44. From May 2003 through June 2004, the remaining issues in C.00-01-017 pertained to quantification of the refunds due to Hambly and the other tenants.

45. Expenditures related to quantification of refunds are attributable solely to Hambly.

46. On March 13, 2003, R.03-03-017 and I.03-03-018 were initiated, this proceeding was consolidated with those proceedings, and D.01-08-040 was stayed.

47. R.03-03-017 and I.03-03-018 dealt with issues related to the discount, and two issues directly related to this proceeding.

48. The issues in R.03-03-017 and I.03-03-018 related to C.00-01-017 were; (1) should the Commission revise the refunds ordered in D.01-08-040, and (2) what mechanism should be implemented to ensure refunds, ordered in D.01-08-040, are appropriately made to MHP submetered tenants?

49. Subsequent to the issuance of R.03-03-017 and I.03-03-01, GSMOL attended PHCs and a related workshop that did not address the above issues.

50. Any expenditures GSMOL may have incurred related to R.03-03-017 and I.03-03-018 are not compensable in regards to this proceeding.

51. The only activities during the period May 2003 through June 2004 related to C.00-01-017 were the preparation of responses to two ALJ rulings.

52. The ALJ ruling, dated August 8, 2003, posed two questions as follows: (1) "Assuming that pedestals and common area facilities are found in R.03-03-017 and I.03-03-018 to not to be covered by the mobile home master meter discount, how should D.01-08-040 be changed, if at all?" and (2) "Assuming D.01-08-040 is unchanged, what is the appropriate amount of the refund, and how should it be calculated?"

53. On September 8, 2003, a brief was filed in response to the August 8, 2003 ALJ ruling on behalf of the complainants. It was titled "Complainants Brief and Calculations Supporting their Request for Refund." It was signed "Attorney for Complainant." Nothing in this filing indicates it was for anyone other than the complainant; "Robert Hambly, for Himself and on Behalf of the Residents of Los Robles Mobilehome Park."

54. The reply brief, filed on October 2, 2003, was titled "Complainant, Robert Hambly, et al.'s Reply Brief to Hillsboro Properties' Response to Questions One and Two." It was filed by "Attorneys for Complainant."

55. GSMOL did not file briefs in response to the August 8, 2003 ALJ ruling.

56. Neither Hambly nor GSMOL responded to the October 16, 2003 ALJ ruling addressing the calculation of the refunds.

57. Subsequent to the October 16, 2003 ALJ ruling, the parties filed a joint motion to close C.00-01-017.

58. By D.04-06-007, the Commission deconsolidated this proceeding from R.03-03-017 and I.03-03-018, removed the stay of D.01-08-040, and closed C.00-01-017.

59. Section 1802 (b)(1)(C) defines a customer as a group or organization authorized by its articles of incorporation or bylaws to represent the interests of residential customers.

60. GSMOL is an organization authorized to represent MHP tenants.

61. The MHP tenants represented by GSMOL in this proceeding are not utility customers.

62. If there is any statewide impact of this proceeding, it would pertain only to tenants of submetered MHPs who are not utility customers.

63. Section 1807 provides that “Any award made under this article shall be paid by the utility that is the subject of the...proceeding...”

64. No utility is a defendant, respondent, or party to this proceeding.

65. In D.00-01-020, the Commission set up a mechanism for payment of intervenor compensation in proceedings where the Commission establishes policy affecting an industry, or all regulated industries (generally quasi-legislative proceedings) where no specific respondent utilities were named.

Conclusions of Law

1. Because the issues of statewide significance were either resolved in the scoping memo, or were beyond the scope of the complaint, GSMOL’s efforts

independent of its representation of Hambly, leading up to D.01-08-040, did not result in a substantial contribution, and are not compensable.

2. GSMOL's efforts, leading up to D.01-08-040, on behalf of Hambly to meet Hambly's burden of proof are not compensable.

3. The expenditures during the period September 2001 through January 2002 are attributable to Hambly, and not compensable.

4. The expenditures for the period February 2002 through April 2003 are attributable to Hambly, and not compensable.

5. Expenditures related to the briefs filed on September 8, 2003, and October 2, 2003 are attributable to Hambly, and are not compensable.

6. The expenditures for the period May 2003 through June 2004 are attributable to Hambly, and not compensable.

7. There is no utility to pay intervenor compensation in this proceeding.

8. GSMOL is not a customer as defined in § 1802(b).

9. Since this proceeding is an adjudicatory complaint case, and not a policy-making proceeding, it does not meet the requirements of D.00-01-020.

10. The Commission has no means to award compensation in this proceeding if such an award were found to be otherwise appropriate.

11. The expenditures incurred by GSMOL in this proceeding are attributable to Hambly, or were outside the scope of the proceeding and, therefore, not compensable.

12. Because GSMOL's efforts in this proceeding are either attributable to Hambly, are outside the scope, or did not result in a substantial contribution, the general expenditures for June and July 2000 are not compensable.

13. GSMOL's request for intervenor compensation should be denied.

14. This decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The request of Golden State Mobilehome Owners League, Inc. for \$100,916.13 in intervenor compensation for its contribution to Decision (D.) 01-08-040 and D.04-06-007 in Case 00-01-017 is denied.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	D0108040, D0406007
Proceeding(s):	C0001017
Author:	ALJ Vieth, ALJ O'Donnell
Payer(s):	None

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Golden State Mobilehome Owners League, Inc.	7/21/04	\$100,916.13	None	No	Failure to make substantial contribution; work performed on behalf of complainant

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Ben	Scharf	Attorney	GSMOL	\$200	2000-2	None
James	Allen	Attorney	GSMOL	\$200	2001-04	None
David	Semelsberger	Attorney	GSMOL	\$200	2003	None
Donald	Lincoln	Attorney	GSMOL	\$200	2002-3	None
Kimberly	Harris	Attorney	GSMOL	\$200	2002-3	None
Linda	Reich	Attorney	GSMOL	\$200	2002-3	None
Kenneth	Baar	Attorney / expert witness	GSMOL	\$150	2000	None