

Decision 02-11-021 November 7, 2002

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 California Mobilehome and Resource Action Association (CMRAA) \$18,769.35 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 Decision (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 §§ 1801-1812.¹ 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).)²

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. CMRRA 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,

¹ 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.

² 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, CMRAA’s NOI was considered timely filed, but CMRAA was required to provide additional information in its request for compensation regarding its customer status and significant financial hardship. The ruling also required CMRAA 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.

CMRAA filed its request for compensation on July 13, 2001, and included a declaration by its president, Dave Hennesy. CMRAA 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, Hennesy states that CMRAA has no local chapters in any member-owned park. He also states that he is not aware of any individual members amongst the thousands of members who reside in a member-owned park. We find that CMRAA 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. (§ 1802(b).)

4. Financial Hardship

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

CMRAA states in its July 13, 2001 request for compensation that it is a non-profit mutual benefit corporation that depends entirely upon membership dues and voluntary contributions for its existence. Membership is \$12.00 per year, which entitles members to receive a newsletter that is published every month. CMRAA states that for the calendar year 2000 its donations and membership fees were \$34,505.44, and its total expenses, **not including** its cost of participation in this proceeding, were \$29,607.57. It is clear to us that CMRAA has a financial hardship under § 1802(g). Even were CMRAA 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.³

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 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

³ 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).

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 CMRAA 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). CMRAA 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.

CMRAA focused on the following:

- Contribution to the Water Division's Workshop Report.
- The provision of data associated with the MHP business in California to the Water Division and ultimately to the Commission;
- Information on the "prevailing rate" concept; and
- Additional recommendations that were not ultimately adopted in the Commission's final decision.

CMRAA 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. CMRAA states that the final decision actually gives more generous rate treatment for tenants than what CMRAA originally proposed. CMRAA states that its fundamental position 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 CMRAA recommended "prevailing rate" treatment,

which the Commission adopted. CMRAA actively participated in the workshop, provided operations and maintenance cost data and other actual examples of discrepancies in park billing and operational practices. CMRAA claims that it did not duplicate other parties' analysis in this proceeding. We agree. CMRAA has voluntarily requested only 80% of its costs because it did not prevail on all its recommendations.

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. CMRAA contributed to this proceeding's outcome, and it is clear that, at a minimum, ratepayers in MHPs have benefited from CMRAA's contributions on the issues through ensuring that submetered tenants are treated comparably to other utility customers. We do not know for sure 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 CMRAA's participation benefited tens of thousands of tenants in addition to CMRAA's own members. CMRAA's expenditure seems productive in terms of its results and the number of tenants who benefit from those results.

6. Reasonableness of Requested Compensation

CMRAA's claims its reasonable costs for participating in this proceeding totaled \$24,058. CMRAA notes that because it did not prevail on all issues, yet did provide a substantial contribution to the final decision, it is discounting the

request by 20%. Thus, CMRAA requests \$19,246⁴ for its participation, as follows:

Advocate	Year	Hours	Rate	%	Amount
Bruce Stanton, Attorney	1999, 2000	39.2	\$175.00	80%	\$5,488.00
Jeff Nahigian, Economist	1999	60.5	\$ 90.00	80%	\$4,356.00
Jeff Nahigian, Economist	2000, 2001	120	\$ 95.00	80%	\$9,120.00
				Subtotal	\$18,964.00
Copies/Postage/ Delivery			\$352.85	80%	\$282.28
				Total	\$19,246.28

6.1 Hours Claimed

CMRAA documented the claimed hours by presenting a daily breakdown of hours with a brief description of each activity. We note that CMRAA has reported travel and compensation request preparation hours separately from professional time, but has incorrectly charged these hours at the full hourly rate, not at one-half the hourly rate. We will adopt CMRAA's voluntary reduction of 20% of its hours. With that adjustment, the hours claimed are reasonable.

6.2 Hourly Rate

CMRAA requests \$175 per hour for its attorney, Bruce Stanton. Stanton has practiced since 1982, specializing in the field of mobilehome law and represented the industry in I.93-10-022 in 1994-96. In light of this experience, \$175/hour is a reasonable compensation rate for Stanton.

⁴ CMRAA rounded its request to the nearest dollar, which explains the discrepancy in the table calculation above.

CMRAA requests rates of \$90/hour for 1999 and \$95/hour for 2000-2001 for Jeff Nahigian, a Senior Economist with JBS Energy, Inc. Nahigian's hourly rates were approved by the Commission in D.00-05-017 and in D.01-06-076, and we rely on them here.

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 CPUC 2d 628, 688.) Here, Nahigian, an advocate that is compensated at a lower hourly rate, drafted CMRAA's compensation request. When a less highly compensated advocate has prepared the request for compensation, we have awarded compensation at the full hourly rate and we do so here. (*See* D.98-12-053 at 13.)

6.3 Other Costs

Other costs necessary for participation in this proceeding were out-of-pocket expenses for copies, postage, and Federal Express delivery amounting to \$352.85, about 2.6%. The total amount claimed for these costs is reasonable considering the duration and substance of the proceeding and we will not apply the 20% reduction to them.

7. Award

We award CMRAA \$18,769.35, calculated as described above and detailed below.

Advocate	Year	Hours	Rate	%	Amount
Stanton, Professional	1999, 2000	35.65	\$175.00	80%	\$4,991.00
Stanton, Travel	1999, 2000	4.25	\$ 87.50	80%	\$297.50
Nahigian, Professional	1999	60.5	\$ 90.00	80%	\$4,356.00
Nahigian, Travel	1999	3	\$ 45.00	80%	\$108.00
Nahigian, Professional	2000, 2001	114	\$ 95.00	80%	\$8,664.00
Nahigian, Travel	2000	3	\$ 47.50	80%	\$114.00
				Subtotal	\$18,416.50
Copies/Postage/ Federal Express			\$352.85	100%	\$352.85
				Total	\$18,769.35

Although the Commission's initial order in this proceeding names only Class A and Class B water utilities as respondents, D.01-05-058 effects 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 CMRAA 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 CMRAA on notice that the Commission staff may audit its records related to this award. Thus, CMRAA 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.

8. 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. CMRAA is a customer as defined in §1804(b).
2. CMRAA made a timely request for compensation for its contribution to D.01-05-058.
3. CMRAA demonstrated significant financial hardship.
4. CMRAA contributed substantially to D.01-05-058.
5. CMRAA did not duplicate any other party's analysis in this proceeding.

6. For work performed by Stanton, an hourly rate of \$175 per hour is reasonable.

7. For work performed by Nahigian, and hourly rate of \$90 for 1999 and \$95 for 2000/2001 is reasonable.

8. The miscellaneous costs incurred by CMRAA are reasonable.

Conclusions of Law

1. CMRAA fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. CMRAA should be awarded \$18,769.35 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 CMRAA may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. California Mobilehome Resource and Action Association (CMRAA) is awarded \$18,769.35 for its substantial contribution to 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.

This order is effective today.

Dated November 7, 2002, at San Francisco, California.

LORETTA M. LYNCH
President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners

COMPENSATION DECISION SUMMARY INFORMATION

Compensation Decision(s):	D0211021
Contribution Decision(s):	D0105058
Proceeding(s):	I9812012
Author:	ALJ Evans
Payer(s):	Commission

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason/Change Disallowance
California Mobilehome and Resource Action Association	7/13/01	\$19,246.00	\$18,769.35	Failure to discount travel rate

Attorney and Expert Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Bruce	Stanton	Attorney	California Mobilehome and Resource Action Association	\$175.00	1999-2000	\$175.00
Jeff	Nahigian	Economist	California Mobilehome and Resource Action Association	\$90.00	1999	\$90.00
Jeff	Nahigian	Economist	California Mobilehome and Resource Action Association	\$95.00	2000-2001	\$95.00