

Decision 00-04-003 April 6, 2000

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

Investigation on the Commission's Own Motion Into the Operations, Marketing and Sales Practices of GTE California to Determine Whether the Commission Was Misled or Supplied Incomplete Information in Connection With Assessing the Extent of Abusive Marketing by GTE California's Foreign Language Assistance Center, Whether Any Rules, Regulations or Statutes Enforced By the Commission Have Been Violated by GTE California; and to Review Whether Previously Ordered Redress to Consumers and Other Corrective Measures for Prior Marketing Abuses Were Adequate.

Investigation 98-02-025  
(Filed February 19, 1998)

**OPINION**

This decision grants the Greenlining Institute and Latino Issues Forum (Intervenors) an award of \$97,454.91 in compensation for contributions to Decision (D.) 98-12-084. In D.98-12-084, the Commission approved an all-party settlement agreement in Investigation (I.) 98-02-025. The investigation was opened to determine whether GTE California Incorporated (GTEC), or its general counsel or regulatory affairs director, misled or supplied incomplete information in connection with abusive marketing practices at GTEC's Foreign Language Assistance Center in 1992. The all-party settlement agreement which we approved provides for a civil payment by GTEC of \$13 million.

This decision also grants the Intervenors' Motion to File Confidential Material Under Seal. The material that is to remain under seal under the

conditions described below contains hourly billing rate information for legal services of attorneys who have appeared before the Commission in the past.

## **1. Background**

The abusive marketing practices at GTEC's Foreign Language Assistance Center were addressed in Resolution (Res.) T-15404, and remedies including customer refunds were ordered. However, documents subsequently came to light that provided probable cause to believe that the marketing abuses disclosed by GTEC in 1992 may have occurred over a longer period of time than previously believed, and may have involved upper level management. There was reason to believe, therefore, that the remedies ordered in 1993 might be inadequate. The Commission opened this investigation to explore these issues, and to determine whether a breach of Rule 1 of the Commission's Rules of Practice and Procedure, or of other rules, had occurred.

The following five parties participated in this proceeding by conducting discovery and attending three prehearing conferences (PHCs): the Commission's Consumer Services Division (CSD); the Greenlining Institute and Latino Issues Forum (Intervenors, participating jointly); individually named respondents Okel and Payne; and respondent GTEC.

On September 9, 1998, the five parties jointly filed a motion to approve a proposed settlement agreement. They indicated that they had reached an agreement whereby GTEC would make a civil payment of \$13 million. This amount included the \$3.2 million penalty imposed by the Commission in 1993, and paid by GTEC to nonprofit community groups in the affected service territory.

In D.98-12-084 the Commission concluded that the proposed settlement was reasonable in light of the record, and that it was in the public interest. The

proposed settlement was modified, however, to revise certain administrative terms and to establish a mechanism whereby the parties and Commission staff might later develop administrative and operative details of the \$4.85 million Telecommunications Consumer Protection Fund (Fund). The proposed settlement agreement was also modified to clarify the purpose of the Fund and avoid any confusion between the Fund in this proceeding and the prior resolution. The Commission granted the joint motion for approval of the proposed settlement agreement, upon the condition that the parties ratify the Commission's modifications. A signed All-Party Ratification of D.98-12-084 was filed on January 22, 1999.

Intervenors filed a Request for Award of Intervenor Compensation (Request) on February 11, 1999. At the same time Intervenors filed a Motion to File Confidential Material Under Seal. This motion was accompanied by confidential material submitted under seal. GTEC filed a Response to Request for Award on March 11, 1999. The purpose of the response is to protest certain of the hourly rates requested as well as the application of a multiplier to the calculation of the compensation award. Intervenors filed a Reply to GTEC's Response on March 25, 1999. On April 28, 1999, Intervenors filed an Errata to Request for Award, correcting specified typographical errors and omissions.

## **2. Motion To File Confidential Material Under Seal**

On February 11, 1999, Intervenors filed a Motion to File Confidential Material Under Seal. The information submitted under seal consists of documents prepared by attorneys at three law firms setting forth the hourly billing rates charged for the services of attorneys with varying levels of

experience.<sup>1</sup> The documents consist of a declaration signed by Robert Gnaizda, letters signed by Terry J. Houlihan and James Asperger, and a declaration of Laurence Popofsky. Intervenors contend that the documents filed under seal contain “sensitive firm information on billing rates, including for matters before the California Public Utilities Commission.” Intervenors note that in I.96-02-043 the Commission accorded confidential treatment to similar sensitive fee information and sensitive financial data. The motion in this proceeding is unopposed. Therefore, the motion of Intervenors to file under seal is granted to the extent set forth in Ordering Paragraph 3.

### **3. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Sections 1801-1812 of the Public Utilities Code.<sup>2</sup> Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the PHC or by a date established by the Commission. The NOI must present information regarding the nature and extent of planned participation in the proceeding, and an itemized estimate of compensation that the customer expects to request. The NOI may also request a finding of eligibility.

Other sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide “a detailed description of services and expenditures

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<sup>1</sup> The law firms providing hourly billing rate information are as follows: McCutchen, Doyle, Brown & Enersen; Heller, Ehrman, White & McAuliffe; O'Melveny & Myers.

<sup>2</sup> All section references are to the California Public Utilities Code.

and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part 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 which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with Section 1806.

#### **4. NOI to Claim Compensation and Finding of Eligibility**

Intervenors timely filed a NOI. Intervenors did not include a showing of significant financial hardship in the NOI. The NOI was addressed in an Administrative Law Judge Ruling dated July 7, 1998. The Ruling indicates that Intervenors are to provide a showing of financial hardship in any future request for compensation. The Ruling also directs Intervenors to identify the class of customer status they assert under Section 1802(b), and the percentage of each Intervenor's membership which is composed of residential customers.

Intervenors assert that they qualify for customer status under Section 1802(b) as "a group or organization authorized pursuant to its articles of

incorporation or bylaws to represent the interests of residential customers.” The bylaws of both Intervenors are attached as Exhibit A to the Request. Both groups are authorized in their bylaws to represent the interests of low-income, minority and residential ratepayers. Latino Issues Forum estimates that it represents 90 percent residential customers, and 10 percent small business customers. The Greenlining Institute estimates that its percentage of residential customers is 80 percent, and the percentage of small businesses is 20 percent. Based upon the information provided by Intervenors, we find that Intervenors qualify for the customer class asserted.

Section 1802(g) defines the requisite showing of “significant financial hardship” for a group or organization authorized by its bylaws to represent residential customers. For this class of customer, significant financial hardship is shown if the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. (The applicability of this standard was reaffirmed by the Commission in D.98-04-059, at pages 34-35.) Intervenors further claim financial hardship on another theory, but we do not discuss that theory because, as we discuss below, the economic interest standard is met.

Applying the standard for a showing of significant financial hardship defined in Section 1802(g) we conclude that the potential economic interest of Intervenors’ members in this proceeding is small compared to the costs of participation. In addition to the \$3.2 million penalty imposed in 1993 and paid by GTEC, this decision requires GTEC to pay \$4.85 million to a Telecommunications Consumer Protection Fund, and \$100,000 to the Commission fiscal office as reimbursement of Commission costs. An additional \$4.85 million is to be paid to the General Fund of the State of California. It appears that Intervenors’ members will not receive any direct economic benefit

from the settlement. Any direct economic benefit for individual consumers would be small compared to the cost of participation in this proceeding. Accordingly, we find that Intervenors have each made a showing of significant financial hardship within the meaning of the statute. We note that based upon a similar showing, both Intervenors were found eligible for an award of compensation in D.98-12-058.

#### **5. Timeliness of Request for Compensation**

Section 1804(c) provides that a request for award of compensation must be filed within 60 days following issuance of a final order or decision by the Commission. Within the allowed 60 days, Intervenors filed their request. Therefore it was timely.

#### **6. Contribution to Resolution of Issues**

Intervenors argue that they made substantial contributions to D.98-12-084 through their representation of the interests of language minority communities. We note that GTEC specifically states in its Response to the Request that it does not contest the significance of Intervenors' contribution to the outcome in this proceeding. (Response, p. 2.) The Commission has previously discussed application of the substantial contribution standard to the participation of a party in nonlitigated proceedings. A party who participates in efforts that lead to the adoption of a settlement agreement may be entitled to an award of compensation where the Commission finds that the party's contribution to the order or decision was substantial. (See D.98-04-059, pp. 39-42.)

The record supports Intervenors' contention that they made a substantial contribution to D.98-12-084. As noted in D.98-12-084, Intervenors conducted discovery and attended three PHCs during the proceeding. Intervenors filed statements prior to each PHC. They also filed a motion to compel discovery

against the other parties that was granted in part. Between the date of the first PHC on May 12, 1998, and September 9, 1998, Intervenors participated in settlement negotiations. On June 29, 1998, the other parties to the proceeding filed a joint motion to approve a proposed settlement agreement. Intervenors alone opposed this original settlement agreement.

As a result of Intervenors' opposition to this settlement agreement, further settlement meetings were held. Intervenors' opposition to the original settlement agreement resulted in the crafting of a revised settlement agreement that includes provisions for a \$4.85 million Telecommunications Consumer Protection Fund. As we note in D.98-12-084, the Fund was created to educate non-English speaking customers in the potentially affected service areas. (Id., p.20.) These are the customers whose interests Intervenors represented. (Id., p. 11.) Intervenors' efforts played a crucial role in ensuring redress to language minority customers. Intervenors have demonstrated that their active participation in all stages of this proceeding made a substantial contribution to D.98-12-084.

#### **7. Customer Interests Represented, Duplication of Effort, Benefits to Ratepayers**

The Commission stated in D.98-04-059 that the original NOI to seek intervenor compensation shall contain information that enables the presiding officer to make a preliminary assessment of whether an intervenor will represent customer interests that would otherwise be underrepresented. Additional assessment of this issue is to occur in response to any request for compensation. (Id., pp. 27-28, Finding of Fact 13.) A review of the record shows that the minority language customers whom Intervenors represented would have been underrepresented had Intervenors not participated in this proceeding. As discussed above, Intervenors were the only party to object to the initial proposed

settlement. Intervenors' participation resulted in the modification of the proposed settlement to better address the interests of this class of customers.

The governing intervenor compensation statutes express an intent that the program be administered in a manner that avoids "unnecessary participation that duplicates the participation of similar interests." (Section 1801.3(f).) Some participation that is duplicative may still make a substantial contribution, but there may be participation that is so duplicative as to be unnecessary and therefore not compensable at all. (See D.98-04-059, p. 49.) Here we consider the record to determine whether the participation of Intervenors was duplicative of the participation of the CSD. We conclude that it was not. While CSD shared some of Intervenors' concerns regarding the interests of this class of customers, it was Intervenors' efforts, acting alone, that resulted in the modification of the proposed settlement agreement to provide broader redress for these customers. No reduction in intervenor compensation is warranted for duplication of effort.

In D.98-04-059, Finding of Fact 42, the Commission indicated that compensation for a customer's participation should be in proportion to the benefit ratepayers receive as a result of that participation. We recognized that putting a dollar value on the benefits accruing to ratepayers as the result of a customer's substantial contribution may be difficult. However, an assessment of whether the requested compensation is in proportion to the benefits achieved helps ensure that ratepayers receive value from compensated intervention, and that only reasonable costs are compensated. (*Id.*, p. 73.) We find that the benefits to ratepayers of Intervenors' participation outweigh the costs of funding this participation. As discussed above, Intervenors' participation played a key role in our adoption of the modified settlement providing for the creation of a \$4.85 million Fund to educate non-English speaking customers in the potentially

affected service areas. The potential long-term benefits to ratepayers of this Fund exceed the \$97,454.91 award of compensation.

### 8. Reasonableness of Requested Compensation

Intervenors request compensation in the amount of \$168,109.50 as follows:

#### Attorney/Advocate Fees

Robert Gnaizda (134.4 hours at \$360/hour)	=	\$48,384.00
Susan E. Brown (149.9 hours at \$260/hour)	=	\$38,974.00
.5 multiplier for Gnaizda and Brown	=	\$43,679.00
Itzel Berrio (195.1 hours at \$125/hour)	=	\$24,387.50
John Gamboa (39.55 hours at \$250/hour)	=	\$ 9,887.50
Guillermo Rodriguez, Jr. (22.85 hours at \$100/hour)	=	\$ 2,285.00
Total Attorney/Advocate Fees	=	\$167,597.00

#### Additional Costs

Postage	=	\$ 55.71
Photocopying	=	\$ 620.00
Printing & Copies	=	\$ 6.00
Travel (Susan Brown)	=	\$ 68.00
Total Costs	=	\$ 750.41
Total Compensation Requested	=	\$168,347.41 <sup>3</sup>

### 8.3 Hours Claimed

Intervenors apportion their efforts as follows: 50% of time to creating a consumer education fund; 25% of time to establishing the inadequacy of the

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<sup>3</sup> This amount represents our calculation of the combined total of all fees and expenses set forth in the Request and the Errata to Request. Intervenors' total of \$168,109.50 in the Request does not include the additional hours itemized in the Errata to Request.

original settlement joined by all parties except Intervenors; 25% of time to targeting language minority communities for consumer education. Intervenors note that because their participation in the investigation was pursued in an integrated manner, this breakdown is only approximate. In Exhibit E a detailed breakdown is provided for the attorney and advocate hours for which compensation is sought. These tasks include meetings with other parties, preparation of motions and prehearing conference statements, in-house strategy meetings, discovery, attendance at PHCs, and drafting and review of the modified settlement agreement. The total amount of compensation sought is very close to the \$166,625.00 that Intervenors estimated as their total budget in their NOI. We note, however, that the NOI contemplated a 12-month proceeding, and included expert witness fees. Based upon a review of the detailed breakdown of hours presented in Exhibit E, we conclude nonetheless that the total number of hours claimed in the Request is generally reasonable. Considerable time was spent in the successful pursuit of a settlement. The efforts expended by Intervenors appear to have been necessary to achieve this result. We find that given the contribution Intervenors made to the ultimate outcome of the proceeding, the hours claimed are not excessive.

We note that Brown's time spent working on fee petition preparation is billed at her full hourly rate for work on February 8 and 9, 1999. In D.98-04-059 we reaffirmed our conclusion that compensation requests are essentially bills for services and do not require a lawyer's skill to prepare. Parties will be compensated for an attorney's time in preparing a request for compensation at half the attorney's hourly rate. (*Id.*, p. 51.) Accordingly, we reduce the amount of the award to reflect payment at half the hourly rate for 2.5 hours on February 8 and 9, 1999. As described in the billing record, these hours appear to be standard activities related to preparation of a compensation request. We do

not reduce the fee for 2 hours of the time spent on February 8, 1999, related to the preparation of the fee request, in recognition of the possibility that some amount of attorney time may have been necessary in the preparation of the declaration of Richard Pearl. We will allocate a total of 2 hours, which is half of the total of four hours spent, to this activity and compensate it at the full hourly rate. We note that Brown and Rodriquez have both billed for travel time to attend a PHC and what appears to be a settlement meeting. These hours have been correctly billed at one-half the hourly rate by means of billing for half of the travel time of each trip. This is in accordance with our direction in D.98-04-059, p. 51.

With the exception of the above reduction in compensation rate for 10.5 hours spent on preparation of the fee request, we find the hours billed to be reasonable and fully compensable.

### **8.3 Hourly Rates**

The Commission's practice is to establish an hourly rate for an individual for a specific time period, and to apply that rate when similar services are performed over a substantially similar time period. In D.98-12-048, Intervenors sought hourly rates for Gnaizda, Gamboa, Rodriquez, and Brown, in excess of rates previously allowed for similar time periods. In D.98-12-048 the rate requested for each individual is analyzed and we explain the basis for the hourly rates adopted.

In D.98-12-048, we adopted hourly rates for services performed in 1998 by Gnaizda, Gamboa, Rodriquez, and Brown. Because the work that is the subject of the Request before us was all performed in 1998, we would have expected Intervenors to utilize the rates that we adopted in D.98-12-048 in their current

Request.<sup>4</sup> However, Intervenors have not done so for Gnaizda, Gamboa, and Brown. They seek increased rates for these three individuals.

In D.98-12-048 we discussed our concern that Intervenors were rearguing rate increase requests we had only recently addressed in D.98-04-025. We asked Intervenors to refrain from rearguing issues recently decided by us. We noted that the practice of rearguing the same issues unnecessarily exhausts the Commission's resources and in an indirect way wastes the public's resources. We have this same concern in this proceeding. Intervenors have presented arguments that we have previously considered. This reargument of positions contributes to a delay in the processing of requests for awards of intervenor compensation. Intervenors imply a necessity to reargue the issue of hourly rates in this proceeding in light of "...statutory revisions that enhance their right of appeal which became operative in January, 1999." (Request, p. 3.)

We are disturbed that Intervenors have ignored our instruction in D.98-12-048 at footnote 17. In that decision, we noted that Intervenors had not provided information on previously adopted rates for some of the attorneys and staff for whom compensation was sought. We stated that in the future, information about previously adopted rates should be provided as part of the justification of the hourly rates requested. This information should be readily available to the party seeking compensation. Information should be provided about past rates

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<sup>4</sup> A possible exception would be the hourly rate of Gamboa. In D.98-12-048 we indicated that we were disinclined to increase Gamboa's 1996-97 rate, given the inadequacy of the showing to substantiate an increase. We would have expected that if an increase in hourly rate were sought for Gamboa, it would be accompanied by a showing in support of an increase. None was presented here, other than the statement in Gnaizda's declaration (Exhibit D) that Gamboa's testimony in a separate proceeding was commended.

awarded and increases in rates over time, as was provided by the Commission in D.98-12-048. This information is necessary to fairly review a request for an increase in hourly rates. Intervenors' failure to provide this information in its current Request increased the amount of administrative time necessary to review the Request, and delayed our issuance of a decision. Because Intervenors did not provide this information in their Request, we summarize the relevant hourly rates adopted in the past:

Gnaizda	1995-96	\$260	D.96-08-040
	1996	\$260	D.99-04-023
	1996-97	\$260	D.98-04-025
	1997 through 1998	\$270	D.98-12-048
Brown	1995-96	\$225	D.96-08-040
	1996	\$225	D.98-04-025
	1996	\$225	D.99-04-023
	1997	\$240	D.98-04-025
	1998	\$250	D.98-12-048
Itzel Berrio	10/97-3/98	\$ 85	D.98-12-058
Gamboa	1994-96	\$125	D.96-08-040
	1996-97	\$125	D.98-04-025
	1996 through 3/31/97	\$125	D.98-12-048
Rodriquez	1994-96	\$ 95	D.96-08-040
	1996-97	\$100	D.98-04-025
	6/97 through 1998	\$105	D.98-12-048

In its Response to Request, GTEC objects to the increased hourly rates that Intervenors propose for Gnaizda, Gamboa, and Berrio. GTEC argues that the hourly rates far exceed the rates previously ordered by the Commission for these

individuals, which we have summarized above. In Reply Comments, Intervenor assert that Section 1806 requires the Commission to award prevailing market rates for counsel. They argue that the Commission has “capped” fee rates in contravention of California law. To support the hourly rate increases sought, Intervenor have provided the Declaration of Richard M. Pearl as Exhibit C to the Request. Pearl, a California attorney with experience on the issue of hourly rates billed by attorneys, provides information about hourly rates in other venues, and opines that the hourly rates sought by Intervenor in this proceeding are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. Intervenor also have filed under seal documents prepared by attorneys at three law firms setting forth the hourly billing rates charged for the services of attorneys with varying levels of experience. Redacted versions of these documents are attached as Exhibit D to the Request.

We are not persuaded to change the hourly rates previously adopted for Gnaizda, Brown, and Berrio. In D.95-08-051 we discussed the Section 1806 requirement that in setting compensation rates, we take into consideration the market rates paid to persons of comparable training and experience who offer similar services. Reviewing the appropriate hourly rate for Gnaizda’s services, we discussed our application of this requirement to attorneys appearing before the Commission and set a rate of compensation for Gnaizda and several other attorneys. In D.96-08-040 we discussed in detail our reasoning in setting the appropriate rates for Intervenor’s attorneys and staff. We also addressed requests by these same parties for increases to previously determined hourly rates in D.98-12-048, D.98-12-058, and D.99-04-023. In short, we have reviewed Intervenor’s hourly rates regularly and methodically, in decisions that have long since become final. We do not disturb our finding that the rates set in

D.98-12-048 for Intervenors' work performed in 1998 are reasonable and consistent with our past treatment of attorney and expert fees for comparable work. Accordingly, we will base the fees awarded for the services of Gnaizda, Brown, Gamboa, and Rodriquez upon the hourly rates adopted in that decision. This is consistent with our practice, outlined in D.98-12-048, of establishing an hourly rate for a specific time period (generally a calendar year) and applying that rate to work performed during that time period. Consideration is given to requests for upward adjustment of rates for future time periods.

All work performed by attorneys and staff in this proceeding occurred in 1998. D.98-12-048 set the hourly rate for services performed by Gnaizda in 1998 at \$270 per hour. We will adopt this hourly rate for the work performed by Gnaizda in this proceeding. The rate for work performed by Brown in 1998 was set at \$250 per hour. We will adopt this rate for work performed by her in this proceeding. The hourly rate set in D.98-12-048 for staff member Gamboa, is \$125 per hour for work performed in 1996 through March, 1997. We note that this is the same hourly rate that was awarded for Gamboa's services from 1994-1996. Accordingly, while we do not find justification for increasing Gamboa's rate to the level sought by Intervenors, we will increase his hourly rate for work performed in 1998 to \$135 per hour. This \$10 per hour increase is the increase allowed for staff member Rodriquez between 1994 and 1998. The hourly rate for work by Rodriquez in 1998 is set at \$105 per hour in D.98-12-048. We will adopt this rate for work performed by him in this proceeding.

We set the hourly rate for Itzel Berrio in D.98-12-058 for work performed in that proceeding from October, 1997 through March, 1998. The adopted hourly rate is \$85 per hour. We indicated this rate reflects that Berrio is a 1997 graduate of New York University, and a member of the Illinois and California bars since 1997. We adopt the previously set hourly rate of \$85 for all work performed by

Berrio in 1998. We find this an appropriate rate for work performed by an attorney during the first full year of practice in the profession.

### **8.3 Other Costs**

Intervenors request compensation for \$750 in expenses. These expenses include \$682.41 for the costs of photocopying and mailing of pleadings and other documents in this proceeding, and \$68 for Brown's travel expenses. We find that the request for compensation for the costs of photocopying and mailing is reasonable. We have reviewed the "transaction report" (Exhibit E) where Brown's travel expenses are itemized. We have compared the dates on which travel expenses were incurred with Brown's daily record of work performed in this proceeding (Exhibit E.) We find that on the dates for which travel expenses are claimed, Brown's daily record of work does not reflect activities involving travel in this proceeding. Because the \$68 in travel expenses claimed is not adequately justified, we will disallow this amount. We will award compensation for expenses in the amount of \$682.41.

### **9. Application of Multiplier for Efficiency and Efficacy**

Intervenors request that a multiplier of 50% be applied to the award for the work of Gnaizda and Brown. They indicate that this multiplier is justified due to the efficiency and efficacy of their work. Intervenors enumerate a number of factors that they believe justify the application of the 50% multiplier. In its Response, GTEC strongly objects to the application of a multiplier. Intervenors respond to GTEC's objections in their Reply Comments. For the reasons set forth below, we agree with GTEC that the application of a multiplier is not warranted in this case.

As a preliminary matter we observe that Intervenors claim that they have not included in their compensation request the work of paralegal services

totaling approximately \$1,200. Additionally, Brown is said to have waived at least 20 hours expended in fee petition preparation (a value of \$2,500 using half her adopted hourly rate), and Gnaizda has waived an unspecified number of hours related to the fee request. (Request, p. 8.) Intervenors appear to suggest that this voluntary waiver of fees, itemized at approximately \$3,700, provides support for a finding that the work of Gnaizda and Brown merits payment of an additional \$36,225 (applying the previously adopted hourly rates.) We disagree. Efficiency adders and fee enhancements are not intended as a substitute for claiming compensation in an itemized request. We do not speculate on why Intervenors chose not to itemize hours they now claim they are “waiving.” Nor can we assume, in the absence of itemization of these hours, that they would have been found reasonable.

We have previously stated, and it is still our policy, that we believe that we should generally exercise restraint in enhancing hourly rates. Enhancement should only be granted in exceptional cases. (See D.95-05-018.) We have applied an “efficiency adder” in cases where an advocate’s contribution clearly has gone beyond the normal duties and responsibilities of an attorney. For example, in D.95-04-003 we allowed an efficiency adder where the attorney had acted in a dual role of attorney and expert witness. That is not the case in this proceeding, where the attorneys did not act in a dual capacity.

We have also granted a “fee enhancement” in cases where the results achieved were exceptional. In D.96-08-029 we listed factors to be considered by the Commission in awarding a fee enhancement. We noted that these factors are not to be applied in a rigid manner, and that not all factors are applicable in all cases. We will not restate all of the factors that are listed in D.96-08-029. We have reviewed those factors and have considered their applicability to Intervenors’ request for a fee enhancement or multiplier. We have also reviewed

the case law cited by Intervenors, wherein courts have applied a multiplier to fee awards in exceptional circumstances. We conclude that the efforts of counsel in this proceeding do not justify a fee enhancement.

Intervenors claim that a number of factors warrant the application of a multiplier. They cite to the contingent nature of the intervenor fee award, the risk undertaken, and the need to forego other legal work in order to work on this case. If we were to consider these factors alone to justify a fee enhancement, then it would appear that all intervenors would be eligible for a fee enhancement. Nor do we consider the fact that opposing counsel are highly experienced, and presented a unified opposition, to justify an enhancement. Both Gnaizda and Brown are compensated at the high end of hourly rates for attorneys appearing before us with similar experience. Their compensation rates reflect the fact that they are expected to be in the lead role in litigation against senior counsel representing other parties. To the extent that novel legal issues were presented, we note Intervenors do not contest GTEC's claim that Intervenors fought for the establishment of the Fund, but did not draft any of the motions supporting the all-party settlement and justifying the Fund's adoption. (Response, p. 11.) We acknowledge the substantial contribution that Intervenors made to the outcome of this case, but we conclude that the efforts of counsel did not exceed what we normally view as the duties and responsibilities of an attorney whose efforts merit an award of intervenor compensation. Accordingly, we deny Intervenors' request for a fee multiplier.

#### **10. Award**

We award Intervenors \$97,454.91 for their contribution to D.98-12-084. The award is calculated as follows:

Attorney/Advocate Fees

Robert Gnaizda (134.4 hours at \$270/hour)	=	\$36,288.00
Susan E. Brown (139.4 hours at \$250/hour and \$10.5 hours at \$125/hour)	=	\$36,162.50
Itzel Berrio (195.1 hours at \$85/hour)	=	\$16,583.50
John Gamboa (39.55 hours at \$135/hour)	=	\$ 5,339.25
Guillermo Rodriguez (22.85 hours at \$105/hour)	=	\$ 2,399.25
<u>Total Attorney/Advocate Fees</u>	=	\$96,772.50
Additional Costs	=	\$ 682.41
<u>Total Compensation Award</u>	=	\$97,454.91

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after Intervenors filed this compensation request and continuing until the utility makes full payment.

As in all intervenor compensation decisions, we put Intervenors on notice that the Energy Division may audit Intervenors' records related to this award. Thus, Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenors' 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.

## **11. Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g) of the Public Utilities Code and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed by Intervenors on February 16, 2000. Intervenors argue that the hourly rates applied in the draft decision for attorney and expert services do not take into account market rates. Intervenors contend that the rates applied result in "separate and unequal" fee treatment for ratepayer representatives, and that the use of these rates constitutes legal error. We have reviewed the arguments made in the Comments and conclude that the record supports application of the hourly rates applied in the draft decision. We find no legal or factual error in the draft decision, and make no changes to the hourly rates applied.

Intervenors contend that the draft decision improperly deducts 10.5 hours from the total number of hours for which Brown is compensated. This time was spent in preparation of the fee request on February 8 and 9, 1999. Intervenors misinterpret the draft decision. The draft decision provides compensation for the 10.5 hours devoted by Brown to preparation of the fee request, but reduces the amount of the award to reflect payment at half of Brown's hourly rate for this activity. We find no error in the draft decision's treatment of Brown's hours related to fee request preparation, and accordingly we make no changes.

### **Findings of Fact**

1. Intervenors' motion for the filing under seal of the confidential information submitted under seal as Exhibit D to the Request for Award of Intervenor Compensation is unopposed.
2. Intervenors both qualify for customer status pursuant to Section 1802(b) of the Public Utilities Code for purposes of the intervenor compensation program.

3. Intervenors have each made a showing of significant financial hardship within the meaning of Section 1802(g) of the Public Utilities Code and are eligible for an award of compensation.

4. Intervenors have made a timely request for compensation for their contribution to D.98-12-084.

5. Intervenors contributed substantially to D.98-12-084.

6. Any duplication of effort between Intervenors and CSD does not warrant a reduction in the amount of the award.

7. The long-term benefits to customers of Intervenors' participation outweigh the costs of funding Intervenors' participation.

8. With the exception of the hourly rate for Guillermo Rodriquez, Jr., Intervenors have requested hourly rates for all attorneys and advocates that are higher than rates previously adopted by the Commission for the same time period. The hourly rates previously adopted for Robert Gnaizda, Susan E. Brown, Guillermo Rodriquez, Jr., and John Gamboa, are set forth in D.98-04-048. We find these rates to be reasonable, with the exception of the rate for Gamboa. We find it reasonable to increase Gamboa's hourly rate by \$10 per hour. The hourly rate of Itzel Berrio was set in D.98-12-058. We find that hourly rate to be reasonable for the time period covered by this Request.

9. Time spent by Brown working on fee petition preparation is billed at her full hourly rate in the Request. We have determined that 10.5 hours of this time falls within the category of services that do not require a lawyer's skill. This time should be compensated at half of Brown's hourly rate.

10. The miscellaneous other costs incurred by Intervenors in this proceeding are reasonable, with one exception. Intervenors have not demonstrated that the itemized travel expenses for Brown are reasonably related to this proceeding, and they should not be reimbursed.

11. The nature of Intervenors' work in this proceeding, and the demands of the proceeding, do not justify the application of a fee enhancement or multiplier to the award for the work of Gnaizda and Brown.

**Conclusions of Law**

1. Intervenors have fulfilled the requirements of Sections 1801-1812 of the Public Utilities Code, which govern awards of intervenor compensation.

2. Intervenors should be awarded \$97,454.91 for contributions to D.98-12-084.

3. This order should be effective today so that Intervenors may be compensated without undue delay.

**ORDER**

**IT IS ORDERED** that:

1. The Greenlining Institute and Latino Issues Forum are awarded \$97,454.91 as set forth herein for substantial contributions to Decision 98-12-084.

2. GTE California Incorporated shall, within 30 days of this order, pay Intervenors \$97,454.91 plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release G.13, with interest beginning on April 27, 1999, and continuing until the full payment has been made.

3. The billing rate information contained in the declaration of Robert Gnaizda, in the letters of Terry J. Houlihan and James Asperger, and in the declaration of Laurence Popofsky, which letters and declarations have been submitted under seal as an attachment (Exhibit D) to the Request, shall remain under seal for a period of two years from the date of this ruling. During that period they shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the

Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If Intervenors believe that further protection of this information is needed after two years, they may file a motion stating the justification for further withholding the letters and declarations from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than 30 days before the expiration of this protective order.

4. Investigation 98-02-025 is closed.

This order is effective today.

Dated April 6, 2000, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
CARL W. WOOD  
Commissioners