

Decision **PROPOSED DECISION OF COMMISSIONER SANDOVAL**
(Mailed 4/23/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Create the Small
Business Advisory Council.

Rulemaking 10-12-009
(Filed December 16, 2010)

**DECISION REJECTING THE CREATION OF
A SMALL BUSINESS ADVISORY COUNCIL AT THIS TIME**

1. Summary

This decision declines to create a Small Business Advisory Council.

This result springs from a review by the Commission of the range of alternatives available for soliciting the input of small businesses. This review convinces the Commission that creating an advisory board is an ongoing, complex, legal endeavor that would require a substantial commitment of financial and staff resources. Moreover, it is possible for the Commission to obtain the input of small businesses in other ways.

In particular, a modification of the agenda of workshops and discussions currently led by a Commissioner at the Commission's small business expositions offers a cost-effective method for learning about how Commission actions affect this business sector. Moreover, nothing precludes the Commission from subsequently holding an en banc hearing or opening a proceeding to pursue any issues brought to the Commission's attention.

In light of the difficult budgetary situation in California state government and the availability of alternative ways of obtaining the input of small businesses

into Commission policies, it is not reasonable to create a Small Business Advisory Council at this time.

This proceeding is closed.

2. Procedural History

The Order Instituting Rulemaking (OIR) initiating this proceeding on December 16, 2010, directed certain respondents and invited interested parties to file comments addressing issues pertaining to the creation of a Small Business Advisory Council (SBAC), which the OIR proposed to create.

On January 20, 2011, AT&T California (AT&T) and Verizon California (Verizon) (filing jointly), Pacific Gas and Electric Company (PG&E), the Division of Ratepayer Advocates (DRA), San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) (filing jointly), The Utility Reform Network (TURN), the California Small Business Roundtable (CSBRT) and California Small Business Association (CSBA) (filing jointly), and Southern California Edison Company (SCE) filed opening comments. On January 21, 2012, the Greenlining Institute (Greenlining)¹ filed opening comments.

By February 3, 2011, Small Business California (SB-Cal), SCE, CSBRT/CSBA, PG&E, TURN, AT&T/Verizon, and Greenlining filed Reply Comments.

On Monday, March 7, 2011, the Commission held a workshop involving interested parties at the Commission offices in San Francisco.

¹ Greenlining filed its opening comments a day late. On January 31, 2011, Greenlining filed a Motion to Late File Opening Comments. In the interest of a complete record, the Greenling Motion is granted.

3. Issues before the Commission Today

The issue before the Commission today is whether to proceed with creation of the SBAC given the practical and legal factors that have come to light.

3.1. Positions of Parties

CSBRT/CSBA “strongly believe that there is a need for a Small Business Advisory Council to expand and enhance the flow of communications between the small business community, Commissioners, Commission Staff and regulated utilities.”² CSBRT/CSBA note the “limitations of formal proceedings” and “the time, cost, number and complexity” of Commission proceedings that produce “obstacles to meaningful participation.”³ SB-Cal filed comments expressing support for the SBAC and asking for inclusion on the SBAC panel.⁴

AT&T and Verizon (filing jointly) comment briefly, stressing that the value and accomplishments of the SBAC are “uncertain at this time.”⁵ In Reply Comments, they note that currently “small businesses and their associations participate in formal proceedings, and small businesses are robustly represented by other organizations such as TURN, DRA, and Greenlining.”⁶

PG&E asks that the Commission model the SBAC on the Low Income Oversight Board.⁷ PG&E also stresses the need for “meaningful review of the Small Business Advisory Council.”⁸ PG&E notes that even if the SBAC exists, “it

² CSBRT/CSBA Comments at 2.

³ *Id.* at 3-4.

⁴ SB-Cal Comments at 8.

⁵ AT&T and Verizon Comments at 2.

⁶ AT&T and Verizon Reply Comments at 3.

⁷ PG&E Comments at 2.

⁸ PG&E Reply Comments at 2.

will not replace the divergent views of the small business community” and therefore cannot be “a substitute for individual party participation in the regulatory process.”⁹

SDG&E and SoCalGas (filing jointly) express support for the Commission’s goal of assisting small business customers.¹⁰ SCE expresses similar support for the Commission’s efforts to support small businesses, but “requests clarification on whether the roles and responsibilities of the BCOG [Business & Community Outreach Group] will be different following the creation of the SBAC and, if so, how.”¹¹

DRA also argues that “while an increased dialogue between small business and the Commission can be facilitated by the Council, the Council’s advisory functions should not become a substitute for issues being raised in formal proceedings where due process is accorded to all parties and proposals are voted on by the Commission based on the evidentiary record.”¹²

TURN argues that the Commission should “immediately reject any notion that that the input of the SBAC might substitute for the formal participation in Commission proceedings by small businesses and their representatives.”¹³ TURN concludes that “[w]hile the SBAC will offer the Commission valuable information regarding small business customers, this information cannot serve as

⁹ *Id.* at 5.

¹⁰ SDG&E and SoCalGas Comments at 3.

¹¹ SCE Comments at 3.

¹² DRA Comments at 2.

¹³ TURN Comments at 7.

a proxy for small business interests in the Commission's formal decision-making process."¹⁴

Greenlining also expresses support for small businesses and the Commission's efforts "to increase the participation of small business owners in Commission proceedings."¹⁵ Greenlining states that it expects that the SBAC "will prove to be of great value to the Commission as it embarks upon sweeping modernization in both the energy and telecommunications sectors."¹⁶ On the other hand, Greenlining observes that "[i]t is unrealistic to think that any nine members can represent all of the diverse interests of California's small business community."¹⁷

Finally, we note that at the March 7, 2011, workshop conducted at the Commission, participants engaged in a constructive discussion. Multiple parties stressed that it is important that the Commission involve the small business community in the Commission's work, but that this involvement take place in an effective way that enables constructive participation at low cost.

3.2. Discussion

Based on the comments of parties to the proceeding and the statements of participants in the Commission workshop, Commission staff concludes that cost-effective participation by the small business community is key to the success of an SBAC. With this in mind, Commission legal and professional staff conducted a more extensive analysis of the structures of existing boards and the

¹⁴ *Id.* at 8.

¹⁵ Greenlining Comments at 1.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 7.

implications for the SBAC. This analysis leads the Commission to conclude that modest modifications to the agenda of the ~~annual~~ small business expositions held twice a year by the Commission offer a more constructive way to proceed. In addition, if necessary, the Commission can also modify the topics discussed at the annual small business roundtable to provide additional avenues for small business input to the Commission.

Our examination of the existing Commission boards shows a major statutory difference with this proposed board. All existing boards are required by statutes, which set their structure, goals and key operations. The Low Income Oversight Board, on which the Commission proposed to model the SBAC, was established in Section 382.1 of the Public Utilities Code. Similarly, the advisory boards created in conjunction with the telecommunications programs are supported by Sections 270-285 of the Public Utilities Code. There is, however, no statute requiring the Commission to create the SBAC.

Currently there are no advisory boards that are not required by statute. If the Commission created an SBAC by decision, it would, like the other boards, become subject to a variety of rules that apply to governmental bodies. These rules aim to ensure that boards function in a formal and transparent way. If the Commission created an SBAC that consisted of three or more people, it would be a "state body," as defined in Government Code Section 11121(c), and would therefore be subject to the Bagley-Keene Open Meeting Act (Government Codes Section 11120, et seq.).

The Commission's experience with advisory boards is that they involve substantial investments of Commission staff time and energy, and ratepayer dollars. The Bagley-Keene Open Meeting Act, in particular, includes a number of procedural and substantive requirements that must be adhered to. Educating

members of advisory boards about these aspects of the law takes staff time and energy away from their normal day-to-day responsibilities. The requirements are not simple to explain and monitoring compliance can place the Commission staff in an adversarial relationship with the board.

There are still other legal complexities. As an advisory board, the SBAC would not automatically have party status in Commission proceedings. Without party status, the advisory board would only be able to convey its thoughts and ideas through its comments to the assigned Commissioner.

Since an advisory board commonly provides only “advice” to the Commission, it is frequently difficult to identify tangible results associated with the advisory board. In particular, since Commission decisions must be based on the record before the Commission in a particular proceeding, reliance on advice and information outside the record of the proceeding risks legal error.

An advisory board, in addition to staff resources and time, may require substantial direct funding to support travel expenses and per diem for attending meetings. In some cases, the Commission has also authorized contracts with technical advisors, adding still more costs.

Alternatively, we note that the Commission currently has in place a strong business and community outreach program. Last year the Commission’s small business team participated in over 55 business events and outreach to thousands of small business owners. The Commission’s team educated small business owners about regulatory policies impacting their businesses and helped connect them to procurement opportunities with utilities and state agencies.

Currently, the Commission sponsors two small business expositions every year – one in Northern California and one in Southern California. Over 300 small business owners attend each exposition. Currently, these expositions include

information exhibits, workshops, and sessions in which a small business can meet with the procurement representatives from government agencies and utilities. A modification of the agenda of the workshops would enable the Commissioner who attends these meetings to learn of the needs of the small business community vis-à-vis the Commission and its regulatory program. Since this program currently operates successfully, it provides a cost-effective alternative to establishing and managing an advisory board. We therefore order such a modification of the workshop agenda.

If needed, the Commission staff could also modify the agenda of the small business roundtables that have been held to address issues affecting this community. In 2011, the Commission Business and Community Outreach staff coordinated a series of roundtable discussions for Commissioners and leaders of the small business community to facilitate an exchange of information, thoughts and concerns. This roundtable offers an information format that could readily provide the liaison Commissioner and Commission staff with insights into utility issues affecting small business interests. The roundtables, if needed, could also be very helpful in facilitating an informal two-way communication.

4. Comments on Proposed Decision

The proposed decision of Commissioner Sandoval in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on ~~_____~~ and reply May

14, 2012 by Greenlining.¹⁸ Reply comments were filed on _____ by
_____ May 21, 2012 by TURN.

Greenlining's Comments observe that: "it is imperative that the Commission solicit and receive this input even without a formal forum."¹⁹ To realize this goal, Greenlining recommends amendments to the proposed decision. Specifically, Greenlining recommends that the "Commission must continue to solicit formal participation in proceedings by small business representatives, and strive to reduce the procedural barriers to participation..."²⁰ Greenlining also recommends that the Commission "regularly and intentionally step out of the box of proceedings and hear directly from the wide and varied small business community about their needs and concerns."²¹ Greenlining approves of the Commission's proposal to rely on roundtable discussions, and identifies factors that will "ensure the utility of these roundtable discussions."²² Greenlining recommends the following:

1. Hold semi-annual or quarterly roundtables.²³
2. Provide wide notice of the roundtables to solicit "participation from new voices."²⁴
3. Track the number and kind of businesses that attend each roundtable to "help ensure diversity of perspective."²⁵

¹⁸ Opening Comments of the Greenlining Institute on the Proposed Decision, May 14, 2012.

¹⁹ Id. at 1.

²⁰ Id. at 2.

²¹ Id.

²² Id. at 3.

²³ Id.

²⁴ Id.

4. Have at least one Commissioner at each roundtable.²⁶
5. Hold roundtables a various locations around the state.²⁷
6. Continue to solicit feedback from small business customers year-round.²⁸

Finally, Greenlining cautions that holding roundtables as part of Small Business expositions would be less productive than a separate roundtable because “the target audiences for each are slightly different.”²⁹

In reply comments, TURN expressed support for Greenlining’s positions. In addition, TURN asked that the “PD be modified to direct the BCO to work closely with the Public Advisor’s office on outreach for the Roundtable Discussions.”³⁰

In response, we find Greenlining’s suggestions concerning the planning of roundtables extremely helpful and will use them as a guide to planning our roundtables. Concerning Greenlining’s recommendation that the Commission strive to hold business roundtables separate form expos, we advise the BCO to follow this recommended practice to the extent possible unless budgetary and personnel resource constraints made such an approach impractical. Concerning TURN’s request, we decline to direct the BCO to work with the Public Advisor. These units of the Commission already work well together, and we are confident

²⁵ Id. at 4.

²⁶ Id.

²⁷ Id.

²⁸ Id. at 5.

²⁹ Id.

³⁰ TURN Reply Comments at 2.

that the BCO will take whatever steps are necessary to ensure the success of their outreach efforts.

5. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Timothy J. Sullivan is the assigned ALJ in this proceeding.

Findings of Fact

1. All parties agree that it is important for the Commission to obtain the input of the small business communities on how Commission actions affect their operations because of the importance of the small business community to the California economy.

2. The input of an SBAC to the Commission is not a substitute for the participation of the representatives of small business interests in Commission proceedings because Commission decisions must be based on the record before the Commission and cannot rely on extra-record information.

3. All advisory boards currently involved in Commission work have a statutory basis.

4. Educating an advisory board concerning the requirements of the Bagley-Keene Open Meeting Act is complex and requires extensive Commission time and monitoring.

5. The Commission ~~held~~participated in over 55 business events for small businesses last year.

6. The Commission currently conducts two small business expositions each year. Approximately 350 businesses attend each expo.

7. The small business expositions include workshops and participation by a Commissioner.

8. A modification of the workshop agendas at the small business expositions would enable the Commission to learn of the needs of the small business community concerning the Commission and its regulatory program.

9. It is reasonable to modify the agendas of the small business expositions to solicit information on the needs of small businesses because this offers a cost-effective way for the Commission to proceed.

10. The Commission holds roundtable discussions with the leaders of the small business community frequently to facilitate an exchange of information, thoughts and concerns.

11. Commission-held roundtable discussions can offer a cost-effective forum for the Commission to learn about the needs of the small business community.

12. If needed, the Commission can modify the agendas of roundtable discussions to obtain information about the needs of the small business community. They also offer a cost-effective forum in which the Commission acquires information.

13. It is not reasonable for the Commission to create an SBAC because such a board offers an expensive way of obtaining information concerning the small business community.

1. It would be beneficial to have at least two roundtables each year to solicit the input of small business on the Commission's regulatory program.

2. It would be beneficial to provide wide notice of a Commission sponsored roundtable because such notice could solicit the participation of new voices.

3. It would be prudent to track the number and kind of businesses that attend each roundtable.

4. The presence of at least one Commissioner at each roundtable would enhance its effectiveness.

5. Holding roundtables at various locations around the state would help diminish the obstacles to participation posed by distance.

6. Soliciting feedback from small businesses customers throughout the year and outside of the roundtable format is appropriate.

Conclusions of Law

1. Modifying the agenda of the small business expositions held by the Commission to discuss issues affecting the small business community is consistent with the Public Utilities Code.

2. Modifying the agenda of the small business roundtables held by the Commission would not contravene any section of the Public Utilities Code.

3. There is no statutory requirement at this time to create an SBAC.

4. If the SBAC consisted of three or more people, it would be a state body as defined in Government Code Section 11121(c) and would therefore be subject to the Bagley-Keene Open Meeting Act (Government Codes Section 11120, et seq.).

5. The Commission should modify the agenda of the small business expositions because this offers a more cost-effective way of obtaining input from the small business community.

O R D E R

IT IS ORDERED that:

1. The Commission's Business and Community Outreach Group must hold at least two discussions per year to solicit the input of small businesses on the Commission's regulatory program. To the extent consistent with resources, the Business and Community Outreach Group shall schedule discussions and roundtables independent of small business expositions. If necessary, the Business and Community Outreach Group may modify the agendas of the small business expositions held each year to facilitate the input of the small business

community to the Commission. ~~Therefore, there will be no Small Business Advisory Council at this time.~~

1. Since roundtable discussions offer a practical way of soliciting the input of Small Businesses concerning the Commission's regulatory program, there will be no Small Business Advisory Council at this time.

2. Rulemaking 10-12-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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