STATE OF CALIFORNIA EDMUND G. BROWN, JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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January 12, 2012 **Agenda ID #10984**

TO PARTIES OF RECORD IN RULEMAKING 10-05-006

This is the proposed decision of Administrative Law Judge (ALJ) Allen. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Allen at pva@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ MARYAM EBKE for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:avs

Attachment

Decision **PROPOSED DECISION OF ALJ ALLEN** **(Mailed 1/12/2012)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 10-05-006 (Filed May 6, 2010)

DECISION DENYING INTERVENOR COMPENSATION TO WOMEN'S ENERGY MATTERS FOR LACK OF SUBSTANTIAL CONTRIBUTION TO DECISION 11-05-005

Claimant: Women's Energy Matters (WEM)	**For contribution to Decision (D.) 11-05-005**
Claimed: $2,830	**Awarded $: $0.00 (reduced 100%)**
Assigned Commissioner: Michael R. Peevey	**Assigned ALJ: Peter V. Allen**

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: The decision modified the Cost Allocation Mechanism (CAM) adopted in D.06-07-029.[1] These modifications were made to ensure that the CAM is consistent with provisions of Senate Bill (SB) 695.[2]

Specifically: 1) we eliminated the utilities' ability to elect (or decline to elect) CAM treatment for generation resources; 2) we allowed CAM treatment for utility-owned generation; and 3) we changed the duration of the CAM treatment to match the duration of the underlying contract.

[1] D.06-07-029 was modified in D.07-11-051. All cites to D.06-07-029 incorporate the modifications made to that decision in D.07-11-051, unless otherwise noted.

[2] Stats. 2009, Ch. 337.

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	June 14, 2010	Verified
2. Other Specified Date for NOI:		
3. Date NOI Filed:	July 14, 2010	Verified
4. Was the notice of intent timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	R.09-01-019	Verified
6. Date of ALJ ruling:	June 24, 2009	Verified
7. Based on another Commission determination (specify):		
8. Has the claimant demonstrated customer or customer-related status?		Yes
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	R.09-01-019	Verified
10. Date of ALJ ruling:	June 24, 2009	Verified-a rebuttable presumption pursuant to § 1804(b)(1) exists for WEM's participation here because the Commission found WEM had met this requirement in an ALJ ruling issued on June 24, 2009 in R.09-01-019, falling within one year of the commencement of this proceeding.
11. Based on another Commission determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		Yes

Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.11-05-005	Verified
14. Date of Issuance of Final Decision:	May 10, 2011	Verified
15. File date of compensation request:	July 11, 2011	Verified
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

Claimant	CPUC	Comment
X		As noted in our NOI, WEM represents customers in Community Choice (CCA) jurisdictions, among others, and advocates for cleaner energy statewide. WEM participated in this phase of the proceeding because of our concern about the potentially negative impacts of SB 695 on CCA customers and the possible neglect of preferred resources it might engender. (WEM opposed the earlier decision on the CAM, during our participation in R.06-02-013.)
	X	We disagree. WEM's comments were outside the scope of this phase of R.10-05-006 as that scope was delineated in a September 14, 2010 ruling issued by the Administrative Law Judge's (ALJ) and in Section 3.3.1.1 of the December 3, 2010 Commissioner and assigned ALJ's Scoping Memo and Ruling.[3]

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's claimed contribution to the final decision:

At the onset of our review, regarding the contributions WEM has listed below, we note that with respect to D.11-05-005, we find that WEM has not shown that it made a substantial contribution. None of WEM's references shows how WEM may have made a substantial contribution. On the contrary, they show that WEM failed to prevail on any of the various procedural and substantive issues that it raised. Moreover (and significantly, since it did not prevail on any issue), WEM does not even purport to demonstrate that it provided information or analysis relied upon by the ALJ or the Commission in its deliberations or development of the record. We find that much of WEM's work was outside of the scope of this phase of the proceeding. We find it appropriate to deny WEM's claim with respect to its claimed contributions to D.11-05-005. Based on our own independent review of WEM's participation, it follows that none of the hours claimed for such work should be allowed.

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
● Women's Energy Matters described the difficulties that SB 695 presents for customers of Community Choice Aggregators, because the legislation imposes utilities' choices on CCAs and could result in over-procurement since	The decision properly interpreted SB 695 bill narrowly. As we discuss further below, it avoided drawing conclusions that would negatively impact deliberations in later phases of this proceeding. The decision	We disagree with the first three bulleted contributions WEM lists here.

[3] At 40.

it duplicates RA requirements. WEM 10/1/10 Comments re SB 695 Implementation, at 2-4. WEM provided first-hand information about the legislative history of the bill, attaching a copy of WEM's detailed letter of opposition to SB 695 that we submitted to the Legislature. Ibid, at 4.	specifically named five issues that remained to be resolved, which had the effect of emphasizing the limited scope of this decision. D.11-05-005 at 15-16. Additionally, it left the following key issue for later determination: "The criteria that the Commission will use in making this determination [whether generation resources are needed that would trigger SB 695 cost allocation] will be developed later in this or a successor proceeding." Ibid, at 6.	D.11-05-005 addressed a very narrow set of issues that were related to the implementation of SB 695. These issues were examined in Phase I of Track III of this very complex proceeding. WEM's comments were outside the scope of Phase I of Track III of this proceeding, and did not substantially contribute to the Commission decision. More specifically, this was a narrow and technical decision on a petition to modify a prior decision to reflect the passage of SB 695. WEM's general comments on SB 695 and WEM's position on the legislation did not substantially contribute to the Commission decision.
● WEM cautioned against the tendency of SB 695 (like the CAM before it) to promote fossil fuel power plants instead of preferred resources, and recommended that this proceeding only approve preferred resources for Resource Adequacy. Ibid, at 2-4. Our Comments made specific recommendations to limit the detrimental impact of SB 695 on CCAs and on preferred resources throughout IOU territories, noting that CCAs are more committed to increasing preferred resources. Ibid, at 2-4.	While the decision did not directly address the issues we raised concerning the tendency of the CAM and SB 695 to promote fossil fuel power instead of preferred resources, it avoided any statements that could be interpreted as endorsing fossil fuel generation for CAM treatment. D.11-05-005, at 6-7. We note that it's harder to prove that a party contributed to the *absence* of something that the party asked the Commission to avoid — however the absence of any reference to fossil generation was aligned with WEM's recommendations.	
● WEM noted that the Statute requires a more accurate methodology for calculating non-bypassable departing load charges, providing citations to issues raised by CCAs in other proceedings. Ibid, at 4-5 (see Q. 2).	The decision affirmed that "It is the Commission's duty, not that of the utilities, to "equitably allocate the cost of generating capacity…" Ibid, at 15. The "next steps" may potentially mitigate the costs to CCAs: "1. The development of policies and processes for distinguishing between system and bundled resource needs, and related cost allocations. 2. Whether there should be a test of "who benefits" under SB 695, and if so, the construction of such a test." Ibid, at 16.	

● WEM asked the Commission to take an active role to ensure fairness because the IOUs have conflicts-of-interest that interfere with just and reasonable rates. Ibid, at 2.	The decision affirmed that "The statute… allows the Commission, not the utilities, to choose to use an auction…" Ibid, at 13.	We disagree. The decision interpreted the statutory language. WEM's statement that IOU's have conflicts of interest did not make a substantial contribution to this proceeding about how to interpret this provision of SB 695.
● WEM pointed out that the cost of participating in auctions is detrimental to small resource providers (EE, renewables, demand response, CHP) and asked the Commission to ensure that they can afford to participate. We recommended that the Commission consider alternatives to auctions. Ibid, at 6.	The decision acknowledged, "the existing energy auction mechanism adopted in D.07-09-044 may need to be revised" and stated: "Consideration of non-auction processes and revisions to the auction methodology will occur in later phases of this proceeding or in a successor proceeding." Ibid, 14.	We disagree with WEM's claimed contributions listed here applying the same reasons for disallowance listed for bullets 1-3 above.
● WEM described discussions with TURN, (a proponent of SB 695), indicating that aspects of the bill that WEM identified as unnecessarily hurtful to CCAs were unintended and would be amended, but this didn't happen at the time. (The Commission is probably aware that CCAs are seeking amendments, in SB 790 in the 2011 legislative session, which would modify some of the problematic provisions of SB 695.)	Commissioner Florio abstained; without giving a reason. (WEM discussed the CAM and SB 695 with Mr. Florio when he worked for TURN on these issues.)	We disagree. Discussions with TURN before and after the passage of SB 695, particularly regarding provisions that were not enacted, are not compensable tasks. Commissioner Florio abstained because he had been a party to the proceeding when he worked for TURN.
● WEM has made a substantial contribution to this decision and should be fully compensated.	The Commission has ruled "The fact that WEM is not specifically credited with making a substantial contribution on a particular issue does not mean that a substantial contribution was not	We disagree. WEM filed two responsive pleadings in this phase of this

	made. Where a decision states a position that is consistent with that asserted by a party we may infer that the party made a contribution on that issue." D.09-03-043, at 7.	proceeding. Neither of WEM's pleadings rose to the level of having made a "substantial contribution" to the Decision.[4]

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

Claimant		CPUC Verified
a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes, but DRA was not active in this phase.	See discussion below.
We disagree. DRA was very involved in the entire proceeding. Our review of the record reveals that DRA was more active in this phase of the proceeding than was WEM. On June 4, 2010, DRA filed opening comments on the rulemaking, and included an analysis of compliance with SB 695 in its comments. WEM did not file opening comments. *On October 1, 2010 WEM filed opening comments on the Judge's September 14, 2010 ruling on implementation of SB 695 and the cost allocation mechanism (Track III). DRA did not file opening comments on this ruling, but it filed reply comments on October 8, 2010. WEM did not file reply comments on this ruling.* *On April 25, 2011 both DRA and WEM filed comments on the Judge's April 4, 2011 proposed decision modifying new generation and long-term contract cost allocation mechanisms pursuant to Senate Bill 695.*		
b. Were there other parties to the proceeding?	Yes	Correct
c. If so, provide name of other parties: There were many other parties in this proceeding. In this particular phase, the active parties were Alliance for Retail Energy Markets (AReM), California Large Energy Consumers Association, Jan L. Reid (Reid), and The Utility Reform Network (TURN); Marin Energy Authority (MEA) commented only on the PD.		Correct
d. Claimant's description of how it coordinated with DRA and other parties to avoid duplication or how claimant's participation supplemented, complemented, or contributed to that of another party: DRA was not involved in this phase. We had several discussions about this issue over the years with TURN, who was on a different side in this issue. The other party that expressed similar concerns as WEM was Marin Energy Authority (MEA), but MEA was not involved until it commented on the PD on April 25, 2011, long after WEM's		See discussion below.

[4] § 1802(i) defines substantial contribution as the "customer's presentation that substantially assisted the Commission in the making of its decision because it has adopted factual and legal contentions, or policy recommendations presented by the intervenor. Section 1802.5 allows compensation for an intervenor's participation which materially supplements, complements, or contributes to the presentation of another party, provided that the intervenor's own participation makes a substantial contribution to a Commission order or decision."

opening comments were filed in October. WEM encouraged MEA to weigh in on this matter — its comments elaborated on some of the issues WEM had raised earlier.	
We disagree. As detailed above, DRA (which filed three responsive pleadings) was more involved in this phase of the proceeding than was WEM (which filed two responsive pleadings). *The MEA filed two responsive pleadings (April 25, 2001 Opening Comments and May 2, 2011 Reply Comments) on the Proposed Decision. WEM filed opening comments on April 25, 2001.* *MEA's May 2, 2011 reply comments were specifically directed at the comments of TURN, PG&E, SCE, SDG&E and AReM (page 1, footnote 1) – and included no mention of WEM or it's comments.*	

B. CPUC Comments on Part II:

CPUC Comments
WEM filed two pleadings in this matter. The first was a 4 ½ page set of comments on the assigned Judge's September 14, 2001 ruling. The second was a ½ page comment on the assigned Judge's April 4, 2001 proposed decision. The WEM and the Commission might have benefited if WEM had coordinated effectively with DRA and MEA on the few issues WEM raised in its pleadings that may have been within the scope of subsection 3.3.1.1 of Phase I of Track III of this proceeding. WEM's failure to coordinate with DRA and MEA resulted in duplication of efforts.

PART III: REASONABLENESS OF REQUESTED

A. General Claim of Reasonableness (§§ 1801 & 1806):

Claimant's explanation as to how the cost of claimant's participation bore a reasonable relationship with benefits realized through claimant's participation \	CPUC Verified
WEM's participation in this phase was very brief and very reasonable. We assisted the Commission in understanding the legislative history of SB 695, the fact that CCAs objected and that there would be an effort to reverse the provisions of the legislation that apply to CCAs. We warned that CCA customers would be concerned about any tendency to impose utilities' choice of non-preferred resources on CCAs, and also recommended that the Commission should beware of approving fossil fuel power under SB 695 and take action to ensure more preferred resources for bundled customers. We asked the Commission to avoid using SB 695 to approve IOU procurement of fossil fuel. While it would be impossible to assign a direct cost savings to our participation, our efforts appear to have prevented overly broad interpretations of the bill that would later have to be reconsidered, and could potentially cause increased costs for regulatory changes, and GHG mitigation. WEM's participation was very efficient and should be compensated in full. ISSUE ALLOCATION – We estimate issue allocation as follows: Cost allocation to CCAs: 25% = $554.38 Preferred v conventional resources: 25% = 554.38 Energy Auction –25% = 554.37 Legislative history and procedural matters 25% = 554.37	We disagree. While brief, WEM's participation was largely off-point and inefficient. To the limited extent it may have been on-point, it was inefficient and duplicative. We decline to compensate these efforts.

B. Specific Claim:*

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate $	Basis for Rate	Total $	Year	Hours	Rate $	Total $
M. Homec	2010	3.0	185	D.10-05-046	55.50	2010	3.0	185	-0-
B. George	2010	7.0	175	D.10-09-015	1,225.00	2010	7.0	175	-0-
B. George	2011	2.5	175	D.10-09-015	437.50	2011	2.5	175	-0-
					Subtotal: $2,217.50				***Subtotal: $0.00***
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate $	Basis for Rate*	Total $	Year	Hours	Rate $	Total $
B. George	2011	7.0	87.50	D.10-09-015	612.50	2011	7.0	87.50	-0-
					Subtotal: $612.50				***Subtotal: $0.00***
					TOTAL REQUEST: 2,830.00				**TOTAL AWARD: 0.00**

* We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.

C. CPUC Disallowances:

	Reason
1	We deny WEM's claim for compensation based on the following and for reasons outlined above: WEM filed two pleadings in this phase of this track of this matter. The first was a 4 ½ page set of comments filed on October 1, 2010 in response to the assigned Judge's September 14, 2001 ruling on implementation of SB 695 and the cost allocation Mechanism. The Judge's ruling asked six questions designed to elicit comments on "procurement rules that must be modified or refined to comply with the new statutory provisions (Ruling at 1)." Comments were to "identify any differences between SB 695 and existing procurement rules, and propose modifications or refinements to the CAM (Cost Allocation Mechanism) for Commission consideration in this proceeding" (Ruling at 2). Most of WEM's opening comments were outside the scope of the Judge's September 14th ruling. Those few comments that were within the scope of the ruling would have benefited from coordination with opening comments filed by TURN and reply comments filed seven days later by DRA. WEM's failure to coordinate with DRA and TURN resulted in a duplication of efforts. The second pleading filed by WEM was a ½ page opening comment on the assigned Judge's April 4, 2001 proposed decision. In six sentences, the comment supported the narrowness of the proposed decision, cited WEM's opposition to CAM, D.06-07-029, and SB 695, and asked the Commission to keep in mind the desires of Community Choice Aggregators to make their own choices when addressing matters of power choices that are being examined in other phases of this proceeding. This document does not rise to the level of a substantial contribution. Lastly, D.11-05-005 makes only one mention of the pleadings filed by WEM. The decision memorializes the fact that Women Energy Matters was one of eight parties who filed opening comments on the proposed decision (Decision at 5). The decision makes no other mention of any contribution made by WEM. The decision quotes extensively from the substantive comments of the other seven parties who filed opening comments, four of the same group of parties that filed reply comments, and the DRA's reply comments. For the above stated reasons, we deny in full this intervenor compensation claim of WEM.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?	No
B. Comment Period: Was the 30-day comment period waived?	No

Public Utilities Code Section 311, subdivision (g)(1), provides that a decision must be served on all parties and be subject to at least 30 days review and comment prior to a vote of the Commission. Rule 14.6(c)(6) provides that this 30-day comment period may be waived on proposed decisions issued in proceedings in which no hearings were conducted for a decision on a request for compensation pursuant to § 1801 et seq. Here, because of the denial of the request, the proposed decision of ALJ Peter V. Allen was mailed to the parties in accordance with § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

FINDINGS OF FACT

1. WEM has satisfied all the procedural requirements necessary to claim compensation in this proceeding.

2. WEM did not make a substantial contribution to D.11-05-005.

CONCLUSIONS OF LAW

1. WEM has not fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is not entitled to intervenor compensation for its participation in the proceeding leading to D.11-05-005.

2. WEM's request for intervenor compensation for its participation in the proceeding leading to D.11-05-005 should be denied.

3. This order should be effective today.

ORDER

IT IS ORDERED that the Request for Intervenor Compensation filed by Women's Energy Matters is denied.

This order is effective today.

Dated, _____San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?** No
Contribution Decision:	D1105005	
Proceeding:	R1005006	
Author:	ALJ Peter V. Allen	
Payer:	N/A	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Women's Energy Matters	07-11-11	$2,830	$0.00	No	lack of substantial contribution

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Martin	Homec	Attorney	Women's Energy Matters	$185	2010	N/A
Barbara	George	Attorney	Women's Energy Matters	$175	2010/2011	N/A

(END OF APPENDIX)