

Decision 11-07-026 July 14, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Energy Efficiency Risk/Reward Incentive Mechanism.

Rulemaking 09-01-019
(Filed January 29, 2009)

DECISION AWARDING INTERVENOR COMPENSATION TO WOMEN'S ENERGY MATTERS FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-12-049

Claimant: Women's Energy Matters (WEM)	For contribution to Decision (D.) 10-12-049
Claimed: \$6,234.38	Awarded: \$5,950 (reduced 9.5%)
Assigned Commissioner: Mark J. Ferron	Assigned ALJ: Thomas R. Pulsifer

PART I: PROCEDURAL ISSUES**A. Brief Description of Decision:**

This decision resolves the third and final phase of Risk/Reward Incentive Mechanism (RRIM) proceedings for the 2006-2008 cycle, for savings achieved due to energy efficiency programs administered by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SCG). As adopted in Decision (D.) 07-09-043, RRIM was designed to offer financial incentives or offsets (called penalties) as a function of utility success in achieving and surpassing the Commission's adopted energy savings goals. In this decision, we complete the true-up of the interim awards for the 2006-2008 period, and determine whether additional incentives earnings are due, or alternatively whether penalties apply.

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:	April 7, 2009	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	May 7, 2009	Correct
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	Correct
6. Date of ALJ ruling:	June 24, 2009	Correct
7. Based on another CPUC 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	Correct
10. Date of ALJ ruling:	June 24, 2009	Correct
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.10-12-049	Correct
14. Date of Issuance of Final Decision:	December 27, 2010	Correct
15. File date of compensation request:	February 25, 2011	Correct
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s description of claimed contribution to the final decision:

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
Overall, WEM sought to reduce costs to ratepayers by eliminating undeserved awards of EE profits. We upheld the veracity and definitiveness	The majority decision rejected the conclusions of ED’s final report and awarded \$68 million additional profits to the utilities	Although the CPUC did not agree with WEM’s substantive

<p>of the Energy Division True-Up Report. 7/23/10, at 2-3.</p> <p>WEM has warned throughout this proceeding that rewarding poor performance and bad behavior was a perverse incentive for utilities to continue to fail to meet their goals in the future. For example, 10/18/10 at 2-3.</p> <p>While we expressed a preference for the ALJ's PD over the Bohn Alternate (and Revised Alternate), we noted that the PD, too, wrongly engaged in revisions of parameters that utilities had been told would govern the RRIM decision and should not have been changed, especially in a cynical attempt to avoid imposing penalties and attempt to further justify previous undeserved awards to the utilities. 11/8/10, at 2-4.</p> <p>WEM made it clear to the Commission that we were disappointed that it would even consider overriding the independent EM&V overseen by its own staff, and therefore we refused to participate in second-guessing the ED report through a prolonged analysis of various scenarios that altered different parameters in order to achieve better outcomes for utilities. 7/23/10 WEM at 3-4.</p> <p>(Similarly we indicated our dismay with Pres. Peevey's alternate by refraining from commenting on it.)</p> <p>We praised the PD's rejection of ex ante values from the 2005 DEER. 10/18/10 WEM, p. 4. In earlier phases of this and other proceedings WEM explained why the Commission should not rely on values from the 2005 DEER because they were based on long-outdated</p>	<p>(for a total of \$211 m profits for the three year cycle). The decision was based on modified "Scenarios" that reverted to ex ante assumptions, rather than relying on ex post evaluations that recommended no additional profits. The decision claimed that utilities could not have known their portfolios would fail their evaluations. D1012049, at6-7.</p> <p>However, two Commissioners (Grueneich and Ryan) filed emphatic dissents. In particular, Comm. Grueneich's dissent contested the claims that utilities could not have known they would fail, and could not have adapted if they had known. She pointed out that the utilities were warned prior to filing program plans and early in the cycle (i.e. in 2005 and 2006) that their ex ante assumptions lacked credibility and their portfolios should be modified. Grueneich Dissent, at 2-3.</p> <p>As Comm. Grueneich pointed out, the ALJ's PD rejected the use of the 2005 DEER (which is the source of many of the ex ante assumptions that were overturned by the ex post evaluations). ALJ PD, at 21. This point was buttressed by WEM's long-time position that the 2005 DEER contained outdated values and was marred by the utilities controlling it. 10/18/10 WEM, p. 4. (see column on left for more discussion).</p> <p>Grueneich noted that PG&E failed more fully because they performed no modifications; other utilities' modifications were inadequate.</p>	<p>positions advocating for reliance on Energy Division ex post evaluations, the WEM arguments were still useful in framing and evaluating the relevant issues to be resolved. WEM's arguments were also relevant to the issues raised in the dissenting opinions.</p>
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<p>data. Our early objections at the time the 2005 DEER was released were consistent with the Commission’s warnings at the time the 2006-08 portfolios were created that the IOUs should expect these values to change and should modify their portfolios accordingly.</p> <p>WEM refused to settle with PG&E because of its exceptionally poor performance as well as its extensive misuse of funds. 7/23/10, at 9; 10/18/10, at 3-4.</p> <p>We urged the Commission to apply penalties for IOUs failure to meet goals as the RRIM mechanism promised. 10/18/10 at 3-4.</p> <p>WEM provided information about the impunity with which PG&E misuses EE funds, which displays disrespect for the Commission and its oversight processes. WEM 7/23/10, at 7-9.</p>	<p>The dissent reflect WEM’s position throughout this part of the proceeding that the Commission should not have engaged in second-guessing ED’s report through “scenario” analysis. 7/23/10 WEM, p. 3 It also reflected WEM’s concerns about PG&E’s exceptionally poor performance, even worse than other utilities. See, WEM 11-8-10 WEM Comment on Rev. Alt., at 4.</p> <p>Comm. Grueneich’s dissent concluded that the Commission should consider independent administration if the utilities desire for profits prevented them from adapting to market conditions. Grueneich Dissent at 4.</p> <p>This statement reflected WEM’s position throughout this proceeding that the RRIM “simply doesn’t work” — it does not sufficiently incentivize the utilities to do a good job and may provide perverse incentives for them to game the system, and therefore the Commission should take away utilities’ monopoly on EE administration. See extensive discussion 7/23/10, at 4-7. WEM 11-8-10 WEM, at 4.</p>	
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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	Yes
b. Were there other parties to the proceeding?	Yes	Yes
c. If so, provide name of other parties: TURN, NRDC, NAESCO, CLECA, IOUs		Correct
d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how claimant’s participation		

<p>supplemented, complemented, or contributed to that of another party:</p> <p>WEM has discussed with DRA and TURN generally which issues we are following, to reduce duplication.</p> <p>Where there was duplication, WEM supplemented and complemented others' comments. In particular, we urged the Commission to uphold ED's report and use ex post measurements as the original RRIM promised, and to refrain from pursuing modifications pursuant to different scenarios, e.g. 7/23/10 at 3-4. We also discussed why the underlying concept of the RRIM was unsuccessful at incentivizing strong EE programs but instead rewarded lowering standards and utility gaming. 7/23/10 at 5-8. (We also provided unique information on PG&E's EE misuse. 7/23/10 at 7-8). Comm. Grueneich's dissent echoed many of WEM's positions.</p> <p>Regarding the other parties: NRDC and WEM seldom overlap. NAESCO and CLECA were not very active in this phase.</p>	<p>WEM's claim demonstrates that it took reasonable steps to avoid unnecessary duplication of efforts with other parties.</p>
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

<p>Claimant's explanation as to how the cost of claimant's participation bore a reasonable relationship with benefits realized through claimant's participation</p>	<p>CPUC Verified</p>
<p>The Decision rejected the Proposed Settlement, in part because of WEM and others' strong objections to it. Settlement talks failed because WEM, DRA and TURN refused to settle with utilities. The final decision awarded less than the proposed settlement; therefore WEM's opposition saved money for ratepayers.</p> <p>Strongly worded dissents by two Commissioners demonstrated that WEM had made a substantial contribution, at least to their thinking, even though the majority decided to provide awards to the utilities.</p> <p>Commissioner Grueneich's dissent (cited above) stated that Commissioner Peevey's alternate wrongly claimed that the utilities could not have foreseen that their exaggerated ex ante assumptions would be drastically reduced by honest ex-post evaluation; she pointed out that they were clearly informed of that in advance. She also warned that undeserved rewards sent the wrong signal to utilities – that they could ignore their goals with impunity - and that was a bad precedent. The dissents echoed many of WEM's positions.</p> <p>WEM's participation saved ratepayers from potentially paying millions more in undeserved claims; it also added to a record that could result in rehearing or modification at a later date, potentially saving even more. WEM's participation overall was very efficient, thanks to our many years'</p>	<p>We make some minor adjustments to WEM's claim for excessive time spent on compensation preparation matters. After this reduction, the remainder of WEM's hours are reasonable and should be compensated</p>

experience in CPUC proceedings addressing RRIM and EM&V issues, which allowed us to digest complex information quickly in this proceeding. We also saved money for ratepayers by declining to participate in the time-consuming scenario analysis, which we considered unnecessary and wasteful.

(Finally, this proceeding will continue in its final phase to consider whether or not to extend the RRIM. While it is speculative what might happen in the future, it is possible that the dissents to this decision might result in changes to the future RRIM (or elimination of it). As the dissents were influenced by WEM’s consistently upholding independent evaluations and higher standards to protect ratepayers from overpayments, as well as our advocacy for ending the RRIM and pursuing other, non-utility administrative options, it is possible that our participation will provide even more substantial savings in the future.)

Additional WEM Comments:

In this Amended Request, WEM provides an approximate time-allocation by issue pursuant to Rule 17.4(b)(3) and (4) and D98-04-059 (at 47-48). We provide an Issue Allocation Chart, below, and also in the Issues allocation with our time sheets. We also provide a detailed description of the issues and sub-issues (see next box). (Note: it would be nearly impossible to determine exactly how much time was spent on each major issue or sub-issue.)

Issue allocation

ED process (evaluations)	\$1,532.70
EE resource	\$288.75
EM&V	\$756.15
GP	\$189.58
Procedural	\$310.63
RRIM	\$592.08
Scenarios	\$832.71
Settlement	\$747.40
Total	\$5,250.00

We provide the following key to major issues, sub-issues, and abbreviations:

Issues	Sub-issues	Issue description
ED Process (evaluations)		Energy Division process & timing for EM&V studies & reports
	TRUE	Final True-Up (final comprehensive EM&V report for a whole cycle)
	VR	Verification Report (interim limited EM&V report for part of a cycle)
EM&V		Evaluation, Measurement, and Verification
	CS	Cumulative Savings
	DEER	DEER values & updates (e.g. for Estimated Useful Life (EULs); Net to Gross (NTG), interactive effects, CFLs (compact fluorescent lights))
	Ex Ante, Ex Post	Predictions in program planning documents (Ex ante); Completed & measured savings (ex post)
EE Resource GP		EE as a reliable resource for the grid General Practice (generic responsibilities of any party in a proceeding)
Misuse Procedural		Improper use of EE funds Resolving questions re access to documents and timing of comments
RRIM		Underlying concepts about incentivizing utilities
Scenarios		Analysis of multiple scenarios altering the values and assumptions in the final report and reverting to ex ante assumptions & values
Settlement		Pertaining to proposed settlement(s)
	GS	General – re Settlement
	IOU Reports	Utility-reported savings claims

Discussion of Issues WEM focused on in this phase

As the Scoping Memo stated:

[E]valuation, measurement and verification EM&V of RRIM earnings claims, have proved to be highly controversial, quite complex, and not as easily or as timely resolved as had been hoped. Scoping Memo, p 2.

The proceeding remained controversial up to and including the final decision.

The Commission chose to rely on scenarios that accepted IOUs' ex ante assumptions (with

further modifications) instead of ED ex post evaluations, claiming that utilities could not have known how badly their portfolios would fail, or how they could have modified the portfolios to succeed.

WEM continued to uphold the strong EM&V in the ED reports, and advocated for keeping the rules of the game as they were originally envisioned in the RRIM – which required ex post evaluations and updating key assumptions.

We felt that the effort to revise the ED reports through “scenarios” was a fundamental betrayal of ratepayers; changing the rules of the game to benefit utility shareholders. We chose not to engage in scenario analysis, as evidence of our disapproval. We continued to discuss why the Commission should look at the bigger picture to understand that the RRIM was not working to incentivize utilities to do better programs, and even if it did, there were things that needed to be addressed to make EE perform as a real resource, which were being completely ignored in the RRIM. We also advocated for penalties for PG&E, since it failed ED evaluations even worse than the other IOUs, and we pointed out that PG&E’s misuse of funds for political ends should have led to deeper questioning about whether PG&E should get profits on these programs.

B. Specific Claim*:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
B. George	2010	30.00	175	D.10-09-015	5,250	2010	30.00	175	5,250
Subtotal: \$5,250						Subtotal: \$5,250			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
B. George	2010	11.25	87.50	½ D.10-09-015 rate	984.38	2010	8.00	87.50	700
Subtotal: \$984.38						Subtotal: \$700			
TOTAL REQUEST: \$6,234.38						TOTAL AWARD: \$5,950			

*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:

Item	Reason
2010-George Intervenor Compensation Claim Preparation Hours	WEM requests a total of 11.25 hrs for George’s time spent preparing WEM’s compensation claim. This is equal to 37.5% of George’s time spent on substantive matters. We find this amount of time excessive given the scope of the task and the fact that the claim relates to only one decision. We approve a more reasonable amount of 8 hrs for this task.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?

No

B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6))?

Yes

FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision (D.)10-12-049.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$5,950.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Claimant is awarded \$5,950.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company and Southern California Gas Company shall pay the claimant their respective shares of the award. We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company and Southern California Gas Company to allocate payment responsibility among them, based on their 2010 electric and gas revenues, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15,

beginning May 11, 2011, the 75th day after the filing of claimant's request, and continuing until full payment is made.

3. The comment period for today's decision is waived.

This decision is effective today.

Dated July 14, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1107026	Modifies Decision? No
Contribution Decision:	D1012049	
Proceeding:	R0901019	
Author:	ALJ Thomas R. Pulsifer	
Payer(s):	Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company and Southern California Gas Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Women's Energy Matters	02-25-11	\$6,234.38	\$5,950	No	excessive claim preparation hours

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Barbara	George	Expert	Women's Energy Matters	\$175	2010	\$175

(END OF APPENDIX)