

Decision 06-08-009 August 24, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Gas and Electric Company (U 39-E) for Approval of the 2006-2008 Energy Efficiency Programs and Budget.	Application 05-06-004 (Filed June 1, 2005)
Southern California Gas Company (U 904-G) for Approval of Natural Gas Energy Efficiency Programs and Budgets for Years 2006 Through 2008.	Application 05-06-011 (Filed June 1, 2005)
Southern California Edison Company (U 338-E), for Approval of its 2006-2008 Energy Efficiency Program Plans and Associated Public Goods Charge (PGC) and Procurement Funding Requests.	Application 05-06-015 (Filed June 2, 2005)
San Diego Gas & Electric Company (U 902-E) for Approval of Electric and Natural Gas Energy Efficiency Programs and Budgets for Years 2006 Through 2008.	Application 05-06-016 (Filed June 2, 2005)

**OPINION DENYING REQUEST OF WOMEN'S ENERGY MATTERS
FOR INTERVENOR COMPENSATION**

I. Summary

This decision finds that Women's Energy Matters (WEM) did not make a substantial contribution to Decision (D.) 05-09-043 or D.05-11-011 in this

consolidated proceeding and denies its request for \$22,963.54¹ in intervenor compensation.

II. Background

D.05-09-043 in this proceeding authorized approximately \$2 billion in program funding (excluding evaluation, measurement and verification (EM&V) elements) for California's largest energy utilities (Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas)), collectively referred to as the investor-owned utilities (IOUs), for their 2006-2008 energy efficiency portfolio plans. D.05-11-011 authorized another \$163 million for the EM&V elements (approximately 7.6% of the overall portfolio funding).

D.05-01-055 earlier established the administrative structure for post-2005 energy efficiency activities, including EM&V elements. That decision directed the Commission's Energy Division (ED) to assume the management and contracting responsibilities for all related EM&V studies for program year (PY) 2006 and beyond. These studies will be used to (1) measure and verify energy and peak load savings for individual programs, groups of programs and at the portfolio level, (2) generate the data for savings estimates and cost-effectiveness inputs, (3) measure and evaluate the achievements of the performance basis, and (4) evaluate whether programs or portfolio goals are met.

Consistent with the working relationships the Commission has established with the California Energy Commission (CEC) in this proceeding, the Commission anticipated in D.05-01-055 that CEC staff would provide ED with

¹ Adjusted for computational errors in request. Original request was \$29,296.04.

technical input and, if needed, staffing support for EM&V and Research and Analysis responsibilities.² ED and CEC staffs are collectively referred to as “Joint Staff” in this proceeding.

D.05-01-055 also recognized that IOU portfolio managers and program implementers need access to market information to perform their responsibilities. To meet this need, the Commission adopted a process that allowed them to manage a limited subset of evaluation studies.

D.05-04-051 addressed threshold EM&V issues for post-2005 programs, and directed Joint Staff, “after obtaining technical expertise from the IOUs and other EM&V experts as necessary, to develop a draft proposal for EM&V plans for the PY2006-PY2008 program cycle.”³ In recognition of the difficulty for EM&V plans to be developed in a budget vacuum, the Commission found that 8% of program funding would be a reasonable guideline to use in developing an EM&V budget for this three-year program cycle.⁴ In the months that followed the issuance of D.05-04-051, Joint Staff developed budget plans based on an analysis that examined the evaluation category and study component level of measurement needs. Joint Staff shared their analysis and discussed the line items and individual project budgets with the evaluation experts from the IOU administrators, and made changes based on this feedback.

On August 30, 2005, the assigned Administrative Law Judge (ALJ) issued for comment the “Joint Staff Request to CPUC for EM&V Budget Authorization

² D.05-01-055, pp. 10-11, 108, 120-121, and 125.

³ D.05-04-051, pp. 65-66.

⁴ *Ibid.*, pp. 69-70.

and EM&V Fund Shifting Authority” (Joint Staff Request). This document included the proposed EM&V plans of each of the IOUs for their allocated portions of EM&V funding. Opening comments were due September 16, 2005.

Several parties filed comments on the Joint Staff Request, including WEM on September 6, 2006. We note that WEM also filed comments on the IOUs’ energy efficiency portfolio plans (June 30, 2005), case management issues (July 21, 2005), EM&V plans and budgets (October 3, 2005), the ALJ’s Draft Decision (November 7, 2005), and PG&E’s motion to bifurcate the IOUs’ portfolio plans (February 27, 2006).

WEM’s subject request is for claimed contributions to D.05-09-043 and D.05-11-011. PG&E and SCE both filed responses opposing WEM’s request. This consolidated proceeding remains open to address ongoing energy efficiency compliance issues.

III. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor’s participation if the intervenor makes a substantial contribution to the Commission’s proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation

- within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
 3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
 4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
 5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
 6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

Though we deny compensation to WEM, the procedural issues (Items 1-4) are discussed below briefly, followed by separate discussions on Items 5-6.

IV. Procedural Issues

The PHC in this matter was held on June 22, 2005. WEM timely filed its NOI on July 22, 2005.

Section 1802(b)(1) defines a “customer” as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. On November 10, 2005, the assigned ALJ ruled that WEM is a customer pursuant to § 1802(b)(1)(C).

WEM filed its request for compensation on January 20, 2006, within 60 days of D.05-11-011 being issued. Pursuant to § 1804(a)(2)(B), WEM made a showing of financial hardship in its request for compensation. We find that WEM meets the financial hardship pursuant to § 1802(g), as the economic interests of its individual members are small in comparison to the costs of effective participation.

In view of the above, we find that WEM has satisfied the procedural requirements necessary to make its request for compensation in this proceeding.

V. Substantial Contribution

We find that WEM did not make substantial contributions to the subject decisions in this proceeding. Since WEM did not make a substantial contribution, we deny its request for compensation.

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1801.3(f) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it

contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁵

A. Responses to WEM's Compensation Request

Pursuant to § 1804(c), parties may file a response to a compensation request within 30 days of its filing. PG&E and SCE timely filed responses to WEM's request on February 16 and 17, 2006, respectively. PG&E and SCE generally make the same arguments (below) opposing the request, and PG&E further recommends the request be denied:

- In its request, WEM paraphrased language from the subject decisions, but did not describe any contributions it made in the determinations adopted in those decisions.
- WEM's allegations that the IOUs were not complying with reporting requirements were not adopted (D.05-09-043, pp. 52-53, and Finding of Fact 66).
- WEM duplicated issues or recommendations previously made by TecMarket Works, Energy Division's consultant, and other parties in the proceeding.
- WEM's recommendations regarding program funding for non-utilities were previously rejected in D.05-01-055.
- WEM addressed issues outside the scope of the proceeding.
- As stated in the subject decisions, WEM's arguments were generally without merit, and were therefore rejected.
- WEM alleged that portions of the report by Joint Staff were wrongly kept confidential. The subject decisions found no basis for these allegations other than elements regarding privacy of individual names.

⁵ D.98-04-059, 79 CPUC 2d, 628 at 653.

- WEM should be denied any compensation for its participation in the California Measurement Advisory Committee (CALMAC), an informal body organized and managed by the utilities, and not officially recognized as a party to the proceeding.

As discussed below, the arguments in opposition to WEM's request are well-taken.

B. Discussion of Substantial Contribution

Our review of the record clearly shows that the Commission explicitly rejected WEM's positions on issues addressed by D.05-09-043, including:

- WEM's assertions criticizing the Case Management System and the TecMarket Works report (Section 6.1);
- WEM's contention that the IOUs over-emphasized lighting in their portfolio plans (Section 6.4);
- WEM's assertion that the reasonableness of overall program funding should be called into question (Section 8.6 and Finding of Fact 60); and
- WEM's assertion that the IOUs were "double-dipping" by rewarding non-compliance with established procedures (Section 8.10, and Finding of Fact 66).

Similarly, our review of D.05-11-011 shows that:

- WEM's objection to Joint Staff's recommendation that the IOUs manage statewide saturation and energy use surveys was without merit (Section 5, p. 11); and
- WEM provided no basis for its comments regarding the alleged inappropriately confidential treatment of matters in the program database. In particular, we observed that WEM alleged without any substantiation that "energy efficiency reports that were once provided to the public...have been disappearing behind a veil of secrecy." (Section 5, p. 13.)

We agree with the arguments made by SCE and PG&E opposing the request. Our own review of WEM's request finds that it did not make a

substantial contribution, as defined above, to D.05-09-043 or D.05-11-011, nor did it materially supplement, complement, or contribute to the presentation of another party, or to the development of a fuller record that assisted us in making a decision. We therefore deny WEM’s request.

Our records show that we addressed three previous compensation requests from WEM in 2006. Two of these three requests were denied for failure to make a substantial contribution (D.06-03-023 and D.06-04-023), and the third request was reduced by approximately two-thirds because of a disallowance of compensable hours. If WEM continues to participate in our proceedings, WEM is advised to focus on the critical elements of making a substantial contribution, as described earlier in this decision.

VI. Reasonableness of Requested Compensation

WEM requests \$22,963.54 for the participation of Barbara George, its executive director, as follows:

<u>Advocate Fees</u>	Year	Hours	Amount
Barbara George	2005	102 hrs. @\$170/hr.	\$17,340.00
	2005	64 hrs. @ \$85/hr. ⁶	\$ 5,440.00
<u>Related Expenses</u>			
Photocopying			\$ 83.54
Messenger Service			\$ 100.00
Total			\$22,963.54

⁶ Time for compensation request preparation and travel at ½ requested rate.

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. However, in this case we find that WEM did not make a substantial contribution, and therefore make no findings on the reasonableness of its claimed fees or costs.

Though no compensation is awarded here, for future reference we address WEM's request for an hourly rate of \$170 for George for work performed in 2005. In D.05-11-031, we adopted guidelines and principles for setting intervenors' hourly rates for work performed in 2005. Except under specific conditions, D.05-11-031 generally does not authorize hourly rate increases for 2005 above those previously approved for 2004. In D.06-04-018, and earlier in D.05-01-007, we adopted a rate of \$150/hour for George for work performed in 2004. WEM did not sufficiently show in its compensation request that it meets the specific conditions in D.05-11-031 to merit an increase for 2005 work above the \$150/hour rate previously approved for 2004 work.

VII. Comment on Draft Decision

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

VIII. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner, and Meg Gottstein is the assigned ALJ in this proceeding.

Findings of Fact

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

2. WEM did not make a substantial contribution to D.05-09-043 or D.05-11-011 in this consolidated proceeding, as described herein.

3. WEM has not made a showing sufficient under the guidelines in D.05-11-031 to justify an increase in our last approved hourly rate for WEM's advocate. Thus, even if WEM had made a substantial contribution as claimed, the award of compensation would be based on the last approved hourly rate.

4. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. WEM did not make a substantial contribution to the subject decisions in this consolidated proceeding, and therefore has not fulfilled all of the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.

2. WEM is not entitled to intervenor compensation for its claimed contributions to D.05-09-043 and D.05-11-011.

3. WEM's claim for intervenor compensation should be denied.

4. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

5. This order should be effective today.

O R D E R

IT IS ORDERED that:

1. The request of Women's Energy Matters for an award of intervenor compensation for substantial contributions to Decision (D.) 05-09-043 and D.05-11-011 is denied.

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

This order is effective today.

Dated August 24, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0608009	Modifies Decision?
Contribution Decision(s):	D0509043 and D0511011	
Proceeding(s):	A0506004, A0506011, A0506015, A.0506016	
Author:	ALJ Gottstein	
Payer(s):		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
Women's Energy Matters	1/20/06	\$22,963.54	\$0	No	Failure to make substantial contribution

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	\$170	2005	N/A