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Decision 07-11-024 November 16, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 06-02-013 (Filed February 16, 2006)
Order Instituting Rulemaking to Examine the Commission's post-2005 Energy Efficiency Policies, Programs, Evaluation, Measurement and Verification, and Related Issues.	**(NOT CONSOLIDATED)** Rulemaking 06-04-010 (Filed April 13, 2006)

OPINION CLARIFYING REQUIRED SHOWING FOR AWARDS OF COMPENSATION TO INTERVENORS FOR THEIR SUBSTANTIAL CONTRIBUTIONS TO PROCUREMENT REVIEW GROUPS, PEER REVIEW GROUPS AND PROGRAM ADVISORY GROUPS

This decision is entered in both of the above-captioned proceedings to provide guidance to parties seeking intervenor compensation for work performed in Procurement Review Groups (PRGs), Peer Review Groups and Program Advisory Groups for procurement and energy efficiency portfolio development of 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).

1. Background

In Rulemaking (R.) 06-02-013, we continue to review the long-term energy procurement strategies and plans for PG&E, SCE and SDG&E. In a predecessor

proceeding, R.01-10-024, we established PRGs to facilitate the utilities' ability to meet their service obligations to customers immediately after the electricity crisis. The expectation was that the PRG process, although strictly advisory, would allow parties in upcoming utility filings to identify potentially contentious issues in advance and to work on a solution before the utilities submitted formal filings. In the continuing procurement process, the PRG members serve as peer reviewers and work with the utilities as the utilities design and implement their procurement plans. Members consist of staff from the Commission's Energy Division and the Division of Ratepayer Advocates (DRA), as well as consumer and ratepayer groups.

Because the Commission expected the PRG process to provide an important forum for identifying opportunities and resolving controversies related to utility procurement strategies, we found that intervenors participating in the PRGs may seek compensation for their work. The Commission established a similar forum for considering the development of utility energy efficiency portfolios. Decision (D.) 05-01-055 set up both Peer Review and Program Advisory Groups for energy efficiency and also found that members may request intervenor compensation for their participation in these groups. In D.07-10-032 issued in R.06-04-010 on October 19, 2007, we eliminated energy efficiency Program Advisory Groups in favor of other processes for considering strategic deployment of energy efficiency programs and measures. Energy efficiency Peer Review Groups, however, continue to function. The guidelines discussed in this decision are applicable to Program Advisory Group activities conducted before the issuance of D.07-10-032.

The Commission has granted compensation to intervenors for their participation to PRGs, Peer Review Groups, and Program Advisory Groups in

several decisions. In addition, several requests for compensation are pending that seek compensation for these types of work. To ensure that in all pending and future requests for compensation provide the type of information we need to assure ratepayers, who assume the costs of the intervenor compensation program, that such costs are justified, this decision provides PRG, Peer Review Group and Program Advisory Group participants with additional guidance about the type of information the Commission needs in requests for intervenor compensation.

In all future compensation requests involving these groups, we direct intervenors to provide the documentation needed to comply with the guidelines articulated herein so that such requests do not need to be supplemented at the request of the assigned Administrative Law Judge or Commissioner. PRG, Peer Review Group and Program Advisory Group members with pending requests for compensation should supplement their requests within 30 days from the effective date of today's decision, as appropriate, to provide additional explanation or information discussed in these guidelines that may not have been presented in their original submittals. Nothing in today's decision, however, is intended to preclude the assigned Administrative Law Judge or Commissioner from requesting further explanation, documentation or information that may be of assistance to them in evaluating intervenor compensation requests.

2. Public Utilities Code Sections 1801-1812

PRGs, Peer Review Groups and Program Advisory Groups and other non-traditional forums, such as settlements, present particular challenges for intervenors and the Commission in the context of intervenor compensation. Some of the work undertaken in such collaborative processes by its nature results in activities, if not analysis and ideas, that overlap with the work of others. Also,

Administrative Law Judges do not directly oversee this work and, therefore, cannot make a first-hand assessment of an intervenor's effectiveness and ultimate contributions to a Commission decision. In spite of these challenges, we have sought to provide compensation to intervenors who participate in these groups to the extent such participation is consistent with Public Utilities Code §§ 1801-1812.[1]

In order to compensate intervenor groups, §§ 1801-1812 establish the criteria under which an intervenor may be compensated for participating in Commission proceedings. Most germane to our order today are the following requirements:

> The intervenor must demonstrate 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).)
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> The customer's participation must not duplicate the presentations of other parties although it may materially supplement, complement, or contribute to the presentation of another party. (§§ 1801.3(f) & 1802.5.)
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> "Compensation" means payment for all or part, as determined by the Commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding. (§ 1802(a).)

The statute provides the Commission with latitude on how to implement the provisions of §§ 1801-1812 and the Commission has interpreted the statute to encourage participation in its proceedings. The Commission has issued literally

[1] All statutory references herein are to the Public Utilities Code unless otherwise indicated.

hundreds of orders granting intervenor compensation over the years. Some are routine. Others address compensation policies and practices generally or the treatment of unique circumstances. Our decisions on the issuance of intervenor compensation have evolved and continue to evolve according to the information needs of the Commission and interests of ratepayers.

In all cases, we have required intervenors to provide enough information to satisfy us that the intervenor made a substantial contribution, that the intervenor's work did more than duplicate the work of others, and that the amount requested is reasonable. Generally, these and other elements of our decisions ensure that the amount we award an intervenor is justified on behalf of ratepayers who assume these costs.

3. Additional Guidelines for PRG, Peer Review Group, and Program Advisory Group Intervenor Compensation

When we stated in D.02-10-062 that active participation by intervenors in PRGs makes a significant contribution, we did not intend to forgo our analysis of "substantial contribution, or "reasonableness of the amount requested." Accordingly, to promote the efficient and effective review of intervenor compensation requests that involve PRGs, Peer Review Groups, and Program Advisory Groups, we clarify that compensation requests must include enough information for the Commission to make the findings required by §§ 1801-1812.

To evaluate the reasonableness of the requested compensation, the intervenor should explain the types of programs, policies, practices or documents reviewed in connection with its PRG, Peer Review Group, or Program Advisory Group work and how that work contributed to an outcome that benefited ratepayers.

The intervenor should also address how its work added value to the review or advisory process because of the intervenor's unique analysis,

perspective or work product or because of specific expertise or skills of the intervenor.

Some intervenor participation in these groups may overlap with other group members by necessity. We understand that many parties may attend the same meetings or review the same documents. Those activities would qualify for compensation as long as the intervenor's contributions are adequately described and distinguished from those of other members, consistent with § 1802.5. The intervenor should also demonstrate reasonable collaboration with other group members to minimize duplication of effort.

In order to effectively evaluate duplication and overall reasonableness of the requested award, we are interested in knowing the date, duration, and location of the PRG, Peer Review Group, or Program Advisory Group meeting for which compensation is requested and we are also interested in knowing whether the intervenor attended in person or participated telephonically. If more than one member of the intervenor's group attends a meeting, we expect a justification for the staffing decision.

Compensation requests need not publicly disclose confidential information. An intervenor that relies on such information may include it in the request for compensation by filing the information with a motion to accept the request under seal.

Our intent is to provide compensation for advocacy on behalf of ratepayers for actively participating in these groups. In the past, the Commission has reviewed intervenor timesheets which include tasks that might be considered staff work, *i.e.,* work normally conducted under the direction of either a utility or Commission manager, including the implementation of program

details according to that manager's discretion. We will not compensate intervenors for this type of work.

Nor will we compensate under the intervenor compensation statute for participation in ad hoc technical review committees that Energy Division may informally convene outside of these groups, as needed, in order to assist in carrying out its ongoing evaluation, measurement and verification (EM&V) responsibilities. In D.05-01-055, we encouraged Energy Division to draw on the experience of the Public Interest Energy Research (PIER) program run by the California Energy Commission (CEC) in creating such committees for its own purposes. Based on the CEC's experience with the PIER ad hoc committees, we concluded that this approach could draw on a pool of EM&V experts in California and other states who are willing and able to provide Energy Division with technical feedback at "very little or no cost" to ratepayers.[2] Energy Division is currently investigating the payment of per diems to participants in ad hoc technical review committees. However, we do not modify D.05-01-055 to identify this type of participation in energy efficiency implementation activities as eligible for intervenor compensation, as one intervenor has recently suggested in R.06-04-010.[3]

Our order today suggests how an intervenor's request for compensation may demonstrate substantial contributions and overall reasonableness. The intervenor must determine what information it can or will provide to support its

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[2] D.05-01-055, issued on January 27, 2005 in R.01-08-028, *mimeo.,* pp. 109-110.

[3] *See Motion of the Utility Reform Network for Clarification of the Administrative Law Judge's Ruling Finding the Utility Reform Network Eligible to Claim Intervenor Compensation in this Proceeding,* April 13, 2007, R.06-04-010.

request. As always, the intervenor assumes the risk that it may not be fully compensated. However, we want to assure intervenors that we value their participation in these groups.

4. Comments on Proposed Decision

On September 18, 2007, the proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with § 311 and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Aglet Consumer Alliance (Aglet) and The Utility Reform Network (TURN) filed joint comments on October 9, 2007. Greenlining Institute also filed comments on October 9, 2007. SCE filed reply comments on October 15, 2007. With the exception of minor clarifications and edits, we do not modify the proposed decision in response to comments. TURN and Aglet recommend that the information requirements articulated in today's decision be prospective only, and not be applied to their pending requests for intervenor compensation. However, these requirements solicit the type of information the Commission needs to effectively evaluate the substantial contribution of intervenors in these proceedings, and, therefore, TURN and Aglet should supplement their filings as provided for in today's decision if such information is not already contained in their filings. Greenlining Institute suggested we review the function of the PRGs. This matter is beyond the scope of this decision.

5. Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Carol Brown and David Fukutome are the assigned Administrative Law Judges in R.06-02-013. Dian M. Grueneich is the assigned Commissioner and Meg Gottstein, Steven Weissman, and Kim Malcolm are the assigned Administrative Law Judges in R.06-04-010.

Findings of Fact

1. The Commission has found that intervenors who participate in PRGs, Peer Review Groups, and Program Advisory Groups may qualify for intervenor compensation.

2. The type of information required by the Commission to evaluate requests for compensation has evolved and continues to evolve.

3. In D.07-10-032, we eliminated Program Advisory Groups.

4. The intervenors who seek compensation for their work in PRGs, Peer Review Groups, and Program Advisory Groups would benefit from guidance on the type of information their compensation requests should include.

Conclusions of Law

1. Pub. Util. Code §§ 1801-1812 provides latitude to the Commission in the implementation of its provisions.

2. The guidance provided herein to parties who seek intervenor compensation for participation in PRGs, Peer Review Groups, and Program Advisory Groups and is reasonable and consistent with the law.

3. The guidelines in this decision apply to work performed by intervenors in Program Advisory Groups before we issued D.07-10-032.

O R D E R

IT IS ORDERED that:

1. The Commission hereby provides guidance to intervenors seeking compensation under Public Utilities Code §§ 1801 and 1812 for participation in Procurement Review Groups, energy efficiency Peer Review Groups, and energy efficiency Program Advisory Groups prior to issuance of Decision 07-10-032.

2. Members of Procurement Review Groups, Peer Review Groups or Program Advisory Groups with pending requests for compensation shall supplement their requests within 30 days from the effective date of today's decision, as appropriate, to provide additional explanation or information discussed in these guidelines that may not have been presented in their original submittals.

3. Nothing in today's decision shall preclude the assigned Administrative Law Judge or Commissioner from requiring further explanation, documentation or information that may be of assistance to them in addressing the compensation request.

4. These proceedings are not consolidated.

This order is effective today.

Dated November 16, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners