

**PROPOSED DECISION**Agenda ID #19663 [\(Rev. 1\)](#)

Ratesetting

[8/5/2021 Item #25](#)Decision **PROPOSED DECISION OF ALJ SISTO** (Mailed 7/1/2021)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of The Utility Reform  
Network for an Award of Intervenor  
Compensation for Substantial  
Contribution to Wildfire Safety  
Division Decision Regarding Southern  
California Edison Company Request  
for 2020 Safety Certification.

Application 20-11-002

**DECISION DENYING COMPENSATION FOR THE UTILITY REFORM  
NETWORK'S CONTRIBUTION TO WILDFIRE SAFETY DIVISION  
STAFF LETTERS REGARDING SOUTHERN CALIFORNIA  
EDISON COMPANY 2020 SAFETY CERTIFICATION**

**Summary**

Sections 1801-1812 of the Public Utilities Code define the circumstances for which intervenors can be awarded compensation for significant contribution to final decisions of, or formal actions adopted by, the full Commission. The Utility Reform Network (TURN) provided feedback to a Wildfire Safety Division (WSD) staff-led process that approved Southern California Edison Company's (SCE) request for a 2020 Safety Certification. On November 13, 2020, TURN filed the instant Application seeking intervenor compensation for its contribution to WSD's consideration of SCE's safety certification. TURN's request is denied, and this proceeding is closed.

## 1. Background

On October 25, 2018, the Commission launched an Order Instituting Rulemaking (R.) 18-10-007 to implement the provisions of Senate Bill (SB) 901 related to electric utility wildfire mitigation plans (WMP) and the cost recovery related to establishing and updating those plans.<sup>1</sup> Separately, the Commission established the Wildfire Safety Division (WSD) as required under Public Utilities Code Section 326<sup>2</sup> to oversee utility compliance with the WMP requirements pursuant to SB 111.<sup>3</sup> WSD is tasked with preliminary review of various aspects of the utilities' wildfire safety and mitigation efforts, prior to and following the Commission's evaluation of the proposed cost recovery and final approval of the full WMPs.

Southern California Edison Company (SCE) submitted its 2020-2022 WMP on February 7, 2020. The Commission ratified the WSD's approval of SCE's WMP, with conditions, via Resolution WSD-004 on June 11, 2020.

On June 19, 2020, SCE submitted a request for a safety certification after WSD provided guidance on the submission requirements for 2020 Safety Certification requests.<sup>4</sup> On June 25, 2020, WSD director Caroline Thomas Jacobs issued a letter seeking stakeholder feedback on the safety certification documents filed by SCE and the other investor-owned utilities. The Utility Reform Network (TURN) provided consolidated comments on SCE and San Diego Gas & Electric

---

<sup>1</sup> Statutes of 2018, Chapter 626.

<sup>2</sup> Other statutory references cite to the Public Utilities Code unless otherwise defined.

<sup>3</sup> Statutes of 2019, Chapter 81, Section 7.

<sup>4</sup> SCE's request was submitted under written guidance provided by WSD on May 6, 2020, pursuant to Section 8389(e)(1).

Company's safety certification requests on July 9, 2020, pursuant to the guidance and solicitation of stakeholder comments issued by WSD on June 25, 2020.

On September 17, 2020, WSD issued a letter approving SCE's safety certification request, pointing to the staff-led public process described above.<sup>5</sup> The letter acknowledged TURN's contribution to its review of SCE's proposed safety certificate, but WSD ultimately found that SCE conditionally met the requirements defined in Sections 8386.3(c), and 8389(e)(1) through 8389(e)(7). However, WSD director Caroline Thomas Jacobs' letter approving SCE's safety certification request was never considered or adopted by the full Commission.<sup>6</sup>

In Application (A.) 20-11-002, TURN encourages the Commission to consider its contribution to the WSD staff-led effort to be eligible for intervenor compensation. TURN believes that the letters issued by the WSD Director approving utilities' safety certification "should be viewed as decisions of the commission for the purposes of the intervenor compensation statute, in order to encourage intervenor participation and the significant benefits that derive from this program."<sup>7</sup> Further, TURN argues that "[b]ecause wildfire safety is a critical component of public utility regulation over which WSD has now been given

<sup>5</sup> WSD's letter states that it "represents the WSD's certification that SCE has met all the relevant requirements of Public Utilities Code § 8389... regarding its 2020 Safety Certification. This Safety Certification is valid for twelve months from issuance and has only the force and effect given to it by §§ 451.1(c) and 8389." It also notes WSD-led workshops but bases its determination largely on the documents submitted by SCE and the utility's responses to WSD staff data requests.

<sup>6</sup> A safety certification allows an electrical corporation to recover catastrophic wildfire costs from its ratepayers, or from the Wildfire Insurance Fund, if applicable, using a burden of proof test that is easier to satisfy than would be the case if it did not have a safety certification. To obtain a safety certification, the electrical corporation must satisfy the conditions of Public Utilities Code Section 8389 (e)(1-7) after the Commission has approved the utility's WMP.

<sup>7</sup> Application (A.) 20-11-002 Part 1, Section C at 3-4.

decision-making authority, WSD's decisions should be viewed as decisions of the commission."<sup>8</sup>

TURN's application is uncontested, so the legal interpretations of the statutes defining work eligible for intervenor compensation comprise the outstanding issues in this proceeding.

A prehearing conference in A.20-11-002 was held on February 4, 2020, to discuss the issues of law and fact and determine the need for hearing and schedule for resolving the matter, and a Scoping Memo was issued by Commission President Marybel Batjer on March 25, 2021.

## **2. Issues Before the Commission**

The following issues are within the scope of this proceeding:

1. Should Public Utilities Code Sections 1802(g) and 1804(c) be interpreted to apply to the public process the Wildfire Safety Division staff used to inform the September 17, 2020, letter approving Southern California Edison's safety certification as part of its Wildfire Mitigation Plan?
2. Are the hours TURN's representatives spent providing comment on SCE's safety certification eligible for intervenor compensation?
3. Did Assembly Bill (AB) 1054, as adopted in July 2019, intend to provide the Wildfire Safety Division's staff letters the same authority as decisions, actions, or resolutions adopted by the full Commission for the purposes of intervenor compensation?<sup>9</sup>

## **3. Intervenor Compensation Claims and Unratified Staff Directives**

Sections 1801-1812 define the requirements for parties to seek and receive intervenor compensation for work related to a Commission proceeding.

---

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

Specifically, Section 1802(g) defines a proceeding as “an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.”

Section 326 required the Commission to, no later than January 1, 2020, establish the WSD within the Commission to, among other tasks, oversee and enforce compliance with wildfire safety; develop risk-reduction performance metrics and recommend to the Commission metrics that should be included in an electrical corporation’s wildfire mitigation plan; and retain staff including experts in wildfire, weather, climate change, and emergency response.<sup>10</sup>

Section 8389 requires the Commission to approve a WMP for all electrical and gas utilities that includes “an executive compensation structure approved by the division.”<sup>11</sup>

TURN has already indicated, within the instant application and by filing a notice of intent within R.18-10-007, that it will seek compensation for participating in R.18-10-007, through which the Commission is considering the utilities’ WMPs as required in Section 8389.<sup>12</sup>

Section 1801 requires intervenors to be compensated for making a substantial contribution to proceedings of the commission, as determined by the commission in its orders and decisions. The letters TURN states it contributed to

<sup>10</sup> Section 326 was added in the California Statutes of 2019, Chapter 81, Section 7 (AB 111), and took effect on July 12, 2019.

<sup>11</sup> Section 8389 (e)(4).

<sup>12</sup> A.20-11-002 at 4-5. On December 11, 2018, TURN separately filed a notice of intent to claim ICOMP in R.18-10-007. On August 17, 2020, TURN filed a separate claim seeking compensation for its contribution to four WSD Resolutions, each of which was considered and voted on by the full Commission.

in the instant application were approved by staff of the WSD but did not result in an order or decision that was considered by or voted on by the Commission.

TURN stated that the letter approving SCE's 2020 safety certification, and its contributions to it, are similar to the advice letter process during which industry staff evaluate whether utilities comply with requirements adopted by the Commission. TURN suggests the letter issued by Director Thomas Jacobs should be viewed no differently than an advice letter disposition.<sup>13</sup>

While TURN's contributions may have aided the WSD staff-led process, we must reject TURN's application because the letter issued by WSD, absent approval or ratification by the full Commission, do not constitute a "proceeding" meeting the statutory requirement for intervenor compensation. ~~We agree that the letter approving SCE's 2020 safety certification is similar~~ TURN has failed to demonstrate that it has made a substantial contribution to a Commission proceeding as required by Sections 1801-1812. Specifically, it has not shown that its work constitutes a "substantial contribution" within the meaning of 1802(j) or that it contributed to a proceeding within the meaning of 1802(g). The September 17, 2020, letter TURN states it contributed to in the industry division staff disposition of a Tier 1 or Tier 2 Advice Letter, which are related to implementation of already-instant application was approved by WSD staff but were not related to any orders or decisions that were considered by or approved utility investments or by the Commission policies. Staff disposition of advice letters are.

In its application, TURN references D.98-11-049, which found that contributions to an advice letter proceeding were eligible for intervenor

<sup>13</sup> A.20-11-002 Part 1 Section C at page 4.

compensation.<sup>14</sup> While D.98-11-049 does support TURN's position that the term 'proceeding' is not ~~considered~~limited to formal ~~Commission~~ proceedings ~~pursuant to Section 1802(g), unless the disposition occurs through a Resolution that is~~ and that ICOMP claims are considered, ~~voted on, and adopted a~~ case-by-case basis, the Commission ultimately only approved intervenor compensation for work that was approved by the ~~full~~ Commission through a resolution. Here, TURN's claim does not concern work related to an advice letter. Consequently, D.98-11-049 does not support TURN's claim for ICOMP, and we decline to opine here on standards for claims relating to advice letter work.

TURN also suggested in its application that, through AB 1054, the legislature intended to provide intervenor compensation related to letters issued by WSD.<sup>1415</sup> However, TURN has not identified support for this suggestion, nor have we identified any provision in AB 1054 that modifies the statutes governing intervenor compensation or renders WSD staff actions the equivalent authority as decisions or resolutions adopted or ratified by the full Commission under Section 1802(g).

Recognizing that its work on these letters is not directly related to a Commission order or decision, TURN argues in its comments that the Legislature intended determinations of the WSD that are reflected in writing to be equivalent

---

<sup>14</sup> A.20-11-002 at 4.

<sup>1415</sup> TURN stated that "[T]hese WSD Decisions are orders or decisions of the commission under Section 1804(c), regardless of the fact that they were not voted upon by the commission. WSD, as currently constituted, is a division of the Commission. By virtue of AB 1054, this division of the CPUC has been given authority to make legally binding decisions on certain critical matters related to wildfire safety." A.20-11-002 Part I Section C, at page 3.

to “orders or decisions of the commission” under Section 1804(c). We disagree with this argument.

Determinations made by WSD do not, as a general matter, constitute orders or decisions of the Commission. TURN’s position is undermined by the provisions of AB 1054, which contemplates that certain actions taken by the WSD, like the Wildfire Mitigation Plans, must be ratified by the full Commission. By contrast, other WSD determinations, such as the executive compensation approval letters at issue here, are not considered by the Commission. The WSD safety certification process TURN is seeking compensation for contributing to in this application was not ratified or approved by the Commission.

In its comments, TURN also recommends clarifications to avoid “unduly broad language” related to intervenor compensation eligibility for work on advice letters. We acknowledge TURN’s recommendation of avoiding unnecessarily broad language and have made modifications to the proposed decision, though we decline to adopt the specific language TURN recommends.

#### **4. Conclusion**

Sections 1801-1812 set forth the requirements for intervenor compensation, including that an intervenor must contribute to the Commission’s consideration of a decision or ratification of a resolution. In the instant application, TURN seeks compensation for contribution to a letter issued by one division of the Commission that was never considered or ratified by the full Commission. The staff issuance of this letter, without consideration by the full commission, does not meet the statutory requirements for intervenor compensation. Consequently, TURN’s application for intervenor compensation is denied.



**5. Comments on Proposed Decision**

The proposed decision of ALJ Sisto 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 comments were filed on \_\_\_\_\_ by \_\_\_\_\_~~ by TURN on July 21, 2021.

**6. Assignment of Proceeding**

Marybel Batjer is the assigned Commissioner and Carolyn M. Sisto is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. The letter issued by WSD on September 17, 2020, related to SCE's 2020 Safety Certification, was never ratified or acted upon by the full Commission.
2. The WSD staff-led process to evaluate SCE's 2020 safety certification, and the resulting letter from WSD director Thomas Jacobs, were not ratified or considered by the full Commission.
3. TURN has not demonstrated that its participation in the WSD staff-led public process to evaluate SCE's 2020 safety certification contributed to a staff action considered in a decision or action that was ratified by the full Commission.
4. The total of reasonable compensation is \$0.
5. This proceeding should be closed.

**Conclusions of Law**

1. Section 1802(g) defines a proceeding as: an application, complaint, or investigation, rulemaking, or alternative dispute resolution process in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.

2. Staff approval of SCE's 2020 safety certification, absent ratification or action by the Full Commission, does not constitute a "proceeding" meeting the statutory requirements for intervenor compensation.

3. AB 1054, which created the WSD, did not modify the intervenor compensation requirements of Sections 1801-1812.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Utility Reform Network's request for intervenor compensation related to its contribution to a letter issued by the Wildfire Safety Division is denied.

2. Application 20-11-002 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

Document comparison by Workshare Compare on Tuesday, August 3, 2021  
10:48:12 AM

| Input:        |   |
|---------------|---|
| Document 1 ID | file:///C:/Users/lil/Desktop/A2011002 Sisto Comment Dec. Denying IComp for TURN.docx          |
| Description   | A2011002 Sisto Comment Dec. Denying IComp for TURN  |
| Document 2 ID | file:///C:/Users/lil/Desktop/A.2011002 Sisto Agenda Dec. (Rev. 1) Denying IComp for TURN.docx |
| Description   | A.2011002 Sisto Agenda Dec. (Rev. 1) Denying IComp for TURN                                   |
| Rendering set | Standard  |

| Legend:                   |  |
|---------------------------|--|
| <u>Insertion</u>          |  |
| <del>Deletion</del>       |  |
| <del>Moved from</del>     |  |
| <u>Moved to</u>           |  |
| Style change              |  |
| Format change             |  |
| <del>Moved deletion</del> |  |
| Inserted cell             |  |
| Deleted cell              |  |
| Moved cell                |  |
| Split/Merged cell         |  |
| Padding cell              |  |

| Statistics:    |       |
|----------------|-------|
|                | Count |
| Insertions     | 26    |
| Deletions      | 14    |
| Moved from     | 0     |
| Moved to       | 0     |
| Style change   | 0     |
| Format changed | 0     |
| Total changes  | 40    |

