

Decision 05-04-045 April 21, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion for the Purpose of
Considering Policies and Rules Governing Utility
Construction Contracting Process.

Rulemaking 03-09-006
(Filed September 4, 2003)

OPINION DENYING REQUEST FOR INTERVENOR COMPENSATION

1. Summary

Greenlining Institute (Greenlining) requests \$5,730.48 as compensation for its work regarding Decision (D.) 04-12-056. In that decision, we adopted certain rules and policies for energy utility contracting procedures in certain cases. We find that Greenlining has failed to demonstrate that it made a substantial contribution D.04-12-056; thus, we deny the request for compensation.

2. Background

The Commission opened this rulemaking in 2003 to examine the Commission's rules and policies with respect to utility construction contracting processes. Briefly, the Commission's original rulemaking expressed concerns with utility contracting procedures as they might affect safety, project quality, and costs. D.04-12-056 directed specified energy utilities to pay prevailing wages to construction contract workers in certain circumstances and addressed several other related issues. It also prohibited specified energy utilities from using "reverse auctions" to solicit construction contract bids. The rulemaking remains open at this time.

3. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-12, 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 (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 comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5 and 6.

4. Procedural Issues

Greenlining filed a timely NOI in this proceeding. On February 24, 2004, Administrative Law Judge (ALJ) Kim Malcolm ruled that Greenlining was a customer and made a satisfactory showing of significant financial hardship. Greenlining filed its request for compensation on February 14, 2005, within 60 days of D.04-12-056 being issued. Subsequently, the assigned ALJ contacted Greenlining's attorney to suggest that Greenlining amend its request because the request did not discuss how Greenlining had made a substantial contribution to D.04-12-056. Accordingly, Greenlining amended its filing on March 4, 2005, seeking compensation of \$5,730.48. Greenlining has satisfied all the procedural requirements to make a request for compensation.

5. Substantial Contribution

Greenlining states that its involvement in this proceeding was unique, providing a perspective presented by no other party because its comments focused on minority-owned businesses and workplace diversity. Greenlining states that the Commission did not explicitly address these issues in its order but that the Commission has awarded compensation in cases where there is "no direct evidence of (an) impact" on the Commission's order. Greenlining reminds the Commission that its participation "did provide to the Commission protection against harm to minority contractors, which the Commission has stated is one of its high priorities."

Greenlining's only filing in this proceeding was reply comments on February 23, 2004, on behalf of minority contractors. However, Greenlining does not make the connection between its advocacy on behalf of minority contractors and D.04-12-056 except to state that its "initial inquiries and efforts" with utilities "may have been responsible for leading the utilities to hold a position that mitigated any negative impacts to minority construction contractors." It does not specify how the utilities' positions protected minority construction contractors or which among those positions the Commission adopted in D.04-12-056. To the contrary, D.04-12-056 neither mentions minority contractors nor adopts the positions of the utilities. Otherwise Greenlining states its contributions are compensable because no other party spoke on behalf of minority contractors. Greenlining does not summarize its position in this case or reiterate its recommendations. Greenlining did not participate in the proceeding on issues relating to minimum wages or project labor agreements, issues raised after Greenlining filed its only set of comments.

Greenlining has not shown that the Commission adopted a contention or recommendation made by Greenlining. It is not enough that Greenlining was the only party in the proceeding representing a specified interest. There must be some connection between Greenlining's position and the Commission's decision. On the basis of the information of record, and upon a review of Greenlining's request for compensation and D.04-12-056, we cannot find a connection between Greenlining's participation in this proceeding and our resolution of issues in D.04-12-056.

In D.04-05-005, we denied Greenlining compensation in another proceeding on the basis that Greenlining had not demonstrated that it had made a substantial contribution. In that decision, we found that Greenlining's

participation “in and by itself cannot constitute a ‘substantial contribution.’ Stated differently, within the meaning of § 1802(h), Greenlining did not assist us in any of the ways mentioned by the statute (*i.e.*, we did not adopt, in whole or in part, a factual or legal contention or policy or procedural recommendation made by Greenlining). Moreover, within the meaning of § 1802.5, Greenlining did not materially supplement, complement, or contribute to the presentation of another party. Absent a substantial contribution by Greenlining to D.03-11-015, the statute does not allow for an award of compensation for Greenlining’s participation.” We make similar findings here.

We encourage Greenlining to continue its efforts in our proceedings but cannot provide compensation to Greenlining or any other party without a convincing showing that its participation made a difference to our resolution of issues.

6. Reasonableness of Requested Compensation

Having determined that Greenlining did not make a substantial contribution in this proceeding, we need not address the reasonableness of Greenlining’s requested compensation.

7. Comments on Draft Decision

Pursuant to Rule 77.7(f)(6) of the Commission’s Rules of Practice and Procedure, we waive the otherwise applicable 30-day period for public review and comment.

8. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Kim Malcolm is the assigned ALJ in this proceeding.

Finding of Fact

Greenlining has not fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of compensation to intervenors because it did not demonstrate that it made a substantial contribution to D.04-12-056.

Conclusion of Law

Section 1802(h) authorizes the Commission to grant compensation to intervenors only upon a showing that they have demonstrated that they have made a substantial contribution to a Commission order.

O R D E R

IT IS ORDERED that the request of Greenlining Institute for intervenor compensation in this proceeding, dated February 14, 2005, is denied as set forth herein.

This order is effective today.

Dated April 21, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0504045
Contribution Decision(s):	D0412056
Proceeding(s):	R0309006
Author:	ALJ Malcolm
Payer(s):	Greenlining Institute

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Greenlining Institute		\$5,730.48	0		No showing of contribution

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted