

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 17, 2012

To: The Commission
(Meeting of April 19, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 1165 (Wright) – Public Utilities Commission: intervenor compensation.**
As amended: March 27, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

SB 1165 would amend Cal. Pub. Util. Code § 1802 to expand the intervenor compensation program to allow certain local government agencies [school districts, county offices of education, and community college districts] to seek intervenor compensation for their participation in California Public Utilities Commission (CPUC) proceedings.

Current statutory provisions governing intervenor compensation in CPUC proceedings provide that the CPUC shall award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs, to customers who comply with certain procedural requirements and make a substantial contribution to the adoption of an order or decision, where participation or intervention without an award of fees or costs would impose a significant financial hardship. At present, the law provides that the term "customer" does not include any state, federal or local government agency or any publicly owned utility.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

Current statutory provisions governing intervenor compensation in Commission proceedings exclude state, federal, and local government agencies from the definition of "customers" eligible to seek intervenor compensation for participating in Commission proceedings. Although local governmental agencies such as school districts, county offices of education and community college districts, may well be customers of Commission-regulated utilities, the same could be said for a wide range of other federal,

state, and local governmental agencies as well. If the definition of “customer” is expanded to include one specific subset of local government agencies, it seems likely that other federal, state, and local governmental agencies would view this selective expansion of the intervenor compensation program as discriminatory, and seek to have themselves included within the scope of customers eligible to seek intervenor compensation.

Intervenor compensation awards are funded by utility ratepayers, and any expansion of the scope of entities eligible to seek intervenor compensation potentially expands ratepayer liability for associated intervenor compensation awards. Federal, state, and local government agencies are currently funded primarily through taxes and similar funding mechanisms. SB 1165 would, to an extent, shift a portion of the responsibility for funding government agencies to Commission-regulated utility ratepayers.

In addition, SB 1165 as currently drafted would place the Commission in the awkward position of having to determine whether specified local agencies would suffer significant financial hardship if the ratepayers did not pay them for their participation or intervention in Commission proceedings. This would not seem to be a desirable responsibility for the Commission to undertake.

SUMMARY OF SUGGESTED AMENDMENTS:

At a minimum, SB 1165 should be amended to remove the current inconsistency between proposed Cal. Pub. Util. Code § 1802 (b)(1)(D), which lists “A school district, county office of education, or community college district,” within the types of entities that fall within the definition of “Customer,” and the language of § 1802 (b)(2), which provides that “‘Customer’ does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission’s opinion, was established or formed by a local government agency for the purpose of participating in commission proceedings.”

DIVISION ANALYSIS (Legal and ALJ Divisions):

- 1) Current intervenor compensation laws require utility ratepayers to fund the participation of a wide range of intervenors in Commission proceedings. (Cal. Pub. Util. Code § 1801, *et seq.*) SB 1165 would expand the pool of potential intervenors.
- 2) It is not clear that school districts, county offices of education, or community college districts constitute a unique class of utility customers whose interests are not currently represented in Commission proceedings and who would suffer significant financial hardship if utility ratepayers did not fund their participation in such proceedings.
- 3) SB 1165 would harm the objectives of the Commission to process formal proceedings in an effective and efficient manner by requiring the Commission to

address intervenor compensation requests from a potentially large new class of potential intervenors. Since the bill would require the Commission to review the finances of other government agencies, a process the Commission does not undertake in its implementation of current intervenor compensation laws, the Commission would need to devote a potentially significant amount of time to the development of an appropriate procedure for such financial hardship reviews. This would require one ALJ to conduct this proceeding. The Commission devotes a large percentage of its time to the processing of intervenor compensation requests under the current intervenor compensation program. SB 1165 would expand this percentage and would require another Legal Analyst to assist in processing the increased claims.

PROGRAM BACKGROUND:

- 1) The Cal. Pub. Util. Code allows certain individuals or groups that participate in proceedings before the California Public Utilities Commission involving electric, gas, water, and telephone utilities to request compensation for the costs associated with that participation. (Cal. Pub.Util. Code § 1801 *et seq.*)
- 2) Intervenors request utility ratepayer funded compensation for their participation in dozens, if not hundreds, of Commission proceedings annually. The processing of such requests represents a substantial percentage of the Commission's overall formal proceeding workload. SB 1165 would expand this workload further and would require another legal Analyst to help process these claims.
- 3) SB 1165 I would require the Commission to review the finances of other government agencies, a process the Commission does not undertake in its implementation of current intervenor compensation laws. The Commission would need to devote a potentially significant amount of time to the development of an appropriate procedure for such financial hardship reviews, which would require one ALJ.

LEGISLATIVE HISTORY:

Unknown. However, Decision (D.)98-04-059 found that Cal. Pub. Util. Code Sec. 1802(b) "precludes compensation for any government agency, or any entity that was established by a government entity for the purpose of participating in a commission proceeding." (1998 Cal. PUC LEXIS 429, *37.) For this reason, the decision noted that the Commission had previously found that the School Project for Utility Rate Reduction and Regional Energy Management Coalition (SPURR/RMEC) ineligible for intervenor compensation. (1998 Cal. PUC LEXIS 429, *37-38.)

SPURR/RMEC asked the Commission to support a legislative amendment that "would carve out an exception to the § 1802(b) definition of customer so that government entities that are public education institutions would be deemed "customers" if they form joint powers agencies under [Government Code § 6500](#) *et. seq.*" (*Id.*) The Commission indicated that: "We would support a Legislative amendment to make it clear that local

public education Joint Powers agencies, like SPURR/REMAC, are customers able to avail themselves of our intervenor compensation program." (1998 Cal. PUC LEXIS 429, *40; see *also*, *148 (Finding of Fact 10).)

Despite the absence of the proposed legislative amendment, SPURR continues to participate in Commission proceedings. See, e.g., Rulemaking11-10-003 (2011 Cal. PUC LEXIS 473).

There are at least several states that allow intervenors to participate and be compensated for their work: Colorado, Idaho, Kansas, Maine and Minnesota. For the most part they are fairly similar to but not as extensive or rewarding as California's program.

FISCAL IMPACT:

This bill would require the CPUC to review financial hardship and intervenor compensation requests on an on-going basis. It would require a new administrative Law Judge (ALJ) II to review compensation requests and financial hardship requests. A legal analyst will be needed to assist the ALJ with reviewing the final compensation claims.

ALJs, with the assistance of the legal analyst, review intervenor claims to ensure the claims meet the criteria for financial hardship. They also review the compensation claims to ensure the claim is reasonable and consistent with the participation in the proceeding. They also check the accuracy of the time spent on various tasks and ensure accurate accounting of expenses. This bill would add to the ALJ workload due to increased claims.

STATUS:

SB 1165 is scheduled to be heard before the Senate Energy, Utilities and Communications Committee on April 24, 2012.

SUPPORT/OPPOSITION:

None on file.

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BILL LANGUAGE:

BILL NUMBER: SB 1165 AMENDED
BILL TEXT

AMENDED IN SENATE MARCH 27, 2012

INTRODUCED BY Senator Wright

FEBRUARY 22, 2012

An act to amend Section ~~487 of the Business and Professions Code, relating to professions and vocations~~
1802 of the Public Utilities Code, relating to the Public Utilities Commission .

LEGISLATIVE COUNSEL'S DIGEST

SB 1165, as amended, Wright. ~~Denial of license.~~
Public Utilities Commission: intervenor compensation.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law provides compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers, as defined, for participation or intervention in any proceeding of the commission based upon specified criteria.

This bill would include a school district, county office of education, or community college district in the definition of a customer that may apply for intervenor compensation.

~~Existing law provides for the licensure, regulation, and discipline of various professions and vocations. These provisions are administered by the boards and examining committees established within the Department of Consumer Affairs. Existing law provides that a licensing authority may deny a license to an applicant for specified reasons.~~

~~Existing law provides that an applicant may request a hearing with the licensing authority to reconsider the decision to deny the license. Such a hearing must be held within 90 days of the request, except as specified.~~

~~This bill would require the licensing authority to send notice of the hearing date to the applicant within 30 days of receiving the request for a hearing.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1802 of the Public
Utilities Code is amended to read:

1802. As used in this article:

(a) "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, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

(b) (1) "Customer" means any of the following:

(A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.

(B) A representative who has been authorized by a customer.

(C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.

(D) *A school district, county office of education, or community college district.*

(2) "Customer" does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding.

(c) "Expert witness fees" means recorded or billed costs incurred by a customer for an expert witness.

(d) "Other reasonable costs" means reasonable out-of-pocket expenses directly incurred by a customer that are directly related to the contentions or recommendations made by the customer that resulted in a substantial contribution.

(e) "Party" means any interested party, respondent public utility, or commission staff in a hearing or proceeding.

(f) "Proceeding" means 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.

(g) "Significant financial hardship" means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

(h) "Small commercial customer" means any nonresidential customer with a maximum peak demand of less than 50 kilowatts. The commission may establish rules to modify or change the definition of "small commercial customer," including use of criteria other than a peak demand threshold, if the commission determines that the modification or change will promote participation in proceedings at the commission by organizations representing small businesses, without incorporating large commercial and industrial customers.

(i) "Substantial contribution" means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural

recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

~~SECTION 1. Section 487 of the Business and Professions Code is amended to read:~~

~~487. (a) If a hearing is requested by the applicant, the board shall conduct the hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted.~~

~~(b) Notice of the scheduled hearing date shall be sent to the applicant by the board within 30 days of receipt of the request for hearing.~~