

Decision 96-09-040 September 4, 1996

ORIGINAL

**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**

**Order Instituting Rulemaking on the
Commission's Proposed Policies
Governing Restructuring California's
Electric Services Industry and Reforming Regulation.**

**Order Instituting Investigation on
the Commission's Proposed Policies
Governing Restructuring
California's Electric Services
Industry and Reforming Regulation.**

**California's Electric Services
Industry and Reforming Regulation.**

Customers eligible for compensation do not include any governmental agency 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" (§ 1805(b)).
Under § 1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the presiding conference is held, file, and serve on all parties to the proceeding a notice of intent (NOI) to claim compensation."

All section references herein are to the Public Utilities Code

11/17/1995

Decision 94-03-010 September 4, 1995

INTERIM OPINION

By this decision, we deny eligibility for compensation in response to notices of intent to claim compensation filed by the School Project for Utility Rate Reduction (SPURR) and the Regional Energy Management Coalition (REMAC) on April 4, 1995 and the Insulation Contractors Association (ICA) on December 11, 1995. ICA and SPURR/REMAC are not "customers" within the meaning of Division 1, Part 1, Chapter 9, Article 5 (beginning with § 1801) of the Public Utilities Code.¹

Under the Public Utilities Code, only "public utility customers" are eligible for compensation for participation in Commission proceedings (§ 1801). Section 1802(b) defines a "customer" as:

any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers."

Customers eligible for compensation do not include any governmental agency 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" (§ 1802(b)).

Under § 1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file, and serve on all parties to the proceeding a notice of intent (NOI) to claim compensation."

¹ All section references herein are to the Public Utilities Code.

The contents of the NOI must include "[a] statement of the nature and extent of the customer's planned participation in the proceeding as far as it is possible to set it out when the notice of intent is filed," and "[a]n itemized estimate of the compensation that the customer expects to request, given the duration of the proceeding as it appears at the time" (§ 1804(a)(2)(A)). The NOI may include a showing of significant financial hardship. (§ 1804(a)(2)(B)). If the NOI does not include a showing of financial hardship, such a showing must be included in the party's request for compensation. (Id.)

1. School Project for Utility Rate Reduction

On May 24, 1994, the assigned administrative law judge (ALJ) issued an order requiring all parties seeking eligibility for compensation to file a NOI to claim compensation no later than August 1, 1994. SPURR/REMAC did not file its notice of intent to claim compensation until April 4, 1995. It asks the Commission to accept late filing on the grounds that "[i]n cases where new issues emerge subsequent to the time set for filing, the commission may determine an appropriate procedure for accepting new or revised notices of intent" (§ 1804(a)(1)). SPURR/REMAC notes that it initially did not plan to participate on its own, but rather as a member of an alliance funded primarily by a for-profit electricity broker. After the August 1, 1994 deadline for filing, SPURR/REMAC decided to terminate the alliance. The split required SPURR/REMAC, which has a limited budget, to request intervenor compensation to fund its continued participation.

SPURR/REMAC represents the consumer interests of 350 school districts, community college districts, and county offices of education statewide. SPURR/REMAC states in its NOI that they are Joint Powers Agreement agencies organized under the provisions of the Government Code of the State of California Sections 6500 et seq. These code sections discuss the joint exercise of powers of public agencies. Government Code Section 6500 defines "public agency" as the federal government or any federal

department or agency, this state, an adjoining state or any state department or agency, a county, county board of education, city, public corporation, or public district of this state or an adjoining state. Section 1802(b)'s definition of "customer" precludes compensation for any state, federal or local government agency ... or any entity that, in the commission's opinion, was established or formed by any local governmental entity for the purpose of participating in a commission proceeding. On its face, this exclusion bars SPURR/REMAC from claiming intervenor compensation. SPURR/REMAC is the agent for a group of entities that, on their own, would clearly be ineligible for compensation under Section 1802(b). SPURR/REMAC cannot get around this rule merely by pooling its resources under a joint powers agreement and subcontracting their participation to a separate entity.

SPURR/REMAC argues that it qualifies as a "customer" nonetheless because it was formed not only to participate in Commission proceedings, but to "assist their member schools in achieving energy savings through a variety of means" (NOI at 2). SPURR/REMAC's activities include disseminating information regarding rates and rate options and demand-side management (DSM) programs, and acting as an agent for core aggregation of member schools' natural gas loads. (Id.) SPURR/REMAC's reading of the statute, however, undermines the purpose of precluding government entities from the intervenor compensation program.

SPURR/REMAC does not deny that it was formed for the purpose of participating in Commission proceedings, but states that it was formed for other purposes as well. The fact that SPURR/REMAC performs a variety of services, however laudatory, is not sufficient to evade the express statutory limitation. If the Legislature had intended that multiple purpose entities be eligible for intervenor compensation funds, it would have so stated. Government entities who wish to participate in Commission proceedings must find the necessary funds in their budgets.

"... as the federal government or any federal

Because SPURR/RBMAC does not qualify as a "customer," it does not meet the threshold test for eligibility. There is no need to consider whether its late filing should be excused, nor any further requirements under §§ 1801, 1812.

2. Insulation Contractors Association

ICA filed its NOI in this proceeding on December 11, 1995, long after the filing deadline of August 1, 1994. ICA asks the Commission to accept the late filing on the grounds that where new issues emerge subsequent to the time set for filing, the commission may determine an appropriate procedure for accepting new or revised notices of intent (§ 1804(a)(1)). ICA, a nonprofit association of licensed insulation contractors, argues that while it has been clear from the beginning of this proceeding that DSM programs would be greatly affected, several policy questions regarding DSM remain unresolved. Given the obvious implications for DSM programs raised by this proceeding from the start, accepting ICA's motion for late filing would stretch the meaning of "new" issues. Nevertheless, the intervenor compensation program is designed to encourage public participation, and § 1804(a)(1) fulfills this purpose by giving the Commission broad discretion to accept late filings in appropriate cases.

However, like SPURR/REMAC, ICA's request raises questions about the kinds of parties that are eligible for intervenor compensation. Section 1802(b) defines "customer" as "any participant representing consumers, customers or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation, or bylaws, to represent the interests of residential customers." Interpreting this section, the Commission has held that the Legislature intended compensation to be proffered "only to parties (or their representatives) whose self interests and participation in the proceeding arise

directly from their interests as customers. (Decision (D) 92-04-051, mimeo., 4, emphasis added.) The rule is the same even where a participant's private interests overlap significantly with the interests of ratepayers as a group. Otherwise, "any participant in our proceedings, regardless of the genesis of its self-interest, could argue that its position represents the interests of customers." (D.88-12-034, mimeo., p. 5)

In D.92-04-051, a case involving an intervenor similar to ICA, the Commission held that a nonprofit organization which purported to represent the interests of small business ratepayers in DSM programs was not a "customer" under Section 1802(b). To handle its participation in the proceeding, the organization subcontracted to a for-profit energy management company that had a direct economic interest in the proceeding as a potential bidder in the DSM solicitation under consideration. As a result, the organization's participation did not differ in material respects from that of several other (for-profit companies) who participated solely at their own cost. (D.92-04-051 at p. 4.) The Commission held that although it "may represent the broader interests of some other consumers or customers," its participation was motivated primarily by its interest as a potential bidder. (Id. at p. 6.) Therefore, it was not a "customer" eligible for intervenor compensation.

ICA is a nonprofit corporation whose members are licensed insulation contractors; i.e., its members are either vendors for or subcontractors to utility DSM programs. ICA acknowledges that the primary interest of its members in this proceeding is not as a "customer," but as a vendor.

² The Commission reasoned that "[i]f coincidence with customers' interests is the primary criterion for establishing representation, such an argument would likely prevail in any instance where the Commission ultimately adopts the participant's position as reasonable and in the public interest. Since compensation is awarded only when the participant's position is adopted, it seems to us that (this view) would make unnecessary the determination that a participant in a proceeding is a customer." (D.88-12-034, mimeo., pp. 5-6.)

Similar to our findings for SPURR/REMAC, because ICA is not a "customer," it has not met the Commission's threshold test for eligibility. There is no need to address its late filing nor the Commission's requirements under §§ 1801 - 1812.

Findings of Fact

1. Customers eligible for compensation do not include any governmental agency or any entity formed by a local government entity for the purpose of participating in Commission proceedings.

2. SPURR/REMAC is the agent for a group of entities that, individually, would be found ineligible for compensation under § 1802 (b), and is therefore not a "customer" eligible for compensation.

3. ICA is an organization whose members function as vendors for or subcontractors to utility DSM programs, and therefore, have a direct economic interest in the outcome of this proceeding. ICA is therefore not a "customer."

Conclusions of Law

1. SPURR/REMAC is not a "customer," as defined in § 1802(b) and should not be eligible for intervenor compensation, as prescribed by Division 1, Part 1, Chapter 9, Article 5 of the Public Utilities Code.

2. ICA is not a "customer," as defined in § 1802(b) and should not be eligible for intervenor compensation, as prescribed by Division 1, Part 1, Chapter 9, Article 5 of the Public Utilities Code.

3. This order should be effective today, in order to eliminate any uncertainty regarding SPURR/REMAC's or ICA's eligibility for intervenor compensation.

INTERIM ORDER

1. The School Project for Rate Reduction/Regional Energy Management Coalition is not a customer and is not eligible for an award of compensation of this proceeding under Article 18.8 of the Commission's Rules of Practice and Procedure and under §§ 1801 - 1812.

2. The Insulation Contractors' Association is not a customer and is not eligible for an award of compensation in this proceeding under Article 18.8 of the Rules of Practice and Procedure and under §§ 1801 & 1812.

This order is effective today.

Dated September 4, 1996, at San Francisco, California.

Commissioners
President P. Gregory Conlon
being necessarily absent, did
not participate.

INTERIM ORDER

1. The School Project for Rate Reduction/Regional Energy Management Coalition is not a customer and is not eligible for an award of compensation of this proceeding under Article 18.8 of the Commission's Rules of Practice and Procedure and under §§ 1801 - 1812.