BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 10-05-006 (Filed May 6, 2010)

WOMEN'S ENERGY MATTERS
COMMENTS ON PROPOSED DECISION ON COMPENSATION

February 1, 2012

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COMMENTS ON PROPOSED DECISION ON COMPENSATION

Women's Energy Matters (WEM) appreciates the opportunity to make these Comments on the Proposed Decision of January 12, 2012, Denying Intervenor Compensation to WEM for Lack of Substantial Contribution to D1105005.

In view of the more than seven hours we had to spend researching the complex errors in the PD and writing these comments, we request an additional 612.50, raising the total of our request to $3,442.50.[1]

Introduction

The Proposed Decision contains significant errors and mischaracterizes WEM's participation in this phase of the Long-Term Procurement Proceeding. In *§C. Additional Comments on Part 1,* it states "WEM's comments were outside the scope of this phase of R.10-05-006" as delineated in the 9-14-10 Ruling and Section 3.3.1.1 of the Dec. 3, 2010 Ruling. PD, p. 3. Later in *§C. CPUC Disallowances* this changes to: "Most of WEM opening comments were outside the scope… Those few comments that were within the scope….would have benefited from coordination with opening comments filed by TURN and ….reply comments filed seven days later by DRA." PD, p. 9 (emphasis added).[2]

There was no duplication

We take up the issue of duplication first because it is quicker to see the errors and omissions in the PD.

The PD notes that DRA discussed SB695 in comments on the OIR four months earlier. That did escape our notice, *because DRA failed to serve these comments on WEM, as can be seen by the email service list on their certificate, which omitted wem@igc.org.*[3]

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[1] These hours should be added to Barbara George's time on compensation issues. $87.50 x 7 hrs. = 612.50, plus 612.50 previously billed, for a total of $1225 George spent on compensation. See footnote 12 for a description of the work that went into these comments.

[2] Similarly, in *Part III. A. General Claim of Reasonableness,* the PD says "To the limited extent [WEM's participation] may have been on-point, it was inefficient and duplicative." PD, p. 8. See also, *B. CPUC Comments on Part II:* The WEM and the Commission might have benefited if WEM had coordinated effectively with DRA and MEA on the few issues WEM raised in its pleadings that may have been within the scope of subsection 3.3.1.1 of Phase I of Track III of this proceeding.

[3] DRA comments on the OIR, 6-4-10, p. 17, posted at http://docs.cpuc.ca.gov/efile/CM/119142.pdf

The one paragraph that dealt with SB695 in DRA's 6-4-10 comments on the OIR did not touch on concerns expressed in WEM's 10-1-10 comments. DRA 6-4-10 Comments, p. 11. Thus, even if we had received them, we would have seen no duplication with DRA, and no reason to coordinate with them.

The PD implies that *WEM* was supposed to coordinate its *Opening* comments with DRA's *Reply* comments.[4] But any duplication in DRA's Reply would be on them, not us (as parties are supposed to read others' comments, to reply to them).

We hardly expected TURN to duplicate WEM's concerns, since TURN had teamed up with utilities to pass the initial CAM and SB695, in spite of WEM's opposition to both of those actions and our pleading with TURN at the time to exempt Community Choice Aggregators (CCAs) from both measures.

TURN's 10-1-10 Comments began with a description of the legislative history of SB695 from the point of view of *proponents* — while WEM's Comments provided the perspective of *opponents* — quite a different matter. TURN, pp. 1-4.

TURN mentions, "However, for purposes of applying the CAM allocation, the Commission has discretion to determine its application to 'departing load' customers" — but pointedly leaves CCAs out of the list of who might benefit from that discretion. Ibid, p. 5. TURN's position on the energy auction was quite different from WEM's. Ibid, p. 7, and WEM 10-1-10, p. 6.

Thus, we see no duplication with either DRA or TURN.

Regarding MEA, WEM stated that we "encouraged MEA to weigh in on this matter" and noted that its comments *(on the Proposed Decision)* elaborated on some of the issues WEM had raised earlier *(i.e. pursuant to the 9-14-10 Ruling)*. WEM Request, pp. 6-7. The decision noted that WEM's comments on the PD were only ½ page.[5] This was partly due to the fact that we *had* coordinated with MEA, by recommending that they make comments.

The PD mistakenly asserts that we *failed to coordinate* with MEA and somehow duplicated them, although WEM's substantive comments *preceded MEA's*. PD, p. 7.

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[4] The PD notes that DRA did not file opening comments and WEM did not file replies.

[5] The PD states "This document does not rise to the level of a substantial contribution." PD, p. 9. We didn't make the request solely on the basis of that document. However, it succinctly summarized WEM's major recommendations, and since we assumed MEA would speak for CCA issues in its comments on the PD we saw no reason to expound further.

Thus, it was MEA that "materially supplemented, complemented, or contributed to the presentation" of WEM. PU Code §1802.5. The fact that MEA didn't mention WEM's ½ page comment is immaterial.

MEA's 4-25-11 reply comments on the PD focused on the methodologies of determining costs under the CAM, "to ensure that the costs passed through the CAM mechanism accurately reflect the net capacity costs and resource adequacy benefits." MEA, p. 5. WEM had explored these issues in more detail six months earlier and discussed them in our opening comments, while other parties took them up in their opening comments on the PD, so it's not surprising MEA referred to those comments rather than WEM's much earlier ones.[6]

Since WEM recommended that MEA weigh in on the SB695 issues, and they did, we could step back in the interest of efficiency. This is the *result* of coordination — not the absence of it.[7]

WEM made a substantial contribution to this phase of the proceeding by being the first party to express concerns about how these matters would impact CCAs, and their customers, who we represent. We also made procedural contributions by bringing a CCA to the table to explain these impacts further, and recommending that issues be further considered in later phases of the proceeding. The Commission has stated:

> We have found in the past, and § 1802(i) expressly states, that a party may be compensated for work on procedural aspects of a case… See D.98-04-059, 79 CPUC 2d 628 (1998), 1998 Cal. PUC LEXIS 429, at *127 (finding eligibility for intervenor compensation for contribution to a Commission decision on procedural matters). D0501007, p. 12.

The duplication discussions in the PD suggest that WEM is being denied compensation in part because we duplicated others' efforts (implying that our efforts might have been compensable if they weren't duplicative). Since we did not in fact duplicate other parties, the PD cannot deny compensation to WEM on that basis.

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[6] The Commission is welcome to confirm with MEA that we asked them to weigh in on this phase of the proceeding. We felt this would hardly be worth bothering them about, given the passage of time and the enormous MEA workload (some 15 proceedings, almost all of them handled by one person up until a few weeks ago).

[7] ***On October 7, 2011, WEM's representative in this proceeding, Barbara George, received the first Charles F. McGlashan Advocacy Award from the Marin Energy Authority, in part because for many years we have kept the agency and other public officials apprised of developments in CPUC proceedings that affect CCAs and MEA in particular.***

WEM was in-scope and made substantial contributions to this phase of R1005006

In *Part II. A. Claimant's claimed contribution to the final decision,* the PD states in part:

> D.11-05-005 addressed a very narrow set of issues that were related to the implementation of SB 695… WEM's comments were outside the scope of Phase I of Track III of this proceeding, and did not substantially contribute to the Commission decision.
> More specifically, this was a narrow and technical decision on a petition to modify a prior decision to reflect the passage of SB 695. PD, p. 4.[8]

As noted above, the PD said the scope was delineated in Sept. 14, 2010 and Dec. 3, 2010 scoping rulings.

It was not altogether obvious that the Commission intended for the decision to be as narrow as it ultimately was. The 9-14-11 Scoping ruling said:

> The Commission is soliciting comments from parties on the *integration of SB 695 into existing procurement rules*. Specifically, the Commission is seeking comment on procurement rules that must be modified or refined… Comments should *identify any differences between SB 695 and existing procurement rules*… 9-14-11 Scoping Ruling, pp. 1-2 (emphasis added).[9]

The Ruling listed several questions, but added that "Comments… need not be limited to" those questions.

Among other things, WEM's comments discussed the problem that *existing procurement rules, embodied in* PU Code §454.5(b) (9)(A) and §454.5(b) (9) (C) *mandate a Renewable Portfolio Standard and a loading order of preferred resources* — neither of which had been met by utilities' procurement plans — but those who wrote SB695 intended for it to grease the skids for building new fossil fuel power plants, which would lead further away from preferred resources.

These are in fact, *differences between SB695 and existing procurement rules,* which should be taken into account for "integration."

We also discussed how SB695 could conflict with "procurement rules" for CCAs, including resource adequacy requirements. We pointed out the need to mitigate the potentially detrimental impacts of SB695 that could (1) impose redundant resources on

[8] We saw no reference to a petition to modify in the two scoping rulings or D1105005.
[9] The PD quotes some of these same passages in the 9-14-11 Ruling, p. 9.

CCAs and (2) interfere with their ability to procure clean resources by requiring them to pay for utility choices that would likely be fossil fueled.

Perhaps the Commission didn't think of the same meanings WEM found in the words and phrases of the scoping ruling, but those plain meanings are indeed there.[10] WEM's interpretation provided a broader perspective, *enriching* the Commission's understanding of issues that could arise when implementing SB695, and recommending practical ways to mitigate them.[11]

Regarding the auction, or other mechanism for valuing the resources, WEM brought up valid points about potential problems with auctions, and proposed a cost-of-service alternative. The PD disagreed with these claimed contributions, "applying the same reasons for disallowance listed for bullets 1-3 above." PD, p. 5. We quoted these reasons above (about D.11-05-005 addressing a very narrow set of issues). They clearly are misapplied to our comments on the auction issue, because this was in fact one of the issues on which the 9-14-10 Ruling specifically requested comments, and WEM's comments were directly responsive to the questions.

The PD states, "Discussion with TURN before and after the passage of SB695, particularly regarding provisions that were not enacted, are not compensable tasks." PD, p. 5. *This falsely suggests that WEM is asking for compensation for the time spent discussing SB695 with TURN — but we didn't do that.*

What we did was describe the dispute in our comments on the legislative background, making it clear that these were important issues — not only for WEM but also for CCAs — that they were not going to go away and therefore the Commission should keep them in mind while determining how to implement SB695.

The weight of our concerns — and thus the substantial contribution we made to the proceeding — becomes more clear when one considers that representatives of CCAs

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[10] ALJ Victoria Kolakowski authored the 9-14-10 Ruling; ALJ Peter Allen wrote D1105005; both signed the 12-3-10 Ruling. In the 2-28-11 PHC, Judge Allen mentioned that he had a very different approach from the previous ALJ.

[11] The Commission has previously determined that even if it did not adopt any of the customer's recommendations, "if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution." D0506027, p. 4.

went to the trouble of getting legislation passed in 2011 that *modified §365.1(c)* — the very statute at issue here. Mark Leno's bill, SB790, inserted a new section that speaks to some of the issues WEM urged the Commission to take into account when implementing SB695:

> PU Code 365.1(c)(2)(B):
> If the commission authorizes or orders an electrical corporation to obtain generation resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation. The commission shall allocate the costs of those generation resources to ratepayers in a manner that is fair and equitable to all customers, whether they receive electric service from the electrical corporation, a community choice aggregator, or an electric service provider.

While we were disappointed by the Decision's failure to directly address some of our concerns, we were heartened by the narrowness of the decision and its pledge to address issues further in later phases of the proceeding, such as distinguishing between system and bundled resource needs, cost allocation, a test of "who benefits" under SB695, and further refinement of the auction process. D1105005, pp. 16-17.

We saw these as potentially related to concerns we raised including how payments under the CAM could interfere with CCAs' commitment to greater use of renewables, and the need to restrain utilities' assumptions that additional fossil fuel resources are necessary, rather than respecting the loading order. These have continued to be hot topics throughout the proceeding, and WEM should be compensated, not penalized, for demonstrating how these issues relate to the implementation of SB695.

If the Commission chose to reject or ignore our advice, that doesn't change the value of our substantial contribution. Even when the Commission rejected all of a party's recommendations, they have sometimes been compensated because they enriched the record and informed the Commission's thinking on the issues.

Specific changes requested

We ask that the final decision:

- remove all passages referring to "duplication" and "failure to coordinate" (see specific citations in this comment);
- remove all statements about WEM being "out of scope" and "inefficient;"

- remove the statement about discussions with TURN before and after SB695 not being compensable tasks;
- remove the inappropriate dismissal of WEM's comments about the auction (p. 5);
- conclude that WEM made a substantial contribution and should be compensated in full.

Conclusion

The Commission has complained in the past when WEM made a claim on multiple decisions, urging us to file on every one. We have sometimes been reluctant to do that because some of our substantial contributions could be seen better with the passage of time. The complete denial of our contribution in this PD confirms our fears.

Because this is a relatively small request, we barely thought it worthwhile to comment, especially since the PD's errors were so complex to refute that this comment required almost half as much time as WEM spent on this phase of the proceeding.[12] However, the PD made so many errors — and on that basis issued a total denial of compensation — that we could not allow it to stand unchallenged.

We ask that the Commission find that WEM did in fact make a substantial contribution to this phase of the proceeding, and should be compensated in full.

Dated: February 1, 2012

Respectfully Submitted,

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[12] For these comments, we had to review both scoping memos, portions of D1105005, PU Code 365.1(c) both pre- and post- SB790, PU Code 454.5(b); WEM's comments, all comments by DRA, TURN and MEA; as well as the PD. In part this thorough review was necessary because so much time has elapsed since this phase of the proceeding took place and since we filed our request (on July 11, 2011).