

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)

**COMMENTS OF L. JAN REID
ON PROPOSED DECISION OF ALJ ALLEN**

November 4, 2013

L. Jan Reid
3185 Gross Road
Santa Cruz, CA 95062
Tel/FAX (831) 476-5700
janreid@coastecon.com

SUBJECT INDEX

	Page
I. Overview.....	1
II. Calculation Errors.....	2
III. Overview.....	3
IV. Duplication.....	3
V. OTC Contracts (Issue 1).....	6
VI. Procurement Review Groups (Issue 10).....	7
VII. Minor Errors	8
VIII. Conclusion	8
Table 1: Reid’s Recommended Compensation	1
Table 2: Disallowances	2
Table 3: Reid’s Compensation Requests	4
Appendix	A-1

TABLE OF AUTHORITIES

California State Law	Page
Public Utilities Code Section 1802	2-3
CPUC Decisions	
D.09-03-020	5
D.09-11-027	5
D.10-05-017	5
D.11-08-015	5
D.12-04-046	7
D.12-05-012	5
D.12-06-011	4
D.12-08-043	4
D.12-09-015	4

I. Overview

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, L. Jan Reid (Reid) submits these comments on the proposed decision (PD) of Administrative Law Judge (ALJ) Peter Allen in Rulemaking (R.) 10-05-006 concerning an intervenor compensation request previously submitted by Reid. (Agenda ID #12490) Chief ALJ Karen Clopton mailed the PD on October 15, 2013. Opening comments are due on Monday, November 4, 2013. I will file this pleading electronically on the due date, intending that it be timely filed.

The PD would award Reid \$42,909.95 for his substantial contributions to Decision (D.) 12-04-046. This represents a decrease of \$22,920.75 or 34.8% from the amount requested. Reid requests that the Commission modify the PD and award Reid compensation in the amount of \$66,376.70 as detailed in the following table.

Table 1: Reid's Recommended Compensation

Item	Hours	Rate	Amount
2010-2011 Professional Work	322.6	\$185	\$59,681.00
2012 Professional Work	26.3	\$200	\$5,260.00
Comments to ALJ Allen's PD	6.3	\$215	1,354.50
Intervenor Compensation Claim	7.7	\$107.75	827.75
<u>Expenses</u>			<u>81.20</u>
Total			\$66,376.70

II. Calculation Errors

I reviewed the PD's disallowances and calculated the total number of hours that should have been disallowed according to the PD. As shown in Table 2, Reid should have been disallowed a total of 67.05 hours according to the PD.¹ The PD disallows a total of 124 professional hours for Reid's 2011 work. (See PD, p. 14)

Table 2: Disallowances

Issue	Reid's Hours	Disallowance Percentage	Disallowed Hours
OTC Contracts	9.30	30%	2.79
Renewable Integration Need	146.20	30%	43.86
Renewable Integration Schedule	1.00	20%	0.20
Independent Evaluators	6.60	50%	3.30
The Rulebook	5.50	40%	2.20
Procurement Review Groups	11.10	100%	11.10
Convergence Bidding	3.60	100%	3.60
Total	183.30		67.05

¹ I calculated the "Disallowed Hours" column by multiplying Reid's Hours by the Disallowance Percentage.

III. Legal Requirements

Public Utilities Code Section (PUC §) 1802(i) states that:

"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.

Thus, the Commission must determine whether or not an intervenor made a substantial contribution to the entire decision, and not to each issue in the decision. In contrast to (PUC §) 1802(i), the PD evaluates the compensation claim based on his contribution to each issue listed by Reid, and not by Reid's contribution to the entire decision.

IV. Duplication

The PD incorrectly reduced Reid's hours by 30% on the OTC Contracts issue and by 40% on the Rulebook issue, due to alleged duplication:

PUC § 1802.5 states that "Participation by a customer that materially supplements, complements, or contributes to the presentation of another party, including the commission staff, may be fully eligible for compensation if the participation makes a substantial contribution to a commission order or decision, consistent with Section 1801.3."

In 2012, the Commission stated that: (D.12-08-043, slip op. at 9)

Second, if the customer’s contentions or recommendations paralleled those of another party, we look at whether the customer’s participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 1801.3(f) and 1802.5.)

This is the first time that Reid has had part of a compensation claim disallowed due to duplication. I reviewed all of the Commission decisions concerning my past compensation requests. My review (see Table 3) indicates that the Commission made the following statements and findings concerning Reid’s past compensation requests.

Table 3: Reid’s Compensation Requests

Commission Finding	Citation
We find that no unnecessary duplication of other parties’ participation took place. Where Reid’s position or argument aligned with the positions of other parties, especially, TURN and DRA, Reid used his independent analysis and thus materially supplemented or complemented the presentations made by other parties.	D.12-09-015, slip op. at 9
Reid’s work did not repeat the work of other parties and is consistent with the Commission’s past posture which states that “[t]he Commission should encourage the presentation of multiple points of view, even on the same issues, provided that the presentations are not redundant.” We make no reductions to Reid’s request for an award for duplication of effort.	D.12-08-043, slip op. at 21, footnote omitted
These intervenors must also demonstrate reasonable collaboration with other group members to minimize duplication of effort. Reid’s request meets these requirements.	D.12-06-011, slip op. at 6

Commission Finding	Citation
<p>The Commission has awarded full compensation even where the intervenor's positions were not adopted in full, especially in proceedings with a broad scope. (D.09-06-016 at 22-23, referring to D.98-04-028). We do so here, with a small adjustment.</p>	<p>D.12-05-012, slip op. at 6</p>
<p>We forgo some minor reductions we could have made here to Reid's claim for duplication of effort. Reid's timesheets confirm that he worked with other parties to avoid showings that would likely duplicate the same showings of the other parties (DRA and TURN). Reid's work as a whole did not repeat the work of other parties, consistent with the Commission's past posture which states that "[t]he Commission should encourage the presentation of multiple points of view, even on the same issues, provided that the presentation are not redundant."</p>	<p>D.11-08-015, slip op. at 12</p>
<p>Reid participated in the proceeding in a manner that did not repeat the work of other parties. Reid represented customer interests that would otherwise be underrepresented in this proceeding.</p>	<p>D.10-05-017, slip op. at 11</p>
<p>Reid neither duplicated the work of other parties representing similar interests nor participated in this proceeding in a way that was unnecessary for a fair determination of the proceeding.</p>	<p>D.09-11-027, slip op. at 12</p>
<p>We find that Reid neither duplicated the work of other parties representing similar interests nor participated in this proceeding in a way that was unnecessary for a fair determination of the proceeding.</p>	<p>D.09-03-020, slip op. at 10</p>

Reid attempted to avoid duplication in the instant proceeding by doing the same things that he had done in the past: meeting with parties and discussing issues in order to avoid duplication. Reid's participation supplemented and complemented the presentations of other parties. Therefore, the Commission should not reduce Reid's hours for duplication.

V. OTC Contracts (Issue 1)

The PD disallows 30% of the time that Reid spent on OTC contracts and incorrectly states that "Reid mostly supported a DRA position that was adopted with significant modifications." (PD, p. 3)

On June 13, 2011 ALJ Peter Allen issued a ruling (Ruling) stating that "On the first issue - procurement rules relating to once-through cooling issues - testimony should address the proposal attached as Appendix A to this Ruling." (Ruling, p. 7) Thus, all parties were strongly encouraged to include comments on the Energy Division's OTC proposal as part of their testimony.

Both Reid and the DRA complied with ALJ Allen's ruling and addressed the OTC issue in their served testimony on August 6, 2011. Reid did not discuss the OTC issue with the DRA prior to serving testimony.

Reid did not merely support the DRA position. Reid and the DRA arrived at their positions independently. Reid supported the Energy Division's OTC proposal in its entirety; while the DRA argued that "DRA recommends the Commission modify the Staff Proposal on OTC unit contracting to comply with the modifications suggested by SDG&E and PG&E." (Exhibit 405, p. 21)

At no time did Reid support DRA's position on the OTC cooling issue. Thus, no duplication occurred and Reid should not have his hours reduced for duplication that did not exist.

VI. Procurement Review Groups (Issue 10)

The PD disallowed all of the time spent on the Procurement Review Groups issue. The PD incorrectly states that: (PD, p. 10)

We disallow Reid's hours spent on this issue. The decision did not address this issue, nor was it considered by the Administrative Law Judge. Reid did not make a substantial contribution on the decision merely because he opposed a proposal that was not adopted.

Three important points should be made concerning this particular disallowance. First, the PD states that the ALJ did not consider this issue – despite the fact that the ALJ asked parties to comment on the PRG issue. (See Ruling, p. 6)

The Ruling stated, "This Ruling confirms that we are addressing those four issues, plus one other issue, consisting of procurement oversight rules, including the oversight responsibilities and authority of various entities (including Independent Evaluators and the Procurement Review Group) and standards of conduct applicable to the utilities and their employees." (Ruling, p. 6)

Why would the ALJ request parties to comment on an issue, state that the Commission would address it, and then not consider the issue?

Second, the Commission stated, "We do not adopt any other of the proposed changes to the procurement rules at this time, but we may consider additional changes in future proceedings." (D.12-04-046, slip op. at 67) This statement implies that the Commission reviewed all of the proposed rule changes (including the PRG issue), but decided not to take any action concerning them.

Third, the PD apparently establishes a new standard for intervenor compensation claims: that intervenors should not expect to be paid if they oppose an issue raised by another party and are successful in their efforts. The Commission should not adopt such a standard for intervenor compensation.

For the reasons given above, the Commission should not disallow any of the time that Reid spent on the Procurement Review Group issue.

VII. Minor Errors

Finding of Fact 4 states that "The total reasonable contribution is . . .". The word "contribution" should be replaced with the word "compensation," consistent with past compensation decisions issued by the Commission.

VIII. Conclusion

The Commission should correct the PD as recommended by Reid for the reasons given herein. The Commission should award Reid compensation in the amount of \$66,376.70.

* * *

Dated November 4, 2013 at Santa Cruz, California.

/s/

L. Jan Reid
3185 Gross Road
Santa Cruz, CA 95062
Tel/FAX (831) 476-5700
janreid@coastecon.com

APPENDIX

Proposed Findings of Fact

Changes

4. The total reasonable contribution compensation is ~~\$42,909.95~~ \$66,376.70.

VERIFICATION

I, L. Jan Reid, make this verification on my behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated November 4, 2013, at Santa Cruz, California.

/s/ _____

L. Jan Reid
3185 Gross Road
Santa Cruz, CA 95062
Tel/FAX (831) 476-5700
janreid@coastecon.com