

Media Advisory

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CPUC PROPOSAL COULD CRIPPLE CONSUMER REPRESENTATION

Ratepayers will lose a key watchdog at the California Public Utilities Commission (CPUC) if the Commission approves a draft decision denying compensation for Women's Energy Matters (WEM) for three years of work in the Energy Efficiency (EE) Rulemaking.

The CPUC is expected to vote on 10 a.m., May 3rd at its office at *505 Van Ness*.

Its *Intervenor Compensation* program funds "reasonable costs of participation" in its proceedings if it finds that an intervenor made a "substantial contribution" — defined as offering input that was adopted in whole or in part, or "enriching the record." WEM has in fact made several important contributions over the past three years, including:

- 1) Exposing how utilities have exaggerated claims of efficiency savings. (PG&E eventually acknowledged ¼ of recent savings were non-existent.) WEM argued that credibility must be improved so EE can more effectively curb climate change by deferring or replacing dirty power sources. CPUC finally took EE measurement away from utilities in 2005, pledging to set up an independent system.
- 2) Revealing the CPUC's failure to find out whether long-range EE "commitments" ever came to fruition. (A study by WEM's ally, SESCO, found that approximately half of PG&E and Edison's reported savings for 2003 were "commitments," i.e. were not actually delivered in that year.) CPUC announced that savings would henceforth only be counted in the year they are actually produced.
- 3) Submitting one of only four proposals received by the CPUC for changing the EE administrative structure. It was not adopted, but WEM argued that its research enriched the record, demonstrating, among other things, that Texas, which doesn't allow utilities to run efficiency programs, achieves achieves 40% more energy savings per dollar than California..

“WEM is being punished for revealing that too much of utility EE is an expensive hoax,” said WEM Executive Director Barbara George. “A reluctant CPUC has fixed some aspects of the system, further angering the utilities. Other intervenors took up themes that WEM pioneered; ironically the judge seized on this to dismiss WEM’s contribution as ‘duplication’ of *their* work.”

A *duplication* prohibition in the law is meant to prevent “me-too” compensation for parties that merely restate the ideas of others. George said, “In this case, the provision is being used to kill the original messenger — the opposite of the law’s intent.”

George called the proposed decision unfair, saying she is contemplating filing an appeal. However, she said, “Getting paid was not WEM’s first priority. We became intervenors because we felt California’s EE system needed a serious overhaul. Our work led CPUC to make important changes — now we’re being penalized instead of rewarded for our achievements. There’s a lot more that needs to be done, but we’ll step back for now if this decision goes through.”

George noted that the judge who denied WEM’s compensation plans to revive “shareholders incentives” — special profits for utilities for EE — before she retires this year. (Incentives were suspended during the CPUC’s experiment with independent EE programs, but this judge approved *30% profit* on utilities’ 1994-2001 EE budgets in a different proceeding where WEM also participated. See p. 3, *Background*.)

George commented, “Incentives did not remove utilities’ conflicts of interest with saving energy. They just had their cake and ate it too — raked off enormous profits and saved as little energy as they could. *The way to really remove these conflicts of interest is to remove utilities from energy efficiency and have independent non-utility organizations provide EE services. That is WEM’s goal.*”

George stated, “There’s a bright side if WEM has to suspend CPUC work. We will have more time to concentrate on generating public support for genuine green alternatives. The lack of money will certainly hurt us, but WEM has community support, including the statewide Sierra Club, top-rated energy efficiency contractors and other environmental and church groups, which supported WEM’s proposal for EE administrative structure.”

WEM works with community leaders in CA cities and counties that seek to replace utilities’ energy choices with publicly controlled energy, whether through municipal ownership or “Community Choice” (a 2002 state law that allows cities and counties to provide energy for their residents and businesses without buying the wires from the utility). Dozens of CA cities and counties are working on Community Choice, and most are planning to provide more energy efficiency and 50% renewables (PG&E’s portfolio has less than 12% renewables.)

In the Energy Efficiency proceedings, WEM has succeeded in keeping the door ajar for Community Choice cities to control their own energy efficiency funds. “It’s right there in the law,” George said, “But anything can happen if ratepayers don’t have someone in the proceedings who is prepared to fight for their rights.”

BACKGROUND – WEM'S ROLE IN ENERGY EFFICIENCY PROCEEDINGS

Energy Efficiency in California (“EE”) is funded in part by the *Public Goods Charge*, a surcharge on electric/gas bills which funds efficiency, renewables, and low-income programs (a few dollars a month per home). It provides about \$250 m/yr for EE programs of CA's four big investor-owned utilities (IOUs) — PG&E, Edison, SDG&E, and SoCalGas. An *EE procurement surcharge* provides an additional \$600m/yr.

The CA Public Utilities Commission (CPUC) has jurisdiction over EE programs, periodically approving program designs, evaluation, oversight, and a final review of achievements and costs. In 2001 CPUC Pres. Loretta Lynch opened a Rulemaking to consider major changes in the system because of longstanding concerns about utilities' conflicts of interest with saving energy.

WEM *was* compensated for much of its work in the first two years of the EE Rulemaking (R0108028). In that time, the Commission began its first-ever experiment with EE programs designed and delivered by independent, non-utility providers. Non-profits and small businesses competed for about \$50 m/yr. (1/5 of the budget in those days). WEM's ally and occasional consultant, SESCO, analyzed first-year reports for all programs and found that all but one of the independent programs saved more energy per dollar than utilities. These statistics helped WEM convince Commissioners to preserve independent non-utility programs for two more years (04-05). WEM also revealed utilities' improper “sweetheart” system for hiring measurement contractors, leading CPUC to pledge to create an independent measurement system.

WEM opposed “shareholders incentives” — special profits for utilities' energy savings — in another CPUC proceeding running concurrently with the Rulemaking. The first judge in that proceeding reopened the question of incentives, as WEM urged. However, after Michael Peevey became Pres. of CPUC, he reassigned both the Rulemaking and the “shareholders incentives” case to the judge who wrote the key shareholders incentives decision in 1994. She made a U-turn in favor of utilities.

HISTORY OF “INTERVENOR COMPENSATION” FOR PUBLIC INTEREST REPS

Pursuant to federal law, California's *Intervenor Compensation* program is supposed to pay for skilled, knowledgeable, and sustained representation for ratepayers in CPUC regulatory proceedings.¹ The law recognized that few customers could afford such representation without undue hardship, or in the case of a group, “the economic interest of the individual members of the group is small in comparison to the costs of effective participation.”

Unfortunately, problems in California's intervenor compensation law prevent all but the most determined groups from participating.² Eligibility barriers make it impossible for most groups to qualify,³ and payment remains uncertain, sometimes for years. Intervenors must wait for the Commission to determine *after the fact* whether they have made a “substantial contribution,” and different Commissions have varied widely in their interpretations of the law.

¹ See Public Utility Regulatory Policies Act of 1978 (PURPA), Public Law 95-617, 16 USC 2601, Subtitle C §121-123. PURPA was created to advance clean energy alternatives.

² See CA Public Utilities Code §1801 – 1812.

³ Legislation introduced this year seeks to alleviate some eligibility problems. (AB1157, Ruskin).