Decision **DRAFT DECISION ALJ GOTTSTEIN (Mailed 6/8/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Future Energy Efficiency Policies, Administration and Programs.	Rulemaking 01-08-028 (Filed August 23, 2001)

OPINION DENYING INTERVENOR COMPENSATION TO LATINO ISSUES FORUM FOR CONTRIBUTIONS TO DECISION 05-01-055

This decision denies Latino Issues Forum's (LIF) request for compensation for contributions to the Commission's decision on administrative structure for post-2004 energy efficiency programs, Decision (D.) 05-01-055. As described below, LIF's eligibility for compensation in this proceeding was previously limited to the new issues added as a result of the January 23, 2004 prehearing conference (PHC). Those new issues are: (1) energy efficiency incentives, (2) utility-specific energy savings goals, and (3) revising and updating avoided costs, none of which were addressed by D.05-01-055.

1. Background

This rulemaking addressed the policies, programs and administration of efficiency programs sponsored by California's investor-owned energy utilities. The Commission has issued numerous decisions, some of which rule on requests for funding specific energy efficiency programs, and others that state or revise the Commission's generally applicable energy efficiency policies. LIF seeks intervenor compensation in the amount of $39,036.81 for its claimed substantial

contributions to D.05-01-055, which established the administrative structure for post-2005 energy efficiency programs.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)

2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)

4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)

5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)

6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

We focus here on the procedural issues related to LIF's eligibility for compensation, as determined by the rulings addressing its NOI (Item #1 above).

3. Procedural History

On December 5, 2003, LIF filed an NOI in this proceeding, more than two years after the PHC, held on September 10, 2001. By ruling dated January 27, 2004, and after consultation with the Assigned Commissioner Administrative Law Judge (ALJ) Malcolm denied LIF's NOI for work conducted prior to its filing of the NOI because its pleading was inexplicably late. However, ALJ Malcolm did not rule on whether LIF would be found eligible for future work should the scope of the proceeding change as a result of another PHC held on January 23, 2004. Her ruling stated that LIF "should file a new timely NOI following that PHC if it decides to participate in upcoming phases of the proceeding."[1]

Following the January 23, 2004 PHC, LIF filed a new NOI on February 4, 2004. In a ruling dated February 18, 2004, the assigned ALJ found LIF to be eligible for work conducted on new issues added to the proceeding as a result of the PHC, as described below, with emphasis added and footnotes omitted:

[1] Administrative Law Judge's Ruling Regarding Notice of Intent to Claim Compensation, January 27, 2004, p. 1.

…LIF is eligible for intervenor compensation for work on prospective issues that represent a change in scope as a result of the January 23, 2004 prehearing conference. In particular, the Assigned Commissioner and Administrative Law Judge established a procedural schedule that would accommodate the addition of energy efficiency incentives in the proceeding, per the Commission's direction in Decision (D.) 03-12-062 in the Procurement Proceeding. The corollary task of establishing utility-specific energy savings goals was also added to the scope of the proceeding, and scheduled during discussions in the morning and afternoon sessions. In response to D.03-12-062, the Assigned Commissioner also identified this docket as the forum for revising and updating the Commission's avoided-cost methodology for analyzing the costs and benefits of energy efficiency programs, including updates for externality adders. This issue was added to the scope of the proceeding and scheduling options were discussed at the January 23, 2004 prehearing conference. Accordingly, LIF is put on notice that today's ruling of eligibility is limited to the new issues added to this proceeding as a result of the January 23, 2004 prehearing conference, as identified above.

All other issues discussed and scheduled during the course of the January 23, 2004 prehearing conference and subsequent February 6, 2004 Assigned Commissioner's ruling are not new to this proceeding. The issue of program evaluation, measurement and verification (EM&V) was identified in the July 3, 2003 Assigned Commissioner's ruling as a topic for this proceeding, both in the context of assessing progress towards meeting program goals to reduce energy consumption and "if the Commission decides to award incentives for superior performance in meeting or exceeding energy efficiency goals." That ruling also identified within the scope of this proceeding the issues of long-term program administration, energy savings goals for California, the selection of energy efficiency programs for 2004-2005, the development of criteria and policy rules for 2004-2005 program selection and related issues. As a foundation for addressing these issues, the Assigned Commissioner outlined a set of workshops on "customer needs," "collaboration and partnership among program implementers," and other topics prior

> to January 23, 2004 prehearing conference. Per the January 2004 Ruling, LIF is not eligible for compensation for work on these issues. Pub. Util. Code §1804(a)(2)(A)(1) requires that the NOI include a statement of the nature and extent of the customer's planned participation. LIF states that, in addition to filing comments and participating in any workshops on incentives, it intends to participate in this proceeding on the issues of "administration" and "evaluation and measurement." However, as discussed above, the issues of administrative structure and EM&V are not new to this proceeding. In its request for compensation, LIF should clearly document how its participation contributes to the Commission's decision(s) on the new issues added as a result of the January 23, 2004 prehearing conference. As described above, the new issues are: (1) energy efficiency incentives, (2) utility-specific energy savings goals, and (3) revising and updating avoided costs."

The Commission issued D.05-01-055 on February 3, 2005 and LIF filed its request for compensation on April 4, 2005. No protests or comments were filed in response to LIF's NOI.

4. Discussion

As described above, LIF was directed to "clearly document how its participation contributes to the Commission's decision(s) on the new issues added as a result of the January 23, 2004 prehearing conference." LIF's April 4, 2004 request for compensation fails to do so and appears to completely ignore the content of ALJ rulings that limited its eligibility for compensation to those new issues. Instead, LIF requests compensation for 97 hours of work related to the Commission decision on administrative structure—an issue explicitly excluded as not being "new" in the ALJ rulings.

In order to give LIF some benefit of the doubt, we have carefully reviewed LIF's breakdown of hours by date and activity to determine if any of those hours relate to the issues for which it would be eligible for compensation. As outlined

in the ALJ rulings, these would be: (1) energy efficiency incentives, (2) utility-specific energy savings goals, and (3) revising and updating avoided costs. With

few exceptions, all of the hours listed by LIF relate to work on administrative structure issues. We found only 8 hours that LIF booked to administrative issues that actually relate to other issues in this proceeding, i.e., work on (1) preparing comments on the consumer needs workshop, (2) preparing comments on the draft decision and alternate decision regarding 2003-2004 program funding, and (3) reviewing the order denying rehearing of that decision (D.03-12-060). However, these few hours are also related to issues that were scoped and noticed prior to the January 23 PHC-- and are thereby similarly excluded from LIF's eligibility for compensation in this proceeding.

We conclude that LIF is not eligible to receive compensation for the hours and expenses presented in its February 4, 2005 request for compensation, and we deny LIF's request on that basis. In doing so, we remind LIF that it is required to abide by ALJ rulings on intervenor eligibility.

5. Comments on Draft Decision

The draft decision of ALJ Gottstein in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed on June 28, 2005 by LIF. No reply comments were filed.

In its comments, LIF argues that it is being denied intervenor compensation based on a "technicality," that the draft decision is "arbitrary and capricious" and that the Commission should recognize and recompense LIF's substantial contribution to D.05-01-055.

We strongly disagree with LIF's characterization of the draft decision. In essence, LIF requests that we selectively ignore the procedural requirements of the intervenor compensation statute and overturn previous ALJ rulings that reach determinations that are consistent with these requirements. This clearly

was not the intention of the intervenor compensation statute, nor does it serve the public interest. We make no modifications to the draft decision in response to LIF's comments.

6. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Meg Gottstein and Kim Malcolm are the assigned ALJs in this proceeding.

Finding of Fact

LIF's February 4, 2005 request for compensation addresses work related to administrative structure and other issues for which LIF is not eligible for compensation, per the January 27, and February 18, 2004 rulings of the assigned ALJs.

Conclusions of Law

1. LIF has not fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, with respect to LIF's eligibility for compensation for the scope of work requested.
2. LIF's request for compensation should be denied.
3. This order should be effective today.

O R D E R

IT IS ORDERED that the Latino Issues Forum February 4, 2005 request for compensation is denied.

This order is effective today.

Dated _____, at San Francisco, California.