

AMENDED IN ASSEMBLY APRIL 16, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 995

Introduced by Assembly Member Frazier

February 22, 2013

An act to amend ~~Section~~ *Sections 1801.3, 1802, 1802.5, 1803, and 1804 of, and to add Section 1802.1 to, the Public Utilities Code, relating to public utilities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 995, as amended, Frazier. Public utilities: intervenor fees: customers.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical, gas, telephone, telegraph, and water corporations, as defined, and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law requires the commission to award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to customers, as defined, of an electrical, gas, telegraph, telephone, and water corporation who comply with specified procedures, if the customer's presentation makes a substantial contribution, as defined, to the adoption, in whole or in part, of the commission's order or decision and the customer's participation or intervention without an award of fees or costs imposes a significant financial hardship, as defined. A "substantial contribution" is defined as meaning 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.

This bill would require the commission, by July 1, 2015, to adopt rules establishing standards to verify that a customer representative is authorized by consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation to represent their interests. The bill would revise the definition of “substantial contribution” to additionally require that the commission find that the customer’s participation promoted a public purpose that directly benefits other customers. The bill would require the commission to award reasonable advocate’s fees, reasonable expert witness fees, and other reasonable costs to customers of an electrical, gas, telegraph, telephone, and water corporation who comply with specified procedures, if the customer’s presentation makes a substantial contribution to the adoption, in whole or in part, of the commission’s order or decision and promotes a public purpose that benefits other customers, and the customer’s participation or intervention without an award of fees or costs imposes a significant financial hardship, as defined. The bill would prohibit the total amount the commission annually awards for intervenor compensation from exceeding the mean average of awards for the previous 3 calendar years.

Existing law provides 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 specified requirements.

Existing law establishes a division within the commission, known as the Division of Ratepayer Advocates, to represent the interests of public utility customers and subscribers, with the goal of obtaining the lowest possible rate for service consistent with reliable and safe service levels.

This bill would provide that a customer’s participation that substantially duplicates the presentation of the commission’s Division of Ratepayer Advocates, or that falls within the scope and purview of the division, is not eligible for compensation, unless the commission determines that it provided a substantial contribution to promote a public purpose that the division did not provide.

Existing law requires a customer who intends to seek an award for intervenor fees to timely file and serve on all parties to the proceeding a notice of intent to claim compensation, ~~containing specified information.~~ Existing law authorizes an administrative law judge that

is assigned to the proceeding in which intervenor compensation is sought to issue a ruling addressing issues raised by the notice of intent to claim compensation and to point out similar positions, areas of potential duplication in showings, unrealistic expectation for compensation, and any other matter that may affect the customer's ultimate claim for compensation. Existing law authorizes a customer found to be eligible for compensation to file within 60 days of the issuance of a final order or decision of the Public Utilities Commission a request for an award, which includes a statement of the nature and extent of the customer's planned participation in the proceeding and an itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appears at the time of the filing of the notice.

This bill would revise the time period for a customer to file a request for an award to 30 days of the issuance of a final order or decision, additionally require that the notice of intent to claim compensation include a verification of the individual customer or group of customers being represented.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *The intervenor compensation program administered by the*
- 4 *Public Utilities Commission provides compensation to individuals*
- 5 *and groups participating in commission proceedings involving*
- 6 *electrical, gas, water, and telephone corporations to cover the*
- 7 *reasonable costs of participation.*
- 8 (b) *The program compensates individual customers, and groups*
- 9 *representing customers, that lack the financial resources otherwise*
- 10 *necessary to advocate in commission proceedings.*
- 11 (c) *Intervenor awards are paid from funds collected from*
- 12 *ratepayers.*
- 13 (d) *The intent of the program is to compensate an intervenor*
- 14 *for participation, when his or her participation promotes a public*
- 15 *purpose and benefits other, nonparticipating ratepayers, and when*
- 16 *it presents evidence or arguments that are separate and distinct*

1 from those presented by the commission’s Division of Ratepayer
2 Advocates.

3 (e) The Division of Ratepayer Advocates is the independent
4 consumer advocate within the commission.

5 (f) The Division of Ratepayer Advocates has a statutory directive
6 to represent consumer interests at commission proceedings, to
7 obtain the lowest possible rate for service consistent with reliable
8 and safe service levels, and to advocate for customer and
9 environmental protections.

10 SEC. 2. Section 1801.3 of the Public Utilities Code is amended
11 to read:

12 1801.3. It is the intent of the Legislature that:

13 (a) The provisions of this article shall apply to all formal
14 proceedings of the commission involving electric, gas, water, and
15 telephone utilities.

16 (b) The provisions of this article shall be administered in a
17 manner that encourages the effective and efficient participation of
18 all groups that have a stake in the public utility regulation process.

19 (c) The process for finding eligibility for intervenor
20 compensation be streamlined, by simplifying the preliminary
21 showing by an intervenor of issues, budget, and costs.

22 (d) Intervenors be compensated for making a substantial
23 contribution to proceedings of the commission, as determined by
24 the commission in its orders and decisions.

25 (e) Intervenor compensation be awarded to eligible intervenors
26 in a timely manner, within a reasonable period after the intervenor
27 has made the substantial contribution to a proceeding that is the
28 basis for the compensation award.

29 (f) This article shall be administered in a manner that avoids
30 ~~unproductive or unnecessary~~ participation that duplicates the
31 participation of similar interests otherwise adequately represented
32 or participation that is not necessary for a fair determination of the
33 proceeding.

34 SEC. 3. Section 1802 of the Public Utilities Code is amended
35 to read:

36 1802. As used in this article:

37 (a) “Compensation” means payment for all or part, as determined
38 by the commission, of reasonable advocate’s fees, reasonable
39 expert witness fees, and other reasonable costs of preparation for
40 and participation in a proceeding, and includes the fees and costs

1 of obtaining an award under this article and of obtaining judicial
2 review, if any.

3 (b) (1) “Customer” means any of the following:

4 (A) A participant representing consumers, customers, or
5 subscribers of any electrical, gas, telephone, telegraph, or water
6 corporation that is subject to the jurisdiction of the commission.

7 (B) A representative who has been authorized by a customer.

8 (C) A representative of a group or organization authorized
9 pursuant to its articles of incorporation or bylaws to represent the
10 interests of residential customers, or to represent small commercial
11 customers who receive bundled electric service from an electrical
12 corporation.

13 (2) “Customer” does not include any state, federal, or local
14 government agency, any publicly owned public utility, or any
15 entity that, in the commission’s opinion, was established or formed
16 by a local government entity for the purpose of participating in a
17 commission proceeding.

18 (c) “Expert witness fees” means recorded or billed costs incurred
19 by a customer for an expert witness.

20 (d) “Other reasonable costs” means reasonable out-of-pocket
21 expenses directly incurred by a customer that are directly related
22 to the contentions or recommendations made by the customer that
23 resulted in a substantial contribution.

24 (e) “Party” means any interested party, respondent public utility,
25 or commission staff in a hearing or proceeding.

26 (f) “Proceeding” means an application, complaint, or
27 investigation, rulemaking, alternative dispute resolution procedures
28 in lieu of formal proceedings as may be sponsored or endorsed by
29 the commission, or other formal proceeding before the commission.

30 (g) “Significant financial hardship” means either that the
31 customer cannot afford, without undue hardship, to pay the costs
32 of effective participation, including advocate’s fees, expert witness
33 fees, and other reasonable costs of participation, or that, in the case
34 of a group or organization, the economic interest of the individual
35 members of the group or organization is small in comparison to
36 the costs of effective participation in the proceeding.

37 (h) “Small commercial customer” means any nonresidential
38 customer with a maximum peak demand of less than 50 kilowatts.
39 The commission may establish rules to modify or change the
40 definition of “small commercial customer,” including use of criteria

1 other than a peak demand threshold, if the commission determines
2 that the modification or change will promote participation in
3 proceedings at the commission by organizations representing small
4 businesses, without incorporating large commercial and industrial
5 customers.

6 (i) “Substantial contribution” means that, in the judgment of
7 the commission, the customer’s presentation has substantially
8 assisted the commission in the making of its order or decision
9 because the order or decision has adopted in whole or in part one
10 or more factual contentions, legal contentions, or specific policy
11 or procedural recommendations presented by the customer *and*
12 *the customer’s participation promoted a public purpose that*
13 *directly benefits other customers.* Where the customer’s
14 participation has resulted in a substantial contribution, even if the
15 decision adopts that customer’s contention or recommendations
16 only in part, the commission may award the customer compensation
17 for all reasonable advocate’s fees, reasonable expert fees, and other
18 reasonable costs incurred by the customer in preparing or
19 presenting that contention or recommendation.

20 *SEC. 4. Section 1802.1 is added to the Public Utilities Code,*
21 *to read:*

22 *1802.1. By July 1, 2015, the commission shall adopt rules*
23 *establishing standards to verify that a “customer” representative*
24 *is authorized by consumers, customers, or subscribers of any*
25 *electrical, gas, telephone, telegraph, or water corporation to*
26 *represent their interests.*

27 *SEC. 5. Section 1802.5 of the Public Utilities Code is amended*
28 *to read:*

29 1802.5. Participation by a customer that materially supplements,
30 complements, or contributes to the presentation of another party,
31 including the commission staff, may be fully eligible for
32 compensation if the participation makes a substantial contribution
33 to a commission order or decision, consistent with Section 1801.3.
34 *Participation that substantially duplicates the presentation of the*
35 *Division of Ratepayer Advocates, or that falls within the scope*
36 *and purview of the division, shall not be eligible for compensation,*
37 *unless the commission determines that it provided a substantial*
38 *contribution to promote a public purpose that the division did not*
39 *provide.*

1 *SEC. 6. Section 1803 of the Public Utilities Code is amended*
2 *to read:*

3 1803. (a) The commission shall award reasonable advocate's
4 fees, reasonable expert witness fees, and other reasonable costs of
5 preparation for and participation in a hearing or proceeding to any
6 customer who complies with Section 1804 and satisfies both of
7 the following requirements:

8 (a)

9 (1) The customer's presentation makes a substantial contribution
10 to the adoption, in whole or in part, of the commission's order or
11 decision *and promotes a public purpose that benefits other*
12 *customers.*

13 (b)

14 (2) Participation or intervention without an award of fees or
15 costs imposes a significant financial hardship.

16 (b) *The total amount the commission may annually award for*
17 *intervenor compensation shall not exceed the mean average of*
18 *awards for the previous three calendar years.*

19 **SECTION 1.**

20 *SEC. 7. Section 1804 of the Public Utilities Code is amended*
21 *to read:*

22 1804. (a) (1) A customer who intends to seek an award under
23 this article shall, within 30 days after the prehearing conference
24 is held, file and serve on all parties to the proceeding a notice of
25 intent to claim compensation. In cases where no prehearing
26 conference is scheduled or where the commission anticipates that
27 the proceeding will take less than 30 days, the commission may
28 determine the procedure to be used in filing these requests. In cases
29 where the schedule would not reasonably allow parties to identify
30 issues within the timeframe set forth above, or where new issues
31 emerge subsequent to the time set for filing, the commission may
32 determine an appropriate procedure for accepting new or revised
33 notices of intent.

34 (2) (A) The notice of intent to claim compensation shall include
35 ~~both~~ *all* of the following:

36 (i) A statement of the nature and extent of the customer's
37 planned participation in the proceeding as far as it is possible to
38 set it out when the notice of intent is filed.

1 (ii) An itemized estimate of the compensation that the customer
2 expects to request, given the likely duration of the proceeding as
3 it appears at the time.

4 (iii) *A verification of the individual customer or group of*
5 *customers being represented.*

6 (B) The notice of intent may also include a showing by the
7 customer that participation in the hearing or proceeding would
8 pose a significant financial hardship. Alternatively, such a showing
9 shall be included in the request submitted pursuant to subdivision
10 (c).

11 (C) Within 15 days after service of the notice of intent to claim
12 compensation, the administrative law judge may direct the staff,
13 and may permit any other interested party, to file a statement
14 responding to the notice.

15 (b) (1) If the customer's showing of significant financial
16 hardship was included in the notice filed pursuant to subdivision
17 (a), the administrative law judge, in consultation with the assigned
18 commissioner, shall issue within 30 days thereafter a preliminary
19 ruling addressing whether the customer will be eligible for an
20 award of compensation. The ruling shall address whether a showing
21 of significant financial hardship has been made. A finding of
22 significant financial hardship shall create a rebuttable presumption
23 of eligibility for compensation in other commission proceedings
24 commencing within one year of the date of that finding.

25 (2) The administrative law judge may, in any event, issue a
26 ruling addressing issues raised by the notice of intent to claim
27 compensation. The ruling may point out similar positions, areas
28 of potential duplication in showings, unrealistic expectation for
29 compensation, and any other matter that may affect the customer's
30 ultimate claim for compensation. Failure of the ruling to point out
31 similar positions or potential duplication or any other potential
32 impact on the ultimate claim for compensation shall not imply
33 approval of any claim for compensation. A finding of significant
34 financial hardship in no way ensures compensation. Similarly, the
35 failure of the customer to identify a specific issue in the notice of
36 intent or to precisely estimate potential compensation shall not
37 preclude an award of reasonable compensation if a substantial
38 contribution is made.

39 (c) Following issuance of a final order or decision by the
40 commission in the hearing or proceeding, a customer who has been

1 found, pursuant to subdivision (b), to be eligible for an award of
2 compensation may file within ~~30~~ 60 days a request for an award.
3 The request shall include at a minimum a detailed description of
4 services and expenditures and a description of the customer's
5 substantial contribution to the hearing or proceeding. Within 30
6 days after service of the request, the commission staff may file,
7 and any other party may file, a response to the request.

8 (d) The commission may audit the records and books of the
9 customer to the extent necessary to verify the basis for the award.
10 The commission shall preserve the confidentiality of the customer's
11 records in making its audit. Within 20 days after completion of
12 the audit, if any, the commission shall direct that an audit report
13 shall be prepared and filed. Any other party may file a response
14 to the audit report within 20 days thereafter.

15 (e) Within 75 days after the filing of a request for compensation
16 pursuant to subdivision (c), or within 50 days after the filing of an
17 audit report, whichever occurs later, the commission shall issue a
18 decision that determines whether or not the customer has made a
19 substantial contribution to the final order or decision in the hearing
20 or proceeding. If the commission finds that the customer requesting
21 compensation has made a substantial contribution, the commission
22 shall describe this substantial contribution and shall determine the
23 amount of compensation to be paid pursuant to Section 1806.