

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Chris Holden, Chair

AB 2431 (Weber) – As Introduced February 14, 2018

SUBJECT: Public Utilities Commission: proceedings: intervenor compensation

SUMMARY: Defines, for the purposes of establishing eligibility for the intervenor compensation program, a customer to include a public school district, county office of education, or community college district, or an authorized representative of one of those entities.

EXISTING LAW:

- 1) Authorizes intervenors of electric, water, and telephone utilities to be compensated for making a substantial contribution to proceedings as determined by the California Public Utilities Commission (CPUC). (Public Utilities Code § 1801 et seq.)
- 2) Defines "compensation" as payments for all or part, as determined by the CPUC, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award, as specified, and of obtaining judicial review, if any. (Public Utilities Code § 1802)
- 3) Defines "customer" to include any of the following:
 - a) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the CPUC;
 - b) A representative of a group or organization that holds the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation;
 - c) A city, county, or city and county that is not a publicly owned public utility that intervenes in a commission proceeding for the purpose of protecting the health and safety of the residents within the entity's jurisdiction following a catastrophic material loss suffered by its residents either in significant damage to infrastructure or loss of life and property, or both, as a direct result of public utility infrastructure;
 - d) A small commercial customer as nonresidential customer with a maximum peak demand of less than 50 kilowatts; and
 - e) A group or association that represents the interests of small agricultural customers in a proceeding and that would otherwise be eligible for an award made shall not be deemed ineligible solely because that group or organization also has members who are large agricultural customers. (Public Utilities Code § 1802)
- 4) Excludes from the definition of customer any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the CPUC's opinion was established or formed by a local government entity for the purpose of participating in a CPUC proceeding;

- 5) Establishes an Office of Ratepayer Advocates (ORA) to represent and advocate on behalf of public utility customers with a goal to obtain the lowest possible rate for service consistent with reliable and safe service levels with a primary focus on residential and small commercial customers. (Public Utilities Code § 309.5)

FISCAL EFFECT: This bill is keyed fiscal and will be referred to the Appropriations Committee for its review of the fiscal effect of this bill. It is important to note however that the Appropriations Committee limits its analysis to the impact on overall state agency impacts and does not assess the impacts of policy on the costs of electricity or gas service to ratepayers.

BACKGROUND:

CPUC Intervenor Compensation – The CPUC initiated its intervenor compensation program in 1981 and state law was enacted in 1984 to govern the program. The program is intended to ensure that intervenors – individuals and groups that represent the interests of utility ratepayers – have the financial resources to bring their concerns and interest to the CPUC at its proceedings. Intervenors advocate for a variety of ratepayers, including residential and small-business customers, minority groups, and the disabled. State law allows intervenors that participate in CPUC proceedings involving utilities, such as electric, gas, and water utilities, to request compensation for the costs associated with that participation. Public utilities pay these intervenor compensation awards from the amounts they collect from their ratepayers. These awards affect utility rates so that utilities can recoup any amounts they pay to intervenors.

Intervenor Eligibility – A party to a proceeding planning to claim intervenor compensation must file a notice of intent to claim compensation that indicates the planned extent and estimated costs of the intervenor’s planned participation in a proceeding. Additionally, intervenors must show “significant financial hardship” to receive compensation, by submitting documents demonstrating that the intervenor could not afford to participate without undue hardship.

Office of Ratepayer Advocates (ORA) – The ORA was created to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the CPUC. ORA’s goal is to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the office primarily considers the interests of residential and small commercial customers. ORA has a staff of 147 consisting of engineers, economists, scientists, and auditors with expertise in regulatory issues related to the electricity, natural gas, water, and communications industries in California. ORA’s staff performs in-depth review and analyses of regulatory policy issues and utility proposals, for funding that totals in the tens of billions of dollars, in order to determine whether utility requests are in the interest of the ratepayers who fund utility activities through their utility bills. ORA also supports environmental policies that benefit customers and seeks to ensure that utility actions comport with CPUC rules and California environmental laws and policy goals. In 2015, ORA participated in 192 CPUC proceedings.

Intervenor Compensation Ratepayer Costs – The CPUC has made \$36.8 million in compensation awards to approximately 65 parties for 2014-2017 under the Intervenor Compensation Program:

| 2014 | 2015 | 2016 | 2017 |
|-------------|--------------|--------------|-------------|
| \$7,987,355 | \$12,243,656 | \$10,180,317 | \$6,342,036 |

Intervenor representatives (attorneys and experts) are compensated by the hour according to a rate schedule adopted annually by the CPUC. For 2017 attorneys were paid a minimum of \$170 an hour for 0-2 years of experience and a maximum of \$585 an hour for 13 or more years of experience. Expert witness fees are compensated a minimum of \$145 an hour for 0-6 years of experience and a maximum of \$435 an hour for more than \$13 years of experience.

COMMENTS:

- 1) Author's Statement. The author states that AB 2431 will ensure that public education agencies are afforded the same rights and abilities to be represented in CPUC proceedings as other ratepayers. Intervenor status will help schools in their efforts to reduce and/or manage their utility and telecommunications costs, which will in turn, lead to better use and efficiency of education facility and operating fund revenues and improved education outcomes.

The bill would simply create greater opportunities for local education agencies (LEAs) to participate in CPUC proceedings that impact their utility costs. Large increases in utility costs divert funds from educational purposes, but there is also a significant cost just to participate in these very technical CPUC proceedings. The bill does not create any rate increases or decreases – the CPUC would continue to have authority to consider the input of all stakeholders and set utility rates.

- 2) Opportunities to Engage. In addition to the efforts of ORA to address general rate cases on behalf of ratepayers, CPUC proceedings are public and open but complicated. Any interested person or group that files an application, petition, or formal complaint with the CPUC automatically becomes a party to the proceeding as well as those filing replies to initiating documents in a proceeding, or appearing at the initial prehearing conference. Groups wishing to participate in a proceeding which is already underway, must file a separate motion with the administrative law judge that addresses the parties interest in the ongoing proceeding. In addition investor owned utilities (IOUs) are required to hold public participation hearings throughout their respective territory after the filing of general rate cases which are open to any ratepayer or ratepayer groups in the IOU territory including schools.
- 3) Eligibility. The statute governing intervenor compensation has historically excluded state, federal, or local government agencies, any public utilities, or any entities formed by a local government agency for the purpose of participating in a CPUC proceeding from the definition of a customer. This exclusion is premised on the fact that government agencies are funded with public dollars and have the ability to pass the costs of participation on to their citizens. Government agencies can still participate as a party in any CPUC proceeding.

The committee acknowledges that school districts have constrained budgets. Unfortunately constrained budgets are a reality for most public and private entities participating in CPUC proceedings. Constrained budgets are different than “financial hardship” which is the threshold for qualification for intervenor compensation. It may be difficult to allow schools to participate in the intervenor compensation program, but not allow other government agencies that may also face similar budget constraints.

- 4) San Bruno Exception. On September 9, 2010, a natural gas pipeline owned by Pacific Gas and Electric Company (PG&E) exploded in a residential neighborhood in the City of San Bruno. Eight people died, dozens were injured, 38 houses were destroyed and many more were damaged. The investigations by the National Transportation Safety Board (NTSB) and an independent review panel appointed by the CPUC found that PG&E mismanaged their pipeline over decades, failed to adequately test the strength of the pipeline and, more generally, valued profits over safety. These same investigations also noted the CPUC's inadequate oversight of PG&E. In response to the explosion in San Bruno, the Legislature passed SB 512 in 2015 which amended the definition of a customer for purposes of participating in the intervenor compensation program to include a local government entity that participates in proceedings for the purposes of protecting health and safety of residents within their jurisdiction after suffering a material loss, either in significant damage to infrastructure or loss of life and property.
- 5) Magnitude. Authorizing public school districts, county offices of education, community college districts and education trade associations opens intervenor compensation more than 1,000 public agencies and innumerable trade associations. In California there are 1,025 school districts, 72 community college districts, and 58 county offices of education. Furthermore the bill also authorizes authorized representatives of those entities, i.e. trade groups, to be eligible for intervenor compensation. This would expand eligible entities for intervenor compensation dramatically and these additional costs of CPUC proceedings would be paid for by the ratepayers of electric, gas, water, and telecommunication corporations.

To limit the expanse of eligible groups and eligible proceedings *the committee may wish to consider narrowing the bill to limit eligibility to small schools districts, defined as those with 5,000 or less average daily attendance, participating in the general rate cases of gas and electric corporations.*

- 6) Prior Legislation. The following related bills have been considered in prior legislative sessions.

AB 2120 (Weber, 2016) would have authorized compensation for participation or intervention of a county office of education, or a consortium of public school districts or agencies on behalf of local K–12 educational agencies (LEAs) in a California Public Utilities Commission (CPUC) proceeding relating to gas or electricity rates. Status: Held in Senate Committee on Appropriations.

SB 512 (Hill, 2015) defines a customer for purposes of participating in the intervenor compensation program to include a local government entity that is not a publicly owned public utility that participates in a proceeding for purposes of protecting the health and safety of the residents within their jurisdiction after suffering a material loss, either in significant damage to infrastructure or loss of life and property. (Chapter 808, Statutes of 2016)

SB 1165 (Wright, 2012) would have allowed intervenor compensation to be awarded for participation or intervention in proceedings at the CPUC for a county office of education, on behalf of any of the local educational agencies in whole or part within

the county or on behalf of itself, or for a community college district. Held in the
Status: Senate Committee on Appropriations.

REGISTERED SUPPORT / OPPOSITION:**Support**

School Project for Utility Rate Reduction (Sponsor)
Ackerman Charter School District
Banning Unified School District
Bellevue Union School District
Butte County Office of Education
California Association of School Business Officials (CASBO)
California School Boards Association
Ceres Unified School District
Chico Unified School District
Claremont Unified School District
Coalition of Adequate School Housing
College of The Desert
Contra Costa County Office of Education
Fortuna Union High School District
Fresno Unified School District
Hemet Unified School District
Hillsborough City School District
Irvine Unified School District
Jacoby Creek School District
Kern County Superintendent of Schools
Kings Canyon Unified School District
Lake Elsinore Unified School District
Panama-Buena Vista Union School District
Riverside County Superintendent of Schools
San Bernardino City Unified School District
San Diego County Office of Education
San Diego Schools Coalition for Electricity Cost Reduction
San Francisco Unified School District
School Energy Coalition
Stockton Unified School District
Tracy Unified School District

Opposition

California Chamber of Commerce
California Communications Association
California Manufacturers & Technology Association
California Retailers Association
California Water Association
Energy Users Forum
PacifiCorp

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