

# California Energy Circuit Juice: Intervention Preemption

March 10, 2006

It's spring. Hope springs eternal. That may explain why I've been hearing from members of the public who want to make a difference in energy policy. These folks do not have deep pockets. They don't have a history of intervening at the California Public Utilities Commission. They don't know the ropes. In fact, they are intimidated by the process but feel that it's important to try to make a difference.

Like I said: hope springs eternal.

I answer their questions as best I can, but it's tough for me to be sanguine on their behalf.

The CPUC offers compensation for some of those who can prove - and prove some more - that their time and effort make a difference. The payment, if it is granted, comes from utilities' ratepayer funds, not from utilities themselves. The California Energy Commission does not offer compensation. Any public participation there is strictly out of the intervenors' pockets.

The CPUC does enough to justify the "public" in its title. It prints pamphlets (Guide to Public Participation, Intervenor Compensation Program Guide). It has a public adviser. Yet, despite the public adviser's help and the siren song of compensation for the time and effort of an outsider's involvement, my sources say the game is stacked. I agree. The CPUC could do much more to instigate and attract real public involvement instead of simply waiting for the usual consumer groups who make a living at it.

For instance, pretend my grandmother has been gathering data in her retirement years about her neighbors' concerns over a forest waste biomass plant. The plant is accumulating piles of ash, which, when wet, turn into vats of corrosive lye, heading toward the groundwater used for drinking and agriculture. (As with some novels, any resemblance of the characters in this column to any number of real intervenors is intentional.)

Hypothetically, the CPUC staff considers the biomass plant good for power supply. The California Independent System Operator considers it important for local reliability. The Division of Ratepayer Advocates feels it's an inexpensive source of power and is uninterested in having more ratepayer funds invested in waste cleanup. The local utility has no interest in funding any cleanup as it is pressuring the plant's owner to renegotiate its contract downward.

In this scenario, as in many real ones, my grandmother's issues are not covered by any of those entities. Hers, and those of other potential intervenors with fresh perspectives, should be a part of state policy making. Despite her data and her willingness, Grams lacks the resources to become an intervenor.

For instance, Grams doesn't have Internet access, but she's good on foot. She prepares a typewritten statement. She walks it over to 505 Van Ness and asks for it

to be submitted. The security force blocking access to the upper floors has no idea what she's talking about. They do not offer the help of the CPUC public adviser's office. Instead, they send her to the mail room for a time/date stamp. The mail room has no idea where Grams's papers are supposed to be filed because they are missing a service list. Finally, another guard offers the availability of the public adviser but doesn't bother to point to the in-house phone to her office. Grams fumbles for 50 cents to make the call. The public adviser is out. Meanwhile, the CPUC is about to shut down for the day, and if Grams doesn't make her filing, she's out of luck. With just minutes to spare, the public adviser is finally located. Grams is sent down the street to make seven copies of her statement.

After that unpleasant experience, Grams dejectedly gets on a bus back to her retirement community in Cucamonga. Once there, she realizes that, unlike most who want to make a difference at the Public Utilities Commission, she has a relative who may know something about getting heard at the state level. She calls me.

I let Grams know she should call the administrative law judge directly for some help and, if she and her friends can afford it, get a lawyer. Also, I mention, don't forget to write a brief that says you want intervenor compensation. If she doesn't, she will simply be out the money up front. I warn her, though, that even if she prevails, it's likely that the utility or the power plant owner will fight her application for funds. Utilities have deep pockets of ratepayer money to spend to fight her. She probably will end up with nothing but bills.

This is with Grams having an "in" to help her through.

A bit more confident, Grams returns to 505 Van Ness with her request for compensation, eight copies, and a self-addressed stamped envelope. This time, she is told she has to simultaneously file e-mails with all the people on the docket's service list.

Crestfallen, Grams boards the bus (which takes a side trip to the Andersen's Split Pea Casino). While proffering her nickels, she tries to figure out how e-mail works. She has to enlist a friend at the Anaheim, Azusa, and Cucamonga Sewing Circle, Book Review, and Timing Association to find the CPUC's service list. Once she gets the service list in her friend's computer, Grams quits whining and starts sending.

Still, Grams has some legitimate concerns:

Eligibility rules - The CPUC requires an organization that wants to intervene directly (instead of as a representative of a specific customer) to have a phrase in its articles of incorporation authorizing it to represent ratepayers in regulatory proceedings. This limits participation to professional intervenors.

Organizations restricted to utility territories - Grams is in Edison's territory, but her arguments are for the state as a whole. Recent decisions appear to narrow intervenors' applicability to a certain utility territory.

The Anaheim, Azusa, etc. Association - A coalition A coalition of people and organizations is up against more restrictions. Apparently, state law is silent on the matter, but the commission has ruled that each organization participating in a coalition must make its own showing of eligibility and financial hardship in order for the coalition to qualify.

Inadequate assistance for new intervenors - Although I put Grams in touch with the public adviser, that office is not involved enough in the details to foresee all the pitfalls and make sure new intervenors understand exactly what is needed.

Those casino nickels run out quickly - Intervenors must pay all their costs of participation for months or even years before the first decision in a case. While some lawyers are willing to work on a contingency basis, generally the other parties to CPUC proceedings are well-funded corporations with lawyers who are very comfortably and regularly paid. Lawyers for utilities are paid up front and often. And they are paid with ratepayer funds - with no questions by the commission.

Can only go so far on Social Security - If Grams actually wins her issue at the commission, and if the commission ultimately awards compensation, it can take a year to make a decision on an intervenor's request. The statute currently specifies that the decision must be made within 75 days of the request; however, that date sometimes comes and goes with no attention from policy makers. Recently approved intervenor funds are being held up in commissioners' offices. (Even professional intervenors say the regulatory body's politics on their funding are getting ever uglier.)

Never-ending, funded opposition - My grandma is sweet and smart, but the utility that's been opposing spending money on lye waste cleanup doesn't agree. Instead of allowing her refunds for the money she's spent on bus travel, making copies, getting an e-mail account, and, finally, hiring a lawyer on contingency, the utility opposes every cent. And these utility lawyers are paid for by ratepayers. Grams stands a chance only if the administrative law judge has a heart, and if the commission decides to agree - and agree promptly - with the law judge's decision.

The greatest barrier: learning the commission's procedures - Mastering the jargon and translating an intervenor's message into a format that can penetrate the little club that dominates regulatory proceedings is daunting. This sentiment is from all my sources - Internet-literate and not.

Policy makers should do what the best actors and actresses do - go undercover to find empathy in your role. If not that, ask a son or daughter or grandmother or neighbor to become an intervenor. See what it looks like if your proxy doesn't even speak English. The state is missing issues that need to be considered to make good policy. The commission (and its sibling, the Energy Commission) have to go farther to make public participation a reality.

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