

**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Enhance the
Role of Demand Response in Meeting the
State's Resource Planning Needs and
Operational Requirements.

Rulemaking 13-09-011
(Filed September 19, 2013)

**CLEAN COALITION REPLY TO SOUTHERN CALIFORNIA EDISON
COMPANY'S (U 338-E) RESPONSE TO INTERVENOR COMPENSATION
CLAIM OF CLEAN COALITION**

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Pursuant to California Public Utilities Code Section 1804(c) and Rule 17.4(h) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Clean Coalition respectfully submits this reply to Southern California Edison's ("SCE") response to the Clean Coalition's intervenor compensation claim in the above-captioned proceeding.

I. INTRODUCTION

On May 13, 2015, SCE filed a response to the Clean Coalition's April 13, 2015, intervenor compensation claim in Rulemaking 13-09-011. SCE requests that the Commission consider the aggregate amount of all parties' intervenor compensation claims.¹ SCE's response is neither supported by statute nor past Commission decisions, and the response provides no basis for how the Commission has or should review intervenor compensation claims in the aggregate. Further, though SCE frames the request as a response to the Clean Coalition's claim, SCE fails to present specific arguments against the Clean Coalition's claim—or any of the other referenced parties' claims. Therefore, the Commission should deny SCE's request to aggregate the parties' intervenor compensation claims.

¹ SCE identifies the following additional parties in its response: Natural Resources Defense Council, Environmental Defense Fund, Consumer Federation of California, Sierra Club, and The Utility Reform Network. Rulemaking 13-09-011, Southern California Edison Company's (U 338-E) Response to Intervenor Compensation Claim of Clean Coalition at 2 (May 13, 2015) [hereinafter SCE Response].

II. DISCUSSION

- a. *SCE fails to cite any statutory provision or Commission decision to support its request that the Commission review parties' intervenor compensation claims in the aggregate.*

SCE relies on a single Commission decision to support its argument that parties' total request in the current proceeding warrants review in aggregation.² In the cited decision, the Commission reviewed the Greenlining Institute's notice of intent to claim intervenor compensation and determined that the organization was not eligible to request compensation. The assigned Commissioner reasoned that in a proceeding that would set hourly rates for calculating intervenor compensation awards the Greenlining Institute was "not acting in its usual capacity as a customer representative."³ The decision noted that a large number of intervenors were requesting compensation and that the total cost of the claims was high, but the Commission clearly did not rely on these observations in reaching its decision.⁴

The basis of the decision is indisputable, as the assigned Commissioner stated: "I stress that the denial of eligibility in this ruling stems from the unique circumstances of this proceeding."⁵ The proceeding was unique in that the financial stake of intervenors was "direct, immediate, and substantial."⁶ Additionally, the assigned Commissioner reasoned that "intervenors [were] advocating predominantly their own interests and should therefore bear the cost of such advocacy themselves."⁷ The decision does not support SCE's request to review the claims in the aggregate.

² Rulemaking 04-10-010, Assigned Commissioner's Ruling on Notice of Intent to Claim Intervenor Compensation at 1 (Aug. 29, 2005).

³ *Id.* at 1.

⁴ The decision also noted that the estimated hours appeared high in relation to the amount of work required to participate in the proceeding. *Id.* at 3 n.1 ("At this time, it appears that an intervenor's work in this proceeding would involve, at most, attending the two workshops (of a half-day each) held earlier, reviewing utility data sets, proposing hourly rates for the intervenor's representatives, and commenting on the draft decision expected to issue shortly.").

⁵ *Id.* at 4.

⁶ *Id.* at 2

⁷ *Id.* at 2-3.

- b. *Clean Coalition's request for reasonable advocate's fees aligns with the statutory directives and is limited to those hours for which the organization made a substantial contribution to the three decisions at issue.*

The purpose of the intervenor compensation statute is “to provide compensation for reasonable advocate’s fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any proceeding of the commission.”⁸ The statute enables participation of groups representing the public interest in proceedings that would otherwise be dominated by utility concerns.⁹ The Commission has similarly determined that “the intent of the [intervenor compensation] program is to assure the availability of compensation to those deserving parties advocating customer interests that otherwise would go un- or under-represented.”¹⁰

In order to recover reasonable advocate’s fees, the statute requires that a party demonstrate that it made a “substantial contribution to the adoption, in whole or in part, of the commission’s order or decision.”¹¹ Upon review, the Commission should find that the Clean Coalition’s intervenor compensation claim is only for hours in which it substantially contributed to three Commission decisions—D.14-03-026, D.14-05-025, and D.14-12-024. In arguing that the Commission should review parties’ claims in the aggregate, SCE references two sections of the California Public Utilities Code that direct the Commission to administer the intervenor compensation program: (1) “in a manner

⁸ CAL. PUB. UTIL. CODE § 1801.

⁹ SCE claims that it filed its response “in order to best serve the interests of the ratepayers, who will ultimately bear the burden of payment.” SCE Response at 2. However, the Commission’s administration of the intervenor compensation program accomplishes just that—best serving the interests of ratepayers by enabling participation of public interest organizations in Commission proceedings. The level of compensation sought by these organizations does not compare to the amount of ratepayer funds spent by SCE and other utilities to represent their own interests. The Commission should not arbitrarily restrict public interest representation while placing no limitation on related utility spending.

¹⁰ Decision 98-04-059, 79 Cal. Pub. Util. Comm’n 2d 630, 648 (1998).

¹¹ CAL. PUB. UTIL. CODE § 1803(a). The statute also requires parties to demonstrate that “[p]articipation or intervention without an award of fees or costs imposes a significant financial hardship.” *Id.* § 1803(b). SCE similarly does not contest this aspect of the Clean Coalition’s intervenor compensation claim. Regardless, the Commission found that the Clean Coalition demonstrated significant financial hardship in a July 19, 2011, decision in Rulemaking 10-05-006.

that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process,”¹² and (2) “in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests.”¹³ The statute does not, however, support SCE’s request to review the claims in the aggregate, nor does SCE allege that the Clean Coalition failed to make a substantial contribution to the decisions.

The Clean Coalition participated effectively and efficiently in the proceeding and substantially contributed to the three decisions at issue. The Clean Coalition assigned a single representative to each stage of the proceeding in order to limit the number of hours requested for compensation. The request is only for staff time directly spent on the proceeding; however, the Clean Coalition has invested significant resources in developing distinct expertise related to demand response and the role of various demand response options as both Supply Resources and Load Modifying Resources in integrating distributed energy resources. The Clean Coalition’s work in this proceeding will enable demand response resources to help create a more efficient electricity grid, which will lead to cost savings for ratepayers.

The Clean Coalition also spent a large number of hours in this proceeding on a settlement process that SCE itself characterized as the outcome of negotiations and concessions on behalf of a large number of parties with divergent interests.¹⁴ SCE recognized that the settlement was “the product of multi-week, intense, good faith negotiations among parties dealing with fist-of-their-kind issues on the design and operation of future [demand response] programs.”¹⁵ Further, settlement negotiations are by their very nature a more efficient means of resolving issues than litigation. The Commission should be wary SCE’s request, as granting it could serve as an incentive for parties to forego settlement negotiations in favor of more resource-intensive litigation.

¹² *Id.* § 1801.3(b).

¹³ *Id.* § 1801.3(f).

¹⁴ *See* Rulemaking 13-09-011, Joint Opening Comments of Pacific Gas and Electric Company, Southern California Edison Company, et al. on Proposed Decision and Alternate Proposed Decision on Settlement Agreement of Phase Three Issues at 2–3 (Nov. 17, 2014).

¹⁵ *Id.* at 3

Finally, the Clean Coalition coordinated with other parties to avoid duplication of effort. When scrutinizing individual hours in the request, the Commission will find that the Clean Coalition limited our participation in the proceeding by working with a number of groups that share overall goals—but often diverge on specifics. This process ensured that the each group brought its unique expertise to the proceeding and did not expend resources representing viewpoints adequately represented by other groups. SCE does not specifically allege, nor should the Commission find, that the Clean Coalition duplicated efforts or failed to make a substantial contribution to the three decisions. The Commission would best serve the intent of the intervenor compensation statute by granting the Clean Coalition’s claim, instead of imposing an arbitrary aggregate review.

III. CONCLUSION

For the foregoing reasons, the Clean Coalition respectfully urges the Commission to deny SCE’s request that the Commission assess parties’ intervenor compensation claims in the aggregate.

Respectfully submitted,

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