

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

Order Instituting Rulemaking to
Continue Implementation and
Administration, and Consider Further
Development, of California Renewables
Portfolio Standard Program.

Rulemaking 15-02-020
(Filed February 26, 2015)

**APPLICATION BY CLEAN COALITION
FOR REHEARING OF DECISION 18-11-010**

Oral Argument Requested

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I. Introduction

The Clean Coalition respectfully requests a rehearing pursuant to Public Utilities Code §1731(b) of Decision 18-11-010, issued November 19, 2018 in proceeding R.15-02-020.

Decision 18-11-010 (“Decision”) rests on numerous errors of law and fact in its finding that the Clean Coalition is categorically ineligible for intervenor compensation. First, the findings are not grounded in evidence properly in the record, and the analytical pathway from raw evidence to findings is not readily discernable given the lack of citations to a properly developed record. Second, the Decision cites to statements and documents not properly in the record, including many apparently obtained by the Administrative Law Judge (“ALJ”) outside of the formal record of this proceeding, including independent research into external facts and ex parte communications expressly prohibited as support for findings. This extrajudicial development of a second, unauthorized “record” denies Clean Coalition due process to address or correct material misrepresentations based in this independent research. Third, despite no parties having contested the Clean Coalition’s eligibility in any proceeding, the ALJ brought forth accusations on her own initiative and proceeded to act in the combined roles of investigator, prosecutor and judge. The Clean Coalition was denied its right to rebut the new accusations included in the revised decision, and have its fate adjudicated by an impartial tribunal. This represents a fundamental denial of due process and runs counter to the spirit and policy of the Commission’s governing statutes. Fourth, in at least two crucial instances, the facts in the record directly

contradict the findings of the Decision, and numerous other conclusions in the Decision are either unsupported or in error. Fifth, while well intentioned, the conclusions of the Decision introduce new and ill-defined standards regarding intervenors' eligibility for compensation that add uncertainty and inhibit public participation in the Commission's proceedings. Finally, the Decision penalizes the Clean Coalition for the Commission's own repeated failures to perform its statutory obligations to render preliminary decisions on Notices of Intent to File for Intervenor Compensation. It is reasonable to evaluate an intervenor's claims of substantial contribution in a particular proceeding, or a preliminary finding of eligibility for compensation, addressed through a less formal review. The stakes are much higher where, as here, an organization is being declared absolutely and permanently ineligible for compensation in all proceedings, past, present and future. This denial of eligibility after the fact may constitute a veritable death sentence for the public interest organizations for which the program aims to address the financial hardship of participation; as such, this merits a higher standard of due process. The Clean Coalition therefore requests that the Commission either reverse the Decision or order a rehearing before an impartial presiding officer to enable the organization to address legal errors and factual mischaracterizations.

II. The Decision relies on a series of conclusions and statements not based in the record to reach its necessary findings.

a. Administrative decisions must be grounded in substantial evidence in the record.

The statutory language governing the Public Utility Commission is clear that administrative decisions must be grounded in substantial evidence in the record: **"The commission shall render its decisions based on the law and on the evidence in the record."** (Pub. Util. Code. 1701(e)(8), see also CPUC Rules of Practice and Procedure("CRPP"), 8.3(k).) This requirement is a foundational requirement of all administrative decisions in the state of California. As the Supreme Court stated it, California agencies rendering decisions are subject to requirement to "set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Ass'n for a Scenic Comm'ty v. Cty. of Los Angeles* (1974) 11 Cal. 3d 509, 511.) In the Decision, the link between raw evidence and findings is frequently absent. Similarly, Cal.

Public Util. Code section 1701.2 requires that “[t]he commission’s decision shall be supported by findings of fact on all issues material to the decision, and the findings of fact shall be based on the record developed by the assigned commissioner or the administrative law judge.” (Pub. Util. Code § 1701.1(e).) Although this statute applies to adjudications, the Decision is an adjudication of a party’s legal rights within a ratesetting case. To disregard this principle would run squarely against the foundation of California administrative law and would violate the Commission’s own rule that “substantial rights of the parties shall be preserved.” (CPUC CRPP 13.6 (a).)

1. The Decision is based on the false premise that the Clean Coalition is not authorized by its bylaws to represent residential customers.

The most obvious factual error is the finding that the Clean Coalition is not authorized by its bylaws to represent the interests of residential ratepayers. The central premise of the Decision is that the organization is not a “customer” under Pub. Util. Code §1802(b)(1)(C), which provides that a “representative of an organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers” is a “customer” for purposes of qualifying for intervenor compensation. The Clean Coalition is a project of Natural Capitalism Solutions, Inc. (“NCS.”)

The Decision at page 20 states (incorrectly) that “the most recent version of NCS’s bylaws attached to the comments clearly does not contain such authorization [to represent the interests of residential ratepayers],” citing the NCS 2015 bylaws submitted as Attachment 2 to the Clean Coalition’s Amended NOI filed on November 9, 2015, in A.15-02-009. The ALJ apparently was reading the wrong section of those bylaws, Article 12 of which states that **“Natural Capitalism Solutions is authorized to represent the interests of residential electric customers in front of state and federal government entities in order to promote a more sustainable energy system.”** This is all that is required by the governing statute, which provides:

“Customer’ means any of the following:

(3) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers....” (Pub Util. Code § 1802(b).)

It is difficult to imagine an authorization in an organization's bylaws that more clearly qualifies it as a "customer" eligible for intervenor compensation. This fundamental error renders the rest of the analysis fatally flawed.

Moreover, the Decision mischaracterizes the Clean Coalition as a "consultant," not only without evidence, but in direct contradiction of the plain language of the bylaws. (Decision, at 24.) The Decision rejects the comparison to other environmental organizations, noting that "neither NRDC nor Sierra Club nor EDF, exist to provide services that would economically benefit participants in renewable energy markets by helping energy companies and governmental entities to enter and/or compete in these markets." (Decision, at 24.) However, neither does the Clean Coalition exist for this purpose. The charter of NCS and the Clean Coalition identifies their purpose as promoting "global development of environmental sustainability concepts." (Attachment 2 to Clean Coalition's Amended NOI filed November 9, 2015, in A.15-02-009, at 2). This aligns precisely with the environmental interests of California ratepayers. Key among sustainability concepts is a deep concern among Californians that a renewable energy not be achieved at the cost of a massive transfer of wealth from consumers to utility shareholders and transmission owners. The organization's *raison d'être* is intimately related to the environmental concerns of ratepayers to transition to an environmentally sustainable economy but to do so affordably, avoiding societal costs of emissions and unsustainable development while ensuring maximum cost effectiveness for ratepayers. The essence of the Clean Coalition's mission is to advance these two ratepayer interests. In contrast, the Decision points to nothing in the bylaws to support its implied characterization that the organization "exist[s] to provide energy services that would economically benefit participants in renewable energy markets by helping energy companies and governmental entities to enter and/or compete in these markets." D.18-11-010, 24. No such support exists. Lowering barriers to market participation reduces prices for ratepayers; increasing market participation results in more competitive markets and lower margins for suppliers, not greater profits.

Since the Decision rests on conclusions about the purposes of the Clean Coalition that directly contradict the plain facts in the record, it must be set aside.

2. The Decision fundamentally errs in stating, without support, that Clean Coalition’s advocacy is not aligned with its clear efforts to address underrepresented ratepayer interests.

The Decision rests on a wholly unsupported and erroneous conclusion that the Clean Coalition’s work to promote in-front-of-the-meter resources “do not reflect Clean Coalition’s interest in underrepresented residential ratepayers.” (Decision at 17.) This fundamentally critical conclusion not supported by evidence in the record in this proceeding, and is contrary the extensive history of the organization’s engagement at the Commission.

Many California ratepayers seek both the individual and societal economic and environmental benefits of local energy, but lack the opportunity to provide for their own private generation, especially in higher density multi-tenant or rental properties. The Decision is based on the assumption, with no evidence whatsoever, that distributed energy resources (“DER”), including those deployed “in-front of the meter” cannot and do not save ratepayers money. This is contrary to reality. Furthermore, development of local resources reduces environmental impact and safety hazards while enhancing both local and system-wide resilience. Consideration of these factors is underrepresented at the Commission, and desperately needed.

The failure of the Decision to acknowledge this critical linkage between the Clean Coalition’s advocacy for local in-front-of-the-meter distributed resources and ratepayer interests demonstrates the need for rehearing. Indeed, the Commission has recognized that distributed generation and storage serves ratepayer interests in the Commission’s own proceedings and DER Action Plan. The strong ratepayer financial interests protected by the Clean Coalition’s work could not be made clearer than by the cancellation of some \$2.6 billion of transmission projects in CAISO’s recent transmission planning process as a result of DER, and the attendant \$10 billion or more of avoided operations, maintenance, and utility profits. It defies belief that the Decision would be so dismissive of that magnitude of financial interests of ratepayers that it would fail to recognize the importance of the Clean Coalition’s work on behalf of the ratepayers of California. The organization’s work to obviate the need for transmission also protects ratepayer interests in sensitive habitat and avoids the development of large scale remote generation projects and

transmission corridors which damage pristine habitats throughout California. The urgency of such environmental concerns should be evident from the recent wildfires such as the Camp, Thomas, or Woolsey fires, all of which are suspected to have been started by transmission infrastructure in wildlands.

Indeed, the failure of the Decision to recognize that ratepayers have a strong interest in local, affordable, renewable energy is itself evidence that the Clean Coalition does represent an underrepresented ratepayer viewpoint. The Commission has repeatedly failed to move forward expeditiously to level market access for local wholesale distributed generation, which unequivocally represents an under realized, cost effective component to achieving 100% renewable energy and is a clear preference of consumers as evidenced by the strong interest expressed through Community Choice Aggregations. Indeed, the barriers to advancing in-front-of-the-meter resources has resulted in industry participants active in this area being largely absent from the California market, even though they are actively delivering benefits to ratepayers elsewhere. It therefore represents a quintessential “situation in which an important aspect of the public good might be overlooked because the persons most interested in that aspect would not otherwise have the financial incentive to participate.” Decision at 10, quoting D.93-11-020 1993. Without industrial advocates for such solutions, it falls to individual ratepayers and non-profits to advocate for development of an effective market for local energy services.

The Clean Coalition has demonstrated that its work to promote effective markets for DER advances important ratepayer interests. Because the Decision fails to acknowledge this interest, it fails to “bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Topanga Ass’n for a Scenic Comm’ty v. Cty. of Los Angeles* (1974) 11 Cal. 3d 509, 511.). Given that many ratepayers, including many who subscribe to the Clean Coalition newsletter, see strong financial and environmental interests in local energy, evidence that the Clean Coalition works to promote local energy options does nothing to show that such work is not in the ratepayer interest. Merely listing engagements or cooperation with utilities and companies involved in or critical to development of effective markets for local energy options is not sufficient to bridge this analytical gap, because it is impractical to effectively analyze local energy issues for ratepayers without meaningfully engaging with such entities. There is a clear connection between promoting effective

markets for wholesale DER services and ratepayer interests. Therefore, evidence that the Clean Coalition engages in such promotion does not support the Decision's conclusion that it does not represent ratepayers' interests. On the contrary. The Decision fails to bridge the logical gap between the evidence and its findings

3. The Decision inappropriately applies a novel economic requirement retroactively in establishing ratepayer representation, and denies an opportunity to demonstrate compliance.

The discussion in the Decision of the Clean Coalition's constituents is factually in error and is not grounded in evidence in the record. The Decision announces a new litmus test, disqualifying organizations without paid membership from compensation. And by introducing this issue so late in the process it denies the Clean Coalition a meaningful opportunity to rebut the argument or conform to the new standard.

First, the Decision, at page 21, creates a new rule out of whole cloth that only organizations with paid membership may be considered to represent ratepayers, while those offering free membership may not. This rule is not found in statute or any prior decisions. The Decision asserts, again without evidence, that there is a difference between the authorization to represent ratepayers when membership involves a fee and when it does not. We note for the Commission's consideration the long historical policy of organizations representing the values and interests of their members to not restrict membership based on financial contribution, and not require mandatory payment of dues or fees. Most prominent among these are the nation's political parties, as well as many civic and religious organizations.

Moreover, the Decision does not explain how an organization must obtain permission from its members to demonstrate that they have authorized it to represent their interests. Even organizations implementing membership fees such as the Sierra Club or NRDC require only the submission of a payment and contact information, but no explicit agreement that the organization may formally represent the member's interests. (In fact, the Clean Coalition has some similar financially contributing members, although they are few because it does not invest in soliciting individual donations. Had the Clean Coalition

received notice of this new requirement and an opportunity to present evidence, it could have done so.) The Decision states without evidence that “[b]ecause the subscribers do not authorize Clean Coalition to represent their interests, and are not obligated to support Clean Coalition in any manner, they cannot reasonably be considered members or constituents.” (Decision, at 21). Requiring that ratepayers signal their support for the mission of an organization by submitting a formal authorization may be worth considering as a future standard. However, to suddenly impose a new requirement retroactively, without warning, is arbitrary and unfair.

In the meantime, representation is properly judged by the nature and content of an organization’s advocacy, and the Clean Coalition has consistently and unwaveringly advocated on behalf of ratepayers’ combined economic and environmental interests, as is in evidence throughout the hundreds of filings on record at the Commission.

Second, the Decision misquotes and misrepresents the very document it cites in support of its positions--the Clean Coalition website text describing its relationship with its supporters. (Attachment to Decision, at 31.) The Decision elides the distinction between Clean Coalition supporters, ratepayers whose interests it represent because of their declared support, and its partners, entities with whom it must cooperate to advance those ratepayer interests. The Decision quotes text from the “partners” page while describing this text as how “The Clean Coalition attracts supporters and partners” while citing to the “supporters” page. (Decision, at 22, and fn 38.). What the “supporters” page *actually* says is:

“The Clean Coalition approach works. We offer proven and pragmatic solutions to resolve the tough energy issues facing our nation today. By collaborating with businesses, governments, and advocates, we efficiently and effectively create programs and policies to scale up the production of local renewable energy in communities across the country.

Our work on behalf of a clean energy future is made possible by the generous support of foundations, organizations, and individuals like you.

Be part of the solution

Please consider supporting us with a fully tax deductible donation. Your investment will provide vital resources for our innovative work accelerating the transition to a clean energy future.”

This language shows that the Clean Coalition is focused on resolving the tough energy issues “*facing our nation today*,” not any economic or business interests. It speaks of “collaborating with businesses,” not representing them. Finally, it solicits support for a “transition to a clean energy future” which is a clear ratepayer interest. It would be disingenuous for the Commission to deny that environmentalist ratepayers place a high value on this transition. Thus, the Decision makes basic factual errors, misquoting the plain language of the supporters page of the Clean Coalition website, and misrepresents the true nature of its relationship with its supporters. “Reaching across the aisle” to work with potential adversaries enables parties to understand each other’s interests and identify and advocate for consensus solutions that address the wide ranging interests of stakeholders as fully as is practicable. The Clean Coalition does not compromise the interests of ratepayers through this willingness to work with other parties; it advances those interests.

Finally, by introducing the novel requirement of paid membership in a revised decision a few weeks before the vote, without opportunity to rebut with evidence, without public comment, and based on misrepresented facts, the Decision has denied the Clean Coalition the opportunity to provide lists of its actual paying supporters. This violates administrative practice and due process. Had this issue been raised in a timely fashion, the Clean Coalition could have provided lists of its actual financial contributors. Absent this opportunity, the Decision cannot stand.

4. The assertion that the Clean Coalition is categorically distinguishable from other environmental intervenors is not supported by the record.

The Decision at 24 asserts a categorical contrast between the Clean Coalition and other eligible environmental intervenors by stating that “While these groups are very active in addressing climate change, neither NRDC nor Sierra Club nor EDF, exist to provide services that would economically benefit participants in renewable energy markets by

helping energy companies and governmental entities to enter and/or compete in these markets.” However, the assertion that the Clean Coalition exists to provide services as a consultant in energy markets conflicts directly with the actual bylaws under which the organization operates. Further, no evidence is found in the record that it is either the intended or de facto purpose of the organization to provide these services. Without evidence, this distinction is unsupported in the record, and conclusions relying upon this distinction are arbitrary, capricious and reversible error. This is reinforced by review of the history of advocacy by the Clean Coalition evidenced in extensive record of formal and informal participation in CPUC proceedings which clearly demonstrate broad alignment with other environmental organizations that were active in the same proceedings, and few if any examples of opposing positions. The Clean Coalition is distinguishable from other parties in the non-duplicative contributions for which it has consistently been recognized, but is not categorically distinguishable from other environmental organizations in the interests it single-mindedly represents in these proceedings.

The Decision later states at 24 that “Clean Coalition’s mission-driven activities purport to remove obstacles to the development of the renewable energy markets. However, providing renewable energy is typically a for-profit enterprise, and activities of a group created to benefit the renewable energy markets are not compensable.” Here the Decision fails itself to distinguish between categorical roles. The Commission has repeatedly affirmed that efficient market mechanisms are in the public interest, and improving these mechanisms for the sourcing and development of renewable energy is directly in the environmental interest of ratepayers. Supporting greater efficiency in market mechanisms benefits ratepayers, not market participants. Renewable energy will deliver environmental benefits more cost effectively through the Clean Coalition’s advocacy for greater efficiency. While growth in renewable energy markets is both an inevitable result of lower renewable energy costs for ratepayers, and desirable outcome toward achieving the public renewable energy targets, the purpose is not to increase opportunity for business profit. Advocating for a more efficient market provides direct to benefits ratepayers as buyers participating in the market, and should in no way be conflated with benefits to producers offering supply to that market.

While the Decision cites the work of environmental organizations in stopping fossil fuel plants, had the Decision been subject to proper development of the record, the Clean Coalition could provide similar examples from A.14-11-016 and numerous other proceedings illustrating comparable history.

The Decision's discussion of the Clean coalition's work promoting environmental interests is riddled with misrepresentations, errors, and unsupported assertions. The legal conclusions based on those errors must be reversed.

5. The Decision concludes without support in the record that the Clean Coalition is a financially interested party.

While financially interested parties, including market participants, are not eligible for intervenor compensation, there is no evidence in the record that the Clean Coalition has ever received any contract related to any position it has ever taken in a proceeding, its participation in any proceeding, any subject addressed by the Commission, or indeed that it has engaged in competitive market activities in any way, successfully or unsuccessfully. Instead, the Decision merely speculates that the Clean Coalition is seeking contracts that may arise out of its work representing ratepayer interests in local energy. For example, the Commission states "Clean Coalition's advocacy before the Commission puts this intervenor in the beneficial position that brings this group more funding either in the form of paid engagements or grants." The Clean Coalition has repeatedly provided financial information to the Commission; however, the record in this proceeding contains no evidence whatsoever that the Clean Coalition has ever sought or received any such engagements or grants as a result of its participation at the Commission, let alone its specific advocacy.

Similarly, the Decision muddles participation that advances public interests with that promoting economic interests. "The economic interest of the utilities, other load-serving entities, renewable power companies and governmental entities in Clean Coalition's services demonstrates that Clean Coalition brings material value to these entities." (Decision at 22.) As noted, the Clean Coalition has received a single engagement with Southern California Edison to assist in a Commission-approved Preferred Resources Pilot. There is no record of any other investor owned utilities or renewable power

companies having engaged the Clean Coalition. A single instance does not constitute a pattern or practice, much less a *raison d'être*. More fundamentally, this statement completely fails to recognize that CCAs, public utilities, and governments do many activities out of public interests that they serve as a matter of law, not profit. Thus, their participation cannot be categorized as pursuing “economic interests” without fundamentally misrepresenting the nature and mandates of these public agencies. The fact that they are not themselves eligible for intervenor compensation does not mean that all of their activities are economic or profit seeking. As a result, participation with government agencies which are required to pursue public interests is not evidence that such work advances the “economic interests” of governments. Thus, the conclusion that the Clean Coalition is advancing government agency economic interests is entirely unsupported, much less that it is in any way representing such interests via its activities at the Commission.

Similarly, the Decision is wholly in error when it states without citation to the record that “Clean Coalition has been positioning itself in its relationships with the potential clients as a non-profit group providing services to accelerate renewable energy markets, in general, and bring competitive advantages to the markets’ participants, in particular.” Decision at 2-3. See also Decision at 32. However, the Decision offers not a single citation to the record or indeed any evidence of any that the Clean Coalition has ever “position[ed] itself... to bring competitive advantages to market participants.” Neither does the Decision provide any concrete example of any purported advantage brought to any market participant. This erroneous conclusion that the Clean Coalition positions itself to bring competitive advantage to market participants is at the core of the Decision, but it has no support in the record. While benefits do not “need not be immediate or tangible,” they do need to be more than speculation, and findings that such benefits exist still need to be supported by substantial evidence in the record. The Commission has produced none.

6. There is no evidence in the record that the Clean Coalition acts as an agent or represents any medium or large commercial interests.

The Decision claims repeatedly that the Clean Coalition represents industry interests or acts as an agent for such interests, but presents no specific examples of such a

relationship or any evidence in the record that the organization represents such interests. For example, the Decision cites D.15-11-034 for the proposition that a representative of medium or large commercial or industrial utility customers is “an *agent* for entities or individuals who would be found ineligible for compensation under § 1802(b).” Under California law, “An agent is one who represents another, called the principal, in dealings with third persons. Cal. Civ. Code 2295. However, nowhere does the Decision provide a single example of the Clean Coalition acting as an agent for medium or large commercial customers or representing their interest. Nor can the Commission identify any entities or individuals for which the Clean Coalition acts as an agent. Nowhere does the Decision identify a single position taken by the Clean Coalition in furtherance of those customer’s interests rather than qualified residential ratepayers, because it is not an agent for any such interests. Indeed, unlike CEERT, the Clean Coalition has no industry members or participants and it does not represent such interests at the Commission. Thus, there is no evidentiary basis for the conclusion that the Clean Coalition represents or acts as an agent of industry or market participants.

III. The Decision suffers from fatal procedural and due process defects.

a. Extra record research by an Administrative Law Judge and Ex Parte communications are expressly not part of the record and cannot be relied upon.

The Commission may not properly rely on extra record research and ex parte communications that are not part of the record. Under the Commission rules, “[a] proceeding shall stand submitted for decision by the Commission after the taking of evidence,” which expressly includes adducing additional evidence not subject to objection or rebuttal. (CPUC Rules of Practice and Procedure 13.14). The failure to comply with this rule denied the Clean Coalition its substantive right to “to be afforded the opportunity to object to the admission of evidence,” (CRPP Rule 13.6(b).), to present rebuttal evidence, and to have evidence “be supported by a declaration under penalty of perjury that they are true and correct.” (CRPP 13.7 and 13.8.) Furthermore, ex parte communications are expressly excluded from the record by statute and rule alike: “Ex parte communications shall not be a part of the evidentiary record of the proceedings.” (Pub. Util. Code §

1701.1(e)(8). See also CPUC Rules of Practice and Procedure Rule 8.3(k). This requirement is critical to afford affected parties an opportunity to object to, correct and rebut erroneous evidence such as that relied upon in this Decision.

The Decision is rife with statements supported only by the ALJ's independent internet research, ex parte communications, and evidence never introduced into the record. The Decision points to footnotes in documents submitted in other proceedings, but does not cite to the record in R.15-02-020 to support its conclusions. Thus the introduction of these "facts" is based on extra-record research by the ALJ, and not properly introduced evidence in the record.

Further, these extraneous sources do not fall within the permissible categories for judicial notice outlined in the Evidence Code. (CRPP 13.9, Evid. Code § 451.)

The ALJ relied on statements that were not authenticated, were taken out of context, and are alleged to have been downloaded from the internet. Although the technical rules of evidence are not applied in these proceedings, the Rules require that decisions be based on reliable evidence that has been authenticated and duly made part of the record. It appears that the ALJ informally and unilaterally obtained these statements outside of the normal process for submitting evidence. Their truth and authenticity was never attested to. Further, the Clean Coalition was never given an opportunity to explain them, put them in context, disavow them, or object to their admission, before the ALJ and the Commission relied on them in making the Decision. Based on the Rules cited above, these documents and statements are not part of the record and may not be relied upon.

The Decision suggests that its reliance on extraneous, unauthenticated statements not introduced by a party is justified because "In its pleadings, Clean Coalition frequently refers to its own website's publications at www.clean-coalition.org, as well as other Internet materials as a valid source of information about this organization." It is appropriate for a party to submit documents from its own website as evidence. The author of a document may properly authenticate it, swear that it is true and correct, and introduce it in the record. Rule 13.7. It is not permissible for anyone else to unilaterally download a document and introduce it in the record without authentication or an opportunity for the author to explain it, challenge its authenticity, or put it in context. *Id.*

The Decision quotes at length from a document purportedly downloaded from the Clean Coalition website describing the organization's role in the Peninsula Clean Energy Community initiative. D.18-11.010 at 13. It quotes a document attributed to that website describing a FIT designed by the Clean Coalition for East Bay Community Energy. D.18-11.010 at 13-14. The Decision quotes a document asserted to have been found on the Clean Coalition website describing a grant from the CEC Electric Program to implement an innovative energy storage system. D.18-11.010 at 14.

The Decision quotes a statement purportedly taken from the Clean Coalition website describing its work with CCAs to develop feed-in tariffs and to accelerate the deployment of DER. D.18-11.010 at 14. It paraphrases statements attributed to the Clean Coalition website describing its work with stakeholders to streamline the deployment of local renewables and distributed renewable generation. D.18-11.010 at 14.

The Decision quotes at length from a description of the organization's work with the City of San Diego and a utility to determine a city-wide plan for distributed solar plus energy storage, ascribed to the Clean Coalition website. D.18-11.010 at 15. It cites to a statement attributed to the website describing the Clean Coalition's Montecito Community Microgrid Initiative. D.18-11.010 at 15. The Decision leaps to the conclusion that "It is the work described above that justifies the reason for the Clean Coalition's existence as described by its fiscal sponsor NCS," and then it quotes from what it asserts is the NCS website. D.18-11.010 at 15-16; fn 20. It quotes the mission statement purportedly downloaded from the Clean Coalition website. D.18-11.010 at 16; fn 21.

At pages 18-20 the Decision lists "typical" projects of the Clean Coalition, citing in part "Internet publications." D.18-11.010 at 18; fn 27. It quotes the website of the Indiana Distributed Energy Alliance to characterize that organization and its purpose. *Id.*, fn 28. Similarly, it quotes other websites (including Wikipedia) to describe governments and organizations, their charters or the projects on which the Clean Coalition worked with them, including the U.S. Virgin Islands and the cities of Portola Valley, San Francisco and San Diego. D.18-11.010 at 19; fn 29-31. At 23-24 the Decision rejects the Clean Coalition's comparison to other environmental groups based largely on information from websites and other documents that are not in the record. *Id.*, see fn 41-42.

The Decision reaches critical conclusions about the Clean Coalition's constituents based in part on an invitation to subscribe to a newsletter, a document purportedly downloaded from the internet. D.18-11.010 at 21; fn 37. The Decision makes the determination that the organization's real constituents are not its newsletter subscribers, who include thousands of residential customers. Instead, it infers that utilities, smart-grid technology providers, clean energy organizations, local governments and utility groups are its true constituents. It leaps to that pivotal conclusion based not on evidence in the record, but on the ALJ's own interpretation of internet research. D.18-11.010 at 22; fn 38. Even if an interpretation is prima facie reasonable, it cannot be considered without opportunity for rebuttal or review of alternative interpretation in context. While the ALJ's independent research raises questions that are appropriate to address, it does not constitute evidence upon which the Commission may properly rely in reaching a conclusion.

Ultimately, such reliance on informal research and limited citation to the record in R.15-02-020, combined with the denial of any meaningful opportunity to rebut these mischaracterizations, was deeply prejudicial to the Clean Coalition. It also breached the duty of the ALJ and the Commission to issue rulings based upon evidence developed in the record. The Decision is based on many statements that were never submitted by a party or properly introduced as evidence in the record. For that reason it should be reversed.

b. By permanently disqualifying the Clean Coalition from intervenor compensation in an informal process in which the ALJ acted as investigator, prosecutor and judge, it was denied its right to adjudication by an impartial tribunal.

It might be appropriate for an ALJ to unilaterally review a garden-variety compensation claim in an informal process. If the issue is whether the number of hours or hourly rate is justified, or whether a substantial contribution was made in a particular proceeding, the presiding ALJ might well be the proper decision-maker.

The Decision here is far more consequential. It does not merely deny compensation in this one proceeding. It purports to disqualify the Clean Coalition from being compensated as an intervenor in any proceeding, now and forever. This is an existential

threat to the Clean Coalition as a policy advocate advancing the interests of ratepayers in affordable and sustainable energy markets before the Commission.

Every aspect of the process that culminated in the Decision was controlled by the ALJ. No party objected to the Clean Coalition's claim for compensation. The ALJ Office apparently undertook investigation of the Clean Coalition's qualifications unilaterally, and while the organization was afforded the opportunity to comment on the initial proposed decision to address numerous errors of fact in detail, there was no opportunity to respond to the wholly revised PD which introduced new errors of both fact and law. An organization should have a meaningful opportunity to participate, contribute relevant information, answer questions, or explain or correct misunderstandings. The ALJ not only initiated the challenge to the Clean Coalition's eligibility, and conducted her own investigation, she also prosecuted that challenge. Worst of all from a due process perspective, the ALJ also acted as the trial court, rendering the devastating Decision that would permanently ban the Clean Coalition from receiving compensation. In doing so the ALJ relied on websites information and documents obtained through her own independent research that was never authenticated or properly introduced into the record.

If ever there was a situation that called for adjudication by an impartial tribunal, this was it. But the ALJ was not impartial. Having initiated the challenge to the Clean Coalition's eligibility, conducted the entire investigation, and prosecuted the challenge throughout the process, the ALJ could not be neutral or independent when she wrote the proposed decision.

Although it occurred within the context of a ratemaking proceeding, this Decision to permanently disqualify the Clean Coalition was an adjudication. As such it was subject to basic principles of administrative due process. Cal. Pub. Utilities Code section 1701.2 mandates that in adjudication proceedings:

“an officer, employee, or agent of the commission that is personally involved in the prosecution or in the supervision of the prosecution of an adjudication case before the commission shall not participate in the decision of the case or any factually related adjudicatory proceeding, including participation in or advising the commission as to findings of fact, conclusions of law, or orders.”

Due process and basic fairness demand that this requirement also apply in an adjudication within the context of a ratesetting. The Clean Coalition agrees that the Commission should

pursue evidence to resolve questions raised by any party with standing. When something as fundamental as a nonprofit environmental organization's eligibility for compensation as a ratepayer advocate is at stake, however, the decision should be made by an objective adjudicator. That did not happen here. Therefore, the Commission should set aside the Decision and order an evidentiary hearing at which a Commissioner or other neutral officer presides.

IV. The Commission has proceeded in a manner contrary to law in denying the Clean Coalition a finding of financial hardship.

The Decision is in error because it misrepresents the nature of the Clean Coalition's showing of financial hardship. This error arises because of the longstanding pattern and practice of noncompliance with California Public Utility Commission Code § 1804(b), which requires of the Commission to "issue within 30 days thereafter a preliminary ruling addressing whether the customer or eligible local government entity will be eligible for an award of compensation" if the Notice of Intent to claim intervenor compensation included showing of significant financial hardship. The Clean Coalition has repeatedly included such showings, including in R.15-020-020, but the Commission failed to render such a preliminary ruling. Worse, since 2011, various Administrative Law Judges have declined to reach new findings on financial hardship, relying instead on a chain of rebuttable presumptions. The Commission now seeks to penalize the Clean Coalition for this reliance on rebuttable presumptions, even though it had no control over the Commission's failure to make a ruling based on new findings as prescribed by law.

First, the Decision states in error that the Clean Coalition's compensation claim "refers to the Commission's finding of Clean Coalition's eligibility to claim intervenor compensation, made in the Ruling of July 19, 2011 (R.10-05-006), and relies on that finding through the rebuttable presumption of significant financial hardship (Section 1804(b)(1))." (Decision, at 4.). This is false. The Clean Coalition had requested a new finding of significant financial hardship in its NOI, submitted May 15, 2015. That NOI does not rely on the earlier finding, instead stating expressly "*Although the Clean Coalition does not rely on a prior finding of significant financial hardship here, the organization notes that the Commission found in favor of our claim of significant financial hardship in R.10-05-006*

(dated July 19, 2011).” (Clean Coalition NOI, May 15, 2015, at 6.). On the contrary the Clean Coalition made an independent showing, asserting:

“The economic interest of individual Clean Coalition subscribers is small in comparison to the costs of effective participation in the proceeding. The Clean Coalition represents the interests of its subscribers in California who are customers of utilities under the jurisdiction of the Commission. Our subscribers share our goal of promoting policies that modernize the energy grid, increase demand for distributed energy resources, and prevent new generating resources that are expensive and harmful to the environment. We estimate that well over half of our 3,050 subscribers who reside in California are residential utility ratepayers. These customers share an interest in the environmental and economic impacts of this proceeding. Some of the Clean Coalition’s California resident subscribers may eventually experience lower and/or more stable electricity bills because of the Clean Coalition’s contribution in this proceeding.”

(Clean Coalition NOI at 6.). This claim was not ruled on within 30 days. ALJ Simon also failed to rule on the Clean Coalition’s supplementary NOI with a showing of financial hardship on March 4, 2016, and the Commission still fails to rule on those showings three years later in the Decision.

Second, the Decision also ignores the plain text of the Clean Coalition’s R.15-02-020 claim, submitted December 22, 2016, which expressly does NOT rely on the 2011 decision but instead points to D.16-11-017 in Section C, highlighting the failure to issue the mandatory finding in response to our NOI:

“The Clean Coalition sought a new finding of significant financial hardship in this proceeding through our NOI filed Revised September 2014 on May 15, 2015. However, the Commission did not issue a ruling on our request. We therefore include this citation to a recent intervenor compensation award that affirmed Clean Coalition’s showing of significant financial hardship.”

(Clean Coalition NOI, May 15, 2015, at 2-3.). The Clean Coalition did not *rely* on the finding in D.16-11-017 a month earlier, but included it as a supplementary basis. However, here again, the Commission fails to rule on the showing made in the NOI in this proceeding.

The Decision is also in error in tracing the rebuttable decision to an expired Decision, which means that even if the Clean Coalition had relied on the finding in D.16-11-017, this still would have been valid. The Decision states: “The claim also refers to D.16-11-017, that awarded intervenor compensation to Clean Coalition in R.11-09-011. However, that decision did not make a substantive finding pursuant to Section 1802(h), relying, instead, on the July 19, 2011 ruling. Therefore, the reference to D.16-11-017 does not

support eligibility.” This is false. A careful review of D.16-11-017 shows that in fact in response to Item 11 regarding of whether the Decision relies on a finding of financial hardship in another CPUC decision, D.16-11-017, ALJ Bushey answers “No.” This squarely contradicts the Decision’s characterization of whether D.16-11-017 relied upon a prior decision. Instead of pointing to any 2011 ruling, D.16-11-017 points to D.16-04-032 rendered 6 months earlier, well within the one-year timeframe of the December 22, 2016 claim. Critically, that decision does not rely on a prior precedent, but based on the plain text of the decision, reaches a finding of financial hardship. In D.16-04-032, Item 12 “has the Intervenor demonstrated significant financial hardship?” ALJ Bushey simply found “yes” with no reference to any prior decision in Item 11. Since the Clean Coalition expressly requested a new finding in R.11-09-011 in our NOI of December 8, 2011 and the ALJ found that yes, we had demonstrated financial hardship in that proceeding. This constitutes a finding of substantial financial hardship upon which the Clean Coalition could have relied as an alternative to the new showing we provided.

If there was any error in D.16-04-032, it was on the part of the Commission, not the Clean Coalition. In light of the plain text suggesting a showing had been made, and the Clean Coalition’s repeated showings of significant financial hardship in both proceedings, and especially the Commission’s repeated failure to rule on these showings within 30 days, it is disingenuous in the extreme to suggest that any procedural deficiency in the showing of financial hardship was the fault of the Clean Coalition.

In fact, the findings of significant financial hardship show a repeated pattern of the Commission ignoring the Clean Coalition’s showings of financial hardship. Not only was the showing in R.15-02-020 not ruled on, but the Clean Coalition *also* requested a de novo finding of significant hardship in our NOI in R.11-09-011, submitted on December 8, 2011, but also did not receive the statutorily required preliminary finding on that request either. Thus, if the decisions in D.16-04-032 and D.16-11-017 relied on outdated rulings, rather than the Clean Coalition’s showings, this is the fault of the Commission and not the Clean Coalition. Since the Commission had a pattern and practice of relying on a chain of rebuttable presumptions in successive proceedings and ignoring the showings made in NOIs, any finding of a lack of significant financial hardship must be set aside, because the

Clean Coalition acted in reasonable reliance of Commission decisions and the Commission's own failure to meet its statutory duty.

V. The Decision should be set aside because of numerous legal and factual errors, the failure to make findings based on substantial evidence in the record, procedural violations in developing the record, and due process violations.

In light of the many critical legal and factual errors, failure to make findings grounded in substantial evidence in the record, procedural deficiencies in the development of the record, and due process violations in which the Clean Coalition was denied substantive rights to present and rebut evidence, the Decision must be set aside. Since the record shows that the Clean Coalition made a showing of significant financial hardship and is a customer representative organization, a new decision awarding intervenor compensation should be issued. In the alternative, an evidentiary hearing should be conducted by an impartial adjudicator so that a decision can be rendered on a properly developed record of reliable evidence.

VI. The Clean Coalition participated in this proceeding in reasonable reliance on numerous decisions by the Commission confirming its eligibility as a customer for intervenor compensation.

The Clean Coalition contends that the finding in the decision that it does not qualify as a "customer" is contrary to PUC §1802(b)(1)(C). But even if it were appropriate to abandon prior rulings that it was eligible for compensation as an organization representing the interests of residential customers, it was fundamentally unfair to apply that standard retroactively. The Clean Coalition invested substantial resources in this and other proceedings with the reasonable expectation that it would be compensated for its services in making a substantial contribution.

The Commission has awarded intervenor compensation to The Clean Coalition as a Class 3 customer representative in many proceedings. See, for example, the ruling dated July 19, 2011 in R.10-05-006; D.13-12-021 and D.13-12-23, both dated December 5, 2013, in R.11-05-005 and R.11-5-005; the Ruling issued March 3, 2015 on the Clean

Coalition's NOI in R.14-10-003; and D.16-04-02, the Decision issued April 22, 2016 granting compensation in R.11-09-011.

It is true that an ALJ issued a ruling on June 30, 2016, rejecting the Clean Coalition's NOI in A.15-02-009, and that the Commission affirmed that ruling when it summarily denied all outstanding motions, including the Clean Coalition's Motion for Reconsideration, apparently without review in D.16-12-065 at the close of the proceeding. But the Commission continued to grant intervenor compensation to the Clean Coalition after that isolated adverse ruling. See, for example, D.17-01-029, the Decision issued January 23, 2017, granting compensation in A.12-01-008, A.12-04-020 and A.14-01-007; D.17-03-008, the Decision dated March 2, 2017, granting compensation in R.13-09-011; and the Proposed Decision dated July 12, 2018 granting compensation in R.14-10-003.

At a minimum, the Clean Coalition should be compensated for work performed before D.16-12-065 was issued in December of 2016. That was the first time a decision denying compensation based on customer status became final. But even after that decision it was reasonable for the Clean Coalition to continue to participate in proceedings with the expectation of qualifying for compensation because the Commission continued to award compensation in other proceedings. It defies logic that an adverse decision on one isolated request for compensation would negate a multiplicity of earlier and later favorable decisions.

The finding in the decision at issue, that the Clean Coalition no longer qualifies for compensation as a Class 3 customer, is fatally flawed and based on a fundamental mischaracterization of the mission of this nonprofit environmental organization. But even if it was appropriate to apply that decision prospectively, it would be unfair to apply it retroactively. If the Commission decides that the Clean Coalition is no longer eligible for compensation, it should reopen this matter for the limited purpose of determining an appropriate cutoff date, and permitting the submission of time records to show which fees and costs were incurred before and after that date.

VII. Request for Oral Argument.

The Clean Coalition requests an opportunity to present oral argument.



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Dated: December 19, 2018

VERIFICATION

I am authorized to make this verification on behalf of the Clean Coalition. I have read the foregoing APPLICATION BY CLEAN COALITION FOR REHEARING OF DECISION 18-11-010 dated December 19, 2018. The statements in the foregoing document are true of my own knowledge, except as to matters that are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 19, 2018 in Santa Cruz, California.

Respectfully submitted,



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