

President Michael Picker

Commissioner Carla Peterman

Commissioner Clifford Rechtschaffen

Commissioner Liane Randolph

Commissioner Martha Guzman Aceves

Administrative Law Judge Simon

California Public Utilities Commission

505 Van Ness Avenue

San Francisco, CA 94102

August 10, 2018

RE: Proposal for a clear standard for intervenor compensation eligible customer representative organizations that performing demonstration projects in the customer interest.

Dear President Picker, Commissioners, and ALJ Simon,

The Clean Coalition seeks to establish a workable standard for evaluating the customer status of organizations that recognizes the critical nature of customer interest demonstration projects by customer representative organizations. Demonstration projects are a powerful tool in customer advocacy, but current policy discourages such demonstration projects. We propose that the Commission adopt a policy that

demonstration projects for the purpose of advancing customer interests be presumed to be consistent with customer interests.

Customer representative organizations must be able to engage in projects to demonstrate the feasibility of key innovations if they are to advocate effectively in the customer interest without jeopardizing the customer status of customer representative organizations for intervenor compensation. If engaging in demonstration projects jeopardizes intervenor compensation status, customer representative organizations will be caught in a double bind of either pursuing the real-world data to be persuasive in front of the Commission or being able to present that data as a funded intervenor, but not both.

The Commission must recognize that customer representative organizations promote demonstration projects for completely different purposes than those of for-profit businesses with clear and substantial competitive interests. While customer representative organizations seek to demonstrate the efficacy of their recommended approaches to decision-makers and to develop technical expertise as an *input* to Commission proceedings, businesses with competitive interests seek to shape Commission proceedings and then pursue economic opportunities as an *output* of Commission proceedings. The Commission's evaluation of customer representative organizations' proof-of-concept projects should reflect this fundamental distinction.

The Commission should therefore extend existing standards to create a clear policy regarding customer interest demonstration projects that these projects be presumed to be consistent with customer interest. Thus, where demonstration projects arise out of a customer interest mission of an organization and are substantially related to the mission, the Commission should recognize that such projects do not pose any conflict in interests.

The Commission should similarly use existing standards to evaluate projects as creating a competitive conflict only if they are shown to create a “clear and substantial competitive interest” with substantial evidence.

I. Customer interest demonstration projects are fundamentally important to advancing public interest

A. The Commission has long recognized the critical importance of demonstrating innovations in the public interest.

The Commission must first recognize the fundamental importance of customer interest demonstration projects. Public interest distributed energy resources (DER) demonstration projects are “promising both as a way to meet L[ocal] C[apacity] R[equirements] needs and as a laboratory for innovation regarding preferred resources,” as recognized recently by the Commission in approving the contracts for the second round of the Preferred Resources Pilot.¹ Although the Preferred Resources Pilot is run by an Investor Owned Utility (IOU), the principle that demonstration projects are a critical laboratory for innovation applies with no less force to customer interest representative organizations seeking to promote cutting edge approaches to create a better and cheaper renewable energy system.

Without the ability to identify key issues on the ground, customer representative organizations would be hampered in their advocacy for customer interests in achieving the full savings possible in a fully renewable future. These demonstration projects provide customer organizations with real world data to give real credibility to their advocacy for innovations in the customer interest, not just at the Commission, but also before the

¹ Decision 18-07-023 (July 12, 2018) at 11 (*quoting* D.14-03-004 at 65-66.)

California Energy Commission, the California Independent System Operator, Investor Owned Utilities, Community Choice Aggregators, or other any entities with authority to implement new approaches. The insights into the actual barriers to achieving savings allows customer representative organizations to raise critical new issues to decision-makers. The lessons learned from demonstration projects also can help bring new solutions to old problems to light for the Commission and other decision-makers.

Customer representative organizations play a unique role in promoting *customer* interest demonstration projects that private enterprises and the Commission cannot. The Commission is necessarily conservative and limited in its scope of authorizations of trials and experimentation at ratepayer expense, whereas for-profit entities will typically pursue trials that aid their profits. In contrast, customer representative organizations have a unique agenda to emphasize customer interests. Customer representative organizations will deploy public funding, such as government grants or foundation or donor support, to develop a wider range of demonstrations to pursue innovations in the customer interest. Customer representative organizations must have the freedom to explore and expand the range of “feasible” alternative approaches in ways the Commission and the IOUs it oversees cannot.

Finally, the experience gained from demonstration projects helps reduce the massive asymmetry when customer representative organizations debate staff from IOUs, Community Choice Aggregators, or the Commission itself. As noted in by the Commission when it launched its review of the intervenor compensation program in 1997, “[t]he complex, highly technical and often obscure nature of the issues makes it difficult for people new to the utility arena to make a contribution to the process without expending

large amounts of time and effort to understand the process.² When customer representative organizations develop technical expertise and real world data through demonstration projects, they can close this gap.

B. The Clean Coalition's activities fall squarely within customer interest demonstration projects.

The Clean Coalition's activities provide vivid examples of how customer interest demonstration projects empower advocacy for the customer interest. The Clean Coalition's main mission is to advocate for faster and cost-effective transition to a 100% renewable energy economy by ensuring that the full value of local energy can be realized for the benefit of customers. Since this is a concept that has met with resistance from entrenched interests in the energy sector, this advocacy would remain largely theoretical unless and until real world projects can show that this approach can and does work.

For example, when we learned that Hawai'i was looking to replace its aging diesel generators with clean local energy, the Clean Coalition assisted a public energy cooperative, the Kauai Island Utility Cooperative (KIUC), and a DER developer, AES Distributed Energy (AES), to assess the viability of a solar+storage solution as a viable approach. We did not build the project or generate profits from the project, but we did help demonstrate how optimization of renewable resources could maximize the reduction of diesel generation at the lowest cost. The result was 28MW solar and 100MWh five-hour duration battery energy storage system that cost 10.85 cents per kWh. This project has been fundamentally important in demonstrating the viability of DER in meeting 24 x 7 energy needs cost-

² I.97-01-010 (January 13, 1997), at 2.

effectively and KIUC was able to use the model we developed with AES to evaluate the cost-effectiveness of future renewable energy opportunities and projects. While KIUC and AES have engaged in their economic transaction, the Clean Coalition has gone on to cite this early example in numerous comments at the Commission, including advocating for cheaper, healthier alternatives to the Ellwood refurbishment; in our testimony to the Energy Commission to suspend the Puente Power Project; and in many other contexts.

Similarly, we challenged utilities and the Commission on early notions that cost-effective DER couldn't be deployed on existing distribution networks. We did early, uncompensated work demonstrating the ability of the existing distribution grid to host high penetrations of solar at the Hunters Point substation using data supplied by PG&E. Without those modeling efforts, the Clean Coalition likely could never have been effective in convincing the California legislature and the Commission to ultimately approve and implement first in the nation distribution grid planning through AB 327 and the Distribution Resources Plan proceeding. Similarly, our work with the City of Palo Alto to determine the value of local generation was fundamental in uncovering the massive market distortion that results from the disparate treatment of wholesale distributed generation caused by the structure of Transmission Access Charges in California. This distortion will cost *customers* tens of billions of dollars in the next two decades and remains a critical issue for the Commission to address.

Today, having achieved some success in those areas, we have moved on to demonstrating that storage can free distribution hosting capacity through our Valencia Gardens Energy Storage Project, that integrated Community Microgrids in Santa Barbara County can be a physical testbed for Distribution System Operator functions, and that

distributed systems can provide resilience in the face of natural disasters. All represent demonstrations of cost-saving or performance improving principles or approaches mostly not yet fully adopted by the Commission. Without the real-world examples, the Clean Coalition's advocacy in the customer interest would be greatly reduced and the Commission might well be delayed by years in moving toward a more cost-effective energy grid.

Although some of these efforts were unfunded, some were funded by public grants or private foundations, and one was funded by a company, all share the common characteristic: they were pursued to advance our customer interest mission. The notion that somehow these projects are being pursued as some kind of economic business opportunity is simply misguided in light of the clear record of the Clean Coalition relying on our experience from demonstration projects to advance customer interests.

II. Customer interest demonstration projects should be evaluated based on their purpose of advancing ratepayer interests.

A. The existing Commission standard for customer interest representative organizations should be applied to evaluation of customer interest demonstration projects.

The Commission should adopt a clear standard that demonstration projects by a customer representative organization, which serve to prove feasibility of the positions that the organization advocates, should be presumed to be consistent with the organization's customer mission and fully consistent with the organization's status as a customer representation organization.

This standard flows naturally from the standard the Commission has already established for evaluating the customer status of organizations. Fundamentally, customer

representative organizations are “groups whose raison d’etre, as demonstrated in their bylaws or articles of incorporation, is the representation of residential customers.”³ Customer representative groups represent “self-interests in the proceeding [that] arise primarily from their role as customers of the utility, in addition to the ... the broader interests of at least some other consumers, customers, or subscribers.”⁴ Thus, where the purpose of the organization is to represent customers, then the organization is a customer representative organization. Similarly, where the purpose of a demonstration project is to prove principles in the customer interest, the projects should be presumed to be consistent with customer interest.

The Commission should adopt this kind of broad approach to evaluating customer demonstration projects that would broaden participation by customer groups, rather than restricting the ranks of customer representative organizations by culling those with the sophistication to engage in demonstration projects. The Public Utilities Code requires the Commission to “encourage[] the effective and efficient participation of all groups that have a stake in the public utility regulation process”⁵ In that spirit, the Commission adopted standards for evaluating customer status “intended to ultimately broaden participation by customers in our proceedings.”⁶ The Commission should adopt a similar approach here.

In this light, demonstration projects of customer representative organizations should be presumed to reflect the customer representative organization’s mission of representing customer interests, since such projects arise out of customer representative

³ D.86-05-007, 21 CPUC 2d 99, at *6-7.

⁴ D.88-12-034 (Dec. 9, 1988), at 7.

⁵ Pub. Util. Code §1801.3.

⁶ D.98-04-059 (April 23, 1998), at 2.

organizations' missions to demonstrate technical or policy advances that would promote ratepayer interests. Projects conducted for the purpose of advancing these ratepayer interests should be considered fully within the scope of the organization's ratepayer interests.

This approach to evaluation of non-profit activities for alignment with the public mission is a well-established approach to categorizing business activities. For example, the Internal Revenue Service (IRS) specifically determines the taxable status of business activities of 501(c)(3) nonprofits based on whether they are "related business activities," and so exempt, or are unrelated business activities, and so taxable. In this instance, the key test for regularly engaged-in business activities is whether they are "substantially related to the performance by the organization of its exempt purpose or function."⁷ The Commission should recognize that business activities that are substantially related to the performance by the organization of its exempt purpose present no conflict with the customer representation mission of customer representative organizations.

1. The Clean Coalition's activities derive from its mission to develop and advocate for savings and efficiencies from DER.

Using the Clean Coalition as an example, our demonstration activities derive from our mission advocacy in the customer interest by proving up that the innovations we advocate for actually work. Typically, we seek to demonstrate each new principle with a single trial, but sometimes it takes multiple examples to convince Commission, CAISO, or

⁷ Internal Revenue Service, Publication 598, Tax on Unrelated Business Income of Exempt Organizations, <https://www.irs.gov/pub/irs-pdf/p598.pdf>.

utility staff. Regardless, in each case the purpose is to show to the Commission and other decision-makers that new approaches can and do work. All of our work with either solar+storage, or multi-site aggregations of DER in Community Microgrids demonstrates the viability of DER suites to meet grid needs or to raise new unrecognized issues with creating a cost-effective distribution-focused grid. Much of the rest of our demonstration activity focuses on showing decision-makers that local areas can host large amounts of DER (e.g., our solar siting surveys) and typically go hand in hand with facilitating the launch of market-adjusting feed-in tariffs. This last category should prove critically important in finally demonstrating to the Commission and others that the old Request for Proposals approach raises costs for DER projects for customers by imposing unnecessary risk premiums, bid costs, and costs of project failures.

B. In contrast, commercial entities have a “clear and substantial competitive interest.”

In contrast to the purposes of customer representative organizations, under existing Commission standards, participation by business entities in Commission proceedings is designed to expand *competitive* opportunities, and not to demonstrate concepts or technologies in order to move a customer advocacy mission. Applying this distinction to demonstration projects, the key distinction is whether the purpose of the organization’s participation is to promote economic opportunities *for their own organization or those they represent* without a customer interest purpose, or whether demonstration projects have a purpose of demonstrating customer interest principles.

Under existing standards, competitive business entities are those “*clear and substantial* competitive interests”⁸ to seek to expand their economic opportunities to sell the products or services they offer to the marketplace. The distinguishing characteristic of a competitor is that the competitor “advocates for changes expanding *its* opportunities to compete.”⁹ This standard should require a clear showing an organization has a clear and substantial interest in expanding economic opportunities. Suggestions of ambiguous or speculative interests should not be enough. Such an approach is consistent with the legislative mandate to “encourage[] the effective and efficient participation of all groups that have a stake in the public utility regulation process”¹⁰ Thus, the touchstone to determine whether a party is a customer representative organization or a business competitor is the *purpose* in their advocacy: customer organizations have a purpose to advocate for customer interests, while business competitors have a purpose of expand their own competitive opportunities for new contracts and projects.

Absent benefits flowing to the organization itself or its sector, the customer representative organization would not have any clear and substantial competitive interest. Thus, a customer representative organization that is not advocating for expanded economic opportunities for itself would be “free from conflicts that may arise in representing two interests, the competitor's as a competitor and the ratepayers' as customers”¹¹ because the organization wouldn't have a competitive interest. Hypothetical or tangential involvement by competitive entities in customer interest demonstration projects does not create “clear

⁸ D.00-04-026 (April 6, 2000), 12.

⁹ D.00-04-026 (April 6, 2000), 12 (emphasis added).

¹⁰ Pub. Util. Code § 1801.3.

¹¹ D.00-04-026 (April 6, 2000), at 12.

and substantial” interest, nor does it imply that advocacy based on the lessons learned from demonstrations is somehow transformed into pushing for expanded economic opportunities.

The Commission has been consistent that the touchstone of a competitor is that its purpose in proceedings is to increase its own economic opportunities. The history of intervenor compensation claims by companies with competitive interests have all involved efforts to change the outcome of a proceeding to expand the market for products or services of the entity with the “clear and substantial competitive interest.” For example, the design group Utility Design, Inc. was denied compensation eligibility because it was participating to advocate for an outcome that would increase the market opportunities for itself and other competitors in the line extension and construction business.¹² Similarly, Liberty Fuels Inc. was denied customer status because its participation was aimed to achieve an outcome that would increase sales of its fuel products.¹³ Even the Greenlining Institute, which advocates for low income homeowners, was deemed to be have a “competitive interest” in a single proceeding to set intervenor compensation rates, even though it is a customer representative organization in all other contexts, because in that particular proceeding it was advocating for rates that would ultimately determine how much the Greenlining Institute was paid.¹⁴ Throughout the key factor is that the purpose competitive organization’s advocacy is to increase its own economic opportunity.

¹² D.00-04-026 (April 6, 2000).

¹³ Decision 04-06-002 (June 9, 2004).

¹⁴ Assigned Commissioner’s Ruling on Notice of Intent to Claim Intervenor Compensation (R0410010) (August 29, 2005) 2005 WL 2148623 (Cal.P.U.C.).

C. Speculation about the potential motivations of participants has been rejected by the Commission as a basis for determining what interests are being represented.

Conclusions that an organization has a competitive interest need to be grounded in concrete and substantial evidence that the purpose is related to an actual economic stake, and not derive from speculation or conjecture. Speculation that an intervenor might be motivated by some prospective hope of hypothetical benefits is beyond the scope of the analysis of customer representation. Speculation about the potential or intentions to secure future earnings was expressly rejected by the Commission as an appropriate inquiry in determining customer eligibility: “an intervenor’s motivation for participating in a Commission proceeding ... [is not] relevant to the eligibility determination.”¹⁵ The Commission expressly took up the question of whether professionals should be excluded from customer representation because they might be thought to hope for future contracts when representing customers, and the Commission squarely rejected the use of speculation about prospects for future revenue generating contracts: “[T]he Commission cannot know whether the prospect of future earnings is motivating the participation of the intervenor.”¹⁶ Thus, allegations of clear and substantial competitive interests should either be supported by substantial evidence of such concrete interests or removed from consideration. Speculation as to the motives of an intervenor is beyond the scope of the customer status evaluation, especially when the black and white mission stated in the organization’s bylaws contradict such speculation.

¹⁵ D.98-4-059 (April 23, 1998), at 28.

¹⁶ D.98-4-059 (April 23, 1998), at 28.

III. The application of the standard must incorporate evaluation of various factors indicating customer interest purposes.

As a practical matter, when evaluating customer status, the Commission should presume the demonstration projects conducted by customer representative organizations are in line with the organization's legal mission. This would streamline the process and prevent unnecessary documentation barriers from being erected. However, in those instances where the Commission seeks a more specific analysis, there are several key factors the Commission could examine.

A. Customer interest projects exhibit particular characteristics distinct from clear and substantial competitive interests.

Engagement with demonstration projects does not constitute a "clear and substantial competitive interest" for four reasons. First, these demonstration projects grow out of the customer interests, so alignment between an organization's customer mission and the customer interest purpose of any demonstration project should be dispositive. Second, customer representative organizations have a completely different relationship between projects and advocacy. Customer representative organizations conduct demonstration projects first in order to advocate for policy changes second, whereas competitive businesses advocate for policy changes first in order to pursue new opportunities second. Third, customer representative organizations will respond to policy successes by moving on to demonstration projects on new policy issues, not by pursuing the economic opportunities created by a change in policy. Fourth, grant or donor support for demonstration projects supports only the cost of demonstration projects, and so do not

create any economic interests, because there are no excess funds derived from grant-funded demonstration projects.

Ultimately, the Commission should not confuse the incidental economic opportunities that inevitably arise from nearly any change in policy direction with intentional efforts to expand economic opportunity for a targeted company or trade group. Instead, the Commission should focus on identifying what “clear and substantial competitive interest” the customer representative organization would actually advance with its positions before concluding there is such an interest.

1. The customer interest demonstration projects have a rationale that is substantially related to the mission of the organization.

First, customer representative organizations’ demonstration projects “arise primarily from their role as customers of the utility,”¹⁷, just as their advocacy at the Commission does. The critical question is what customer interests the projects advance. In the case of the Clean Coalition’s demonstration activities, for instance, advance the customer interest in creating an energy sector that functions effectively to deliver cost-effective and environmentally-friendly energy services. Where a customer representative organization facilitates a demonstration within the scope of its mission, this project should be presumed to be in the customer interest.

On the other hand, a blanket assertion that involvement in demonstration projects amounts to participating in the private energy development industry ignores the reality

¹⁷ D.88-12-034 (Dec. 9, 1988), at 7.

that demonstration projects can and do represent a vital tool for customer representative organizations to strengthen their advocacy on behalf of customers. In fact, the Commission has already recognized that even non-profit contractors can be customer representatives in the context of Cal/Neva, which was deemed to be a customer representative organization, “as non-profit contractors, ... an association comprised of community action agencies and community based organizations representing low income interests.”¹⁸ Clearly, the Commission has rejected the notion that even non-profit contractors who directly build projects must be excluded from customer representative organization status. This stands in sharp contrast to the customer representative organization, like the Clean Coalition, which aren’t contractors, don’t build projects, only facilitates the development of projects by others, and have no economic stake in the projects.

2. Customer interest demonstration projects precede the Commission proceeding, but business competitive opportunities result from the Commission proceeding.

Second, the relationship between demonstration projects and Commission proceedings is fundamentally different for customer representative organizations than it is for competitive organizations. Customer representative organization demonstration projects are but a tool to further advocacy to advance customer interests, whereas for competitive businesses, the projects have no customer rationale and are merely an end in themselves. As a result, customer demonstration projects precede the proceedings in which they are relevant to support advocacy for positions. Once the proceeding is successfully

¹⁸ D.98-04-059 (April 23, 1998), at 30, n.14.

concluded, no further demonstration projects on that topic are needed. In contrast, the commercial entity participates in proceedings to “expand[] *its* opportunities to compete.”¹⁹ Once the opportunities are successfully expanded, competitive entities ramp up to meet the new opportunities. Thus, the logical relationship between activities and proceedings is fundamentally inverted for competitive business entities from the order in which customer representative organizations proceed.

3. Customer representative organizations do not typically repeat many of the same kind of demonstration projects, whereas business competitive entities will *increase* the number of substantially similar projects it conducts.

Third, customer organizations respond to policy successes in a fundamentally different way than competitive organizations do. Customer organizations tend to move on to entirely new kinds of demonstration activities to evaluate new concepts and approaches, while competitive organizations will tend to offer substantially similar services in project after project to pursue the easiest profits. When a customer organization achieves a policy success, new issues arise to be resolved, but there is no further need for demonstration projects on that topic. Thus, customer representative organizations will typically not pursue the same kind of project over and over (unless there is need for replication to convince decision-makers), but rather will move on to demonstrating new principles and improvements. In contrast, a competitive business would ramp up to position itself to *increase* the number of substantially similar projects it can deploy to avail itself of any

¹⁹ D.00-04-026 (April 6, 2000), at12 (emphasis added).

newly expanded opportunity. Thus, the Commission should distinguish clearly between customer representative organizations pursuing subsequent demonstration projects, each on new topics, from competitive interests, which will seek to capitalize on expanded opportunities to compete in one particular area.

For example, since the Clean Coalition demonstrated at Hunter's Point that existing distribution grids could handle high levels of DER, the Clean Coalition has not conduct another similar project. Similarly, since facilitating a single demonstration that in-front-of-the-meter batteries can increase distribution grid hosting capacity, the Clean Coalition has not engaged in any other similar projects, except to address more complex issues that arise from initial experiments. An economic competitor would seek to scale up these projects and deploy the same repeatedly with different clients without limit in pursuit of profits, not abandon an approach once proven successful. In this manner, the customer representative organization's approach to subsequent projects is entirely different.

4. Customer representative organizations do not pursue demonstrations out of a profit motive and do not derive excess funding from demonstration activities

Fourth, the Commission should also clearly recognize that demonstration projects do not represent some kind of profit center for organizations or an end in themselves. Demonstration projects do take money to design and implement, but customer organizations are typically not able to derive excess funding from demonstration activities. Grant or donor support for demonstration projects usually covers only the costs of conducting the demonstration projects and do not typically create excess funds that could

create an economic interest for customer representative organizations. Securing grants to cover the costs of conducting customer interest demonstration projects is fundamentally different from payments to a for-profit business for delivering a product or service, which create profits and economic incentives. Without excess funds, demonstrations cannot give rise to an economic interest. Furthermore, even if excess funds were derived from such activities, those funds would merely support further customer advocacy and cannot be converted to private profits. Therefore, grant funded demonstration projects simply cannot create competitive economic interests.

5. Advocating for policy changes that incidentally create opportunities for companies implementing improvements is not the same as advocating for expanded business opportunities.

Ultimately, the Commission should not confuse customer interest advocacy that may incidentally result in business opportunities with competitive interest advocacy for expanded opportunities for the competitive businesses themselves. Eliding this critical distinction would almost eviscerate customer interest policy advocacy. Many ratepayer interests involve changes in business as usual, and companies that provide more efficient or environmentally beneficial services will naturally benefit, but that is not why customers advocate for those changes. For example, customers with an interest in avoiding serious climate change will inevitably advocate for policies that benefit renewable energy companies. Customers advocating for more equitable access to renewable energy benefits will inevitably benefit those companies that install, for example, community solar projects. Similarly, customers interested in using DER to create a resilient and cost-effective

renewable energy system will advocate for policies that create opportunities for anyone who provides DER-based solutions. However, this is a far cry from advocating for a particular industry sector as a business per se. Although there are incidental business benefits, the Commission should not mistake such incidental effects for the *purpose* and *interests* that motivate the customer advocacy in the first place.

IV. The distinct characteristics of customer interest demonstration activities inform several factors in the analysis of customer interest demonstration projects.

At a practical level, the Commission can look to several indicia of customer interest in its investigation of interests arising out of the status as customer, which remains the fundamental touchstone of customer status.

A. The analysis of customer interest is determined on a proceeding by proceeding basis.

First, the Commission should squarely recognize that the assessment of whether an entity is advocating out of the customer interest or to advance its own opportunity to compete is a proceeding-by-proceeding analysis. The Commission has long recognized that the same organization can be a customer in some contexts but have clear and substantial financial interests in another. Thus, the same business that might be a competitor in some proceedings might nonetheless appear before the Commission as a customer in another, for example by “advocating for changes to a tariff under which the business takes service.”²⁰ Similarly, a customer representative organization might be squarely a customer

²⁰ D.00-04-026 (April 6, 2000), at 12.

representative organization in every proceeding, except where direct financial consequence for the organization would flow (e.g., in intervenor compensation rates proceedings.)²¹

Second, this squarely implies that the analysis of customer status must turn on the position and interests at stake *in that particular proceeding*. A customer representative organization that has some particular “unrelated business activity,” as the IRS defines it, to raise funds would be a competitor in any proceeding touching on that particular business activity but remain a customer representative organization in all other contexts. As noted, customer representative organizations receiving intervenor compensation are acting out of economic interests in proceedings regarding intervenor compensation while remain customers everywhere else. This means that unless an organization has “clear and substantial competitive interest” in the outcome of that particular proceeding, it is likely a customer representative organization with respect to that proceeding. Absent a showing of such a clear interest, the organization should be deemed to be acting consistently with its mission.

B. A range of factors can assist the Commission in evaluating the motivating interests behind a given set of activities.

Where the Commission feels a need to engage in a specific inquiry into the status of particular demonstration projects, the Commission can look to the rationales, funding source, and the nature of the collaborators to gain insight into the purpose of activities.

²¹ Assigned Commissioner Ruling on Notice of Intent to Claim Intervenor Compensation (R0410010) (August 29, 2005) 2005 WL 2148623 (Cal.P.U.C.)

The first indicative factor is the rationale for the project. In many instances, grant applications and project descriptions will often articulate the purposes and objectives of the demonstration project. Enunciated rationales such as proving innovative concepts or evaluating issues to support the development of a better grid, practices or policies strongly suggest customer interest purposes. Even when demonstration projects do not have pre-existing project descriptions, customer representative organizations will typically have articulable public interest objectives for demonstration projects. A project with a rational explanation as advancing the customer mission should be viewed as being conducted for the purpose of advancing customer interests.

The second factor is the source of the funding. Public interest foundation grants or government grants are made to further specific public interest aims. For example, many Energy Commission grants are specifically granted to advance new approaches that may benefit the public. Public grant funding indicates the project is conducted for a public purpose, from which customers benefit. Furthermore, the dedication of grant funding by the agency indicates that it represents the kind of project that private entities would be unlikely to pursue as a bona fide business opportunity for a lack of profitability. Reliance on public funding undercuts concerns that the public representative organization is actually representing some business or affluent client interests.²² Ultimately, demonstration projects funded by public interest sources should be presumed to be in the interests of the public as a whole.

²² D.86-05-007, 1986 Cal. PUC LEXIS 287 at *11.

The third indicative factor is the nature of the collaborating entities. Public entities, such as local governments, Community Choice Aggregators, or other public institutions themselves exist to represent the public interest. Local governments frequently engage in activities with a public interest component, in part because they represent customer interests. Elected bodies necessarily must demonstrate cost-effectiveness for the customers who voted them into office. Community Choice Aggregators are by definition public entities called into existence to represent the interest of local communities and customers. Collaboration with such organizations elected by customers or convened to represent customers should be viewed as consistent with an organization's customer interest mission.

C. Any alternative rule such that engaging in demonstration projects should jeopardize a customer representative's status would muddy the relationship between customer advocacy and demonstration projects.

The alternative standard implicitly presuming engagement in demonstration projects create a "clear and substantial competitive interest" completely muddies what should be a clear distinction in the purposes of such projects. Customer representative organizations first do projects so that they may engage in effective advocacy in Commission proceedings, whereas competitive entities engage in Commission proceedings in order to later pursue the economic opportunities that result. Suggesting that the involvement of commercial entities in demonstration projects indicates a customer representative organization has mixed interests completely reverses the actual rationale for demonstration projects. The fact that demonstration projects in the customer interest may

be partly funded by commercial entities does not render these projects something not in the customer interest. Indeed, some trials such as the Preferred Resources Pilot are *implemented* by Investor Owned Utilities, such as Southern California Edison, but this does not prevent the Commission from recognizing that the pilots do advance the public customer interest. While funding sources is not entirely immaterial, it is far from dispositive.

Worse, suggestions that mere involvement with commercial entities indicates a clear and substantial competitive interest even further removed from the reality of implementing demonstration projects in the customer interest. No demonstration project can be done without a contractor to build the hardware. Every demonstration project of relevance to the electrical system must engage with a utility of some kind in order to interconnect and participate in demonstrating energy services. The Commission should not confound working *with* renewable energy market participants with working *for* utilities and other renewable energy industry and market stakeholders. Any rule that prohibits customer representative organizations from working with for-profit entities to implement demonstration projects would either prohibit demonstration projects entirely or would require nonprofits to host entire development firms within their organizations. Neither is remotely practical.

V. Erecting barriers to customer representative conducting demonstration projects would be bad policy for customers.

Creating new barriers to customer representative organizations developing the kind of data, information, and expertise that the Commission needs for informed decision-

making would hinder the ability of the Commission to develop sound policy and stack the deck against customers. The better the technical accuracy of advocacy by all advocates, the more informed and more effective the ultimate policy of the Commission can be. Where customer representative organizations face difficulties in developing facts and expertise in order to make specific and technically sound recommendations, the Commission will be deprived of quality inputs into its decision-making process.

Furthermore, customer representative organizations frequently must contend with public utilities, investor owned utilities, and Community Choice Aggregators, which have far greater technical expertise and better information. As a result, customer representative organizations face a systemic disadvantage in proceedings. In the case of the Clean Coalition, a significant factor in our ability to bring forward sound proposals and craft informed arguments is the in-house expertise developed through demonstration projects. Erecting barriers to participation in demonstration projects would serve to eliminate technically proficient voices and to discourage customer representative organizations from pursuing effective advocacy approaches.

VI. Financial hardship analyses should recognize that funding for demonstration projects typically cannot support policy advocacy.

The Commission should recognize that funding for demonstration projects does not support advocacy at the Commission. Most grant funding for demonstration projects is typically under tight fiscal control and generally does not include funds for advocacy in venues such as the Commission.

A. Foundation and government grants for demonstration projects are restricted and cannot alleviate financial hardship of participating in a proceeding

The Commission should recognize that grant support from foundations, government entities, and donors to support demonstration projects does not provide financial capacity to participate in Commission proceedings. The analysis of financial hardship for organizations should turn on the benefit for individual customer relative to the costs of participation, and funding at-cost of separate related activities that cannot be spent on participation at the Commission should not suggest organizations have independent wealth to pursue customer advocacy.

Ultimately, a showing of financial hardship for groups or organizations, requires a “showing that the economic interest of individual members is small compared to the overall costs of effective participation.”²³ What matters first in that analysis is that the per customer benefits of a more cost-effective transition to renewable energy is smaller than the costs of effective participation. For example, the estimated savings of \$60 billion over 20 years analysis from Transmission Access Charges reform works out to under \$100 per person per year. This is clearly much less than the cost of actually pushing through successful reform. The fact that a customer organization receives at-cost funding for other activities that cannot be used to cover those costs of participation does nothing to change the analysis called for by statute.

First, moving beyond the relative costs analysis in statute, grant funding for demonstration projects cannot be properly viewed as covering the costs of participation at

²³ Pub. Util. Code§ 1802(g).

the Commission because such funding is prohibited from being spent on general advocacy in most instances. Grant funding for demonstration projects is unavailable because it is entirely encumbered, subject to tight fiscal management for the activities for which it is granted, and subject to audit. This funding cannot be diverted from those purposes to provide support for effective participation. Thus, demonstration project grants cannot be rationally viewed as available to defray the costs of participation at the Commission.

Second, virtually every national customer representative organization would be eliminated from the intervenor compensation program if the commission were to eliminate organizations receiving other funding, including foundation funding. Many national organizations receive substantial funds from foundations for various purposes. Often, however, these funds are not available to support policy advocacy. Thus, a move to disqualify such organizations based on the mere presence of any kind of grant or foundation funding would be a serious blow to the participation by environmental, customer, and social justice organizations.

B. Speculation about future earnings has been rejected from financial hardship considerations by the Commission

The Commission has considered and rejected allowing consideration of future earnings in financial hardship analyses. “Future earnings are not an element of the significant financial hardship definition, and we are not inclined to attempt to evaluate future earnings in determining financial hardship.”²⁴ Arguments have been raised that participation in commission proceedings might be conducted to somehow set the table for hypothetical future contract revenues, rather than out of customer interest (even setting

²⁴ D.98-4-059 (April 23, 1998), at 28.

aside that future demonstration projects do not generate such excess funds). However, this kind of unfounded speculation regarding future earnings has been squarely rejected by the Commission and has no place in evaluating whether customer representative organizations have *current* financial hardship based on future hypothetical earnings (which would not exist in any event). Ultimately, California law calls for an evaluation of the costs of participation and the relative benefits to individual customers. Speculation about other sources of funding that may hypothetically materialize does not appear in that statutory test.

V. Conclusion: The Commission should evaluate customer interest demonstration projects using the existing standards for distinguishing customer representative organizations from competitive businesses.

The Commission should draft new guidelines to clarify how to determine whether demonstration projects are consistent with representing customer interests. That new standard should apply the same standard to a customer organization's demonstration activities that applies to the customer organization itself: does the project advance the organization's customer interest mission? The demonstration activities of customer representative organizations should be presumed to be pursuant to the customer interest mission of the organization, unless there is a clear and substantial competitive benefit to the organization itself (e.g., to expand the market for the products or services offered by the organization) as shown by concrete and substantial evidence. Such an approach would remove a cloud that now exists over customer representative organizations that might want to demonstrate their points with real world data or to develop the kind of technical

expertise to participate effectively in Commission proceedings. The development of those technically informed customer perspectives should be warmly welcomed by the Commission and supported by the drafting of sensible guidance on this critical question.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'DK', with a long horizontal stroke extending to the right.

Doug Karp

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Clean Coalition