

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

Order Instituting Rulemaking to Create a
Consistent Regulatory Framework for the
Guidance, Planning and Evaluation of
Integrated Distributed Energy Resources.

Rulemaking 14-10-003
(Filed October 2, 2014)

**COMMENTS OF THE CLEAN COALITION
ON THE ALTERNATE PROPOSED DECISION OF COMMISSIONER LIANE
M. RANDOLPH REGARDING INTERVENOR COMPENSATION TO THE
CLEAN COALITION**

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February 21, 2019

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I. Introduction

Pursuant to Public Utilities Code § 1804(c) and Article 14 of the Commission’s Rules of Practice and Procedure, the Clean Coalition respectfully submits these comments in opposition to the Alternate Proposed Decision (“APD”) of Commissioner Liane M. Randolph to the Proposed Decision (“PD”) of Administrative Law Judge (“ALJ”) Kelly Hymes that originally appeared on the Agenda for the Commission meeting of June 21, 2018 as Item 42 granting intervenor compensation.

II. Description of the Party

The Clean Coalition is a nonprofit organization whose mission is to accelerate the transition to renewable energy and a modern grid through technical, policy, and project development expertise.

The Clean Coalition advances and represents ratepayer environmental and cost effectiveness interests. In this capacity, we drive policy innovation to remove barriers to procurement and interconnection of distributed energy resources (“DER”)—such as local renewables, advanced inverters, demand response, and energy storage—and we establish market mechanisms that realize the full potential of integrating these solutions. The Clean Coalition also collaborates with utilities and municipalities to create near-term deployment opportunities that prove the technical and financial viability of local renewables and other DER.

III. Summary

The Clean Coalition opposes the APD, which adopts the analysis performed in Decision 18-11-010 as an alternative to the findings in the PD. However, that Decision rests on numerous errors of law and fact in its finding that the Clean Coalition is categorically ineligible for intervenor compensation, as detailed in the Clean Coalition's outstanding Application for Rehearing filed 12/19/2018 in R.15-02-020.

D.18-11-010 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 that proceeding, despite no parties having contested the Clean Coalition's eligibility in any proceeding. In at least two crucial instances, the facts in the record directly contradict the findings of D.18-11-010, and numerous other conclusions in the Decision are either unsupported or in error.

The PD was unopposed. There has been no finding, nor claim, nor even suggestion by any party, that the Clean Coalition has advocated for any position which was not founded in public interest. There is neither claim nor evidence that the positions advocated by the Clean Coalition reflect any conflict of interest or associated bias. The APD asserts that the Clean Coalition represents market participants, but offers no evidence or examples of such representation.

Both D.18-11-010 the APD penalize the Clean Coalition for the Commission's own repeated failures to perform its statutory obligations to render preliminary decisions on Notices of Intent ("NOI") to File for Intervenor Compensation, particularly under § 1802(g) where the NOI has included a claim of "significant financial hardship" that requires a finding and the applicant has requested a ruling. Additionally, while well intentioned, the conclusions of D.18-11-010 introduce new and ill-defined standards regarding intervenors' eligibility for compensation that add uncertainty and inhibit public participation in the Commission's proceedings.

In contrast, the PD written by ALJ Hymes finds it fair to award compensation for verified substantial contributions based on the finding of eligibility in D.16-05-049 and because the intervenor was participating in this proceeding from 2014 to 2016 without a warning that it was not eligible to claim compensation (PD at I.B.11). Furthermore, the June 30, 2016 Ruling of

ineligibility in A.15-02-009 was specific to that proceeding, and was itself contested by the Clean Coalition in an August 1, 2018 Motion for Reconsideration, which also sought guidance on behalf of all intervenors regarding the types of engagements and compensation that organizations should avoid to ensure that there is no question of market involvement. That motion and all other outstanding motions were later denied en masse at the close of the proceeding without any guidance or findings of fact or merit.

The APD's denial of eligibility after the fact is unreasonable, unduly impacts the Clean Coalition, and will have a chilling effect on this and other public interest organizations for which the intervenor compensation program aims to address the financial hardship of participation. The Clean Coalition therefore requests that the Commission adopt the PD and reject the APD. Alternatively we request that the Commission grant the requested rehearing of D.18-11-010 before an impartial presiding officer to enable the organization to address legal errors and factual mischaracterizations.

The Clean Coalition strongly supports the Commission in ensuring appropriate eligibility for intervenor compensation and addressing potential conflicts of interest in customer status. Toward this end, the Clean Coalition has requested that the Commission establish clear rules and guidelines. In response to the legitimate questions raised by ALJ Simon prior to D.18-11-010, we proposed such standards in an ex parte letter to the ALJ and Commissioners on August 10, 2018 (see attached).

The Executive Director of the Clean Coalition wishes the Commission to note that ongoing delays in awarding compensation have already forced reductions in staff, and convey his conclusion that, absent the development of clear standards, the adoption of the APD would merit legal and legislative recourse to address the impact of these Commission practices and Decisions on the function of the intervenor compensation program.

IV. The APD relies on a series of conclusions and statements in D.18-11-010 that are contested and not based in the record.

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.

1. The APD and D.18-11-01 are based on the factually incorrect conclusion that the Clean Coalition has not provided information since the June 30 Ruling establishing customer status.

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 D.18-11-010 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.”)

D.18-11-010 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 failed to accurately read 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, D.18-11-010 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’etre* is intimately related to the environmental concerns of ratepayers to both transition to an environmentally sustainable economy and 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, D.18-11-010 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.” (Decision, at 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 D.18-11-010 rests on conclusions about the purposes of the Clean Coalition that directly contradict the plain facts in the record, it must be set aside, and the APD rejected.

2. D.18-11-010 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 to 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, and inconsistent with the Commission's own DER Action Plan, DER Avoided Cost Calculator, and the multiple Proceedings aimed squarely at leveraging DER deployment and operation in ratepayer interest. Furthermore, development of local resources reduces environmental impact and safety hazards while enhancing both local and system-wide resilience. However, impartial consideration of these factors is underrepresented at the Commission, and desperately needed. That is precisely the role the Clean Coalition has played throughout all of its actions, as evidenced by the consistent record of its substantial contributions in this and other proceedings.

The failure of D.18-11-010 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.

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.

The Clean Coalition has demonstrated that its work to promote effective markets for DER advances important ratepayer interests.

3. D.18-11-010 inappropriately applies a novel economic requirement retroactively in establishing ratepayer representation.

The discussion in D.18-11-010 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.

D.18-11-010, 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. To impose a new requirement retroactively 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.

"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.

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

D.18-11-010 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 expertise it has developed and 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.

D.18-11-010 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 D.18-11-010 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.

D.18-11-010'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. D.18-11-010 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, D.18-11-010 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 compensation for a single engagement with Southern California Edison to assist in a Commission-approved Preferred Resources Pilot. To the extent that the Clean Coalition has received very limited compensation for expert consultation does not belie the financial hardship of public interest participation in unrelated proceedings for which no external funding was received.

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’etre*. More fundamentally, this statement completely fails to recognize that CCAs, public utilities, and governments do many activities out of public interest, 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, D.18-11-010 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, and 32). However, the Decision offers not a single citation to the record or indeed any evidence 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 is 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 Decision put forth 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.

D.18-11-010 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. 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.

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

D.18-11-010 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.

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 an earlier finding, instead 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.

D.18-11-010 is also in error in tracing the rebuttable decision to an expired Decision. 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 D.18-11-010'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.

In fact, the findings of significant financial hardship show a repeated pattern of the Commission ignoring the Clean Coalition’s showings of financial hardship and repeated requests for rulings.

The Clean Coalition was previously granted customer status category 3 in R. 11-09-011 and R.11-05-005. (See: D.13-12-021/D.13-12-023, both dated 12/5/13). Under PUC § 1802(g) the Clean Coalition has submitted NOIs and requested a ruling on financial hardship multiple times since 2011, including on 2/23/2012 in A.11-06-006, in A.14-02-006 on 6/12/2014; R.14-07-002 on 11/26/2014,¹ in R.14-10-003 on 12/26/2014,² in R.15-02-020 on 5/18/2015; in R.15-03-011 on 6/16/2015; in A.15-02-009 on 7/10/2015; in R.17-06-026 on 9/28/2017; in R.18-07-017 on 10/26/2018; and had continued to consistently receive intervenor compensation awards until D.18-11-010.

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 and associated requests for rulings, any finding of a lack of customer status or 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.

VI. The APD 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 associated with D.18-11-010.

¹ ALJ Anne E. Simon responded on 2/17/15 and requested additional information in R.14-07-002 to establish customer status and financial hardship in an amended NOI within 30 days. An amended NOI was timely filed on 3/19/2015. In that proceeding, D.16-05-049 (issued on May 26, 2016) found that Clean Coalition had demonstrated significant financial hardship.

² ALJ Kelly Hymes requested additional information on 3/3/2015 in R.14-10-003. An amended NOI was timely filed on 4/2/2015. As noted in the PD at I.B.11, no ruling on the amended NOI issued.

In light of its reliance on D.18-11-010, which contains many critical legal and factual errors, failed 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 APD should be rejected. Since the record shows that the Clean Coalition made a showing of significant financial hardship and is a customer representative organization, ALJ Hymes PD awarding intervenor compensation should be issued.

VII. 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 D.18-11-010 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 is fundamentally unfair to apply that standard retroactively, as recognized by ALJ Hymes in the PD. 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

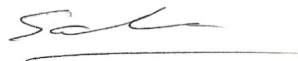
compensation in R.13-09-011; and the Proposed Decision dated July 12, 2018 granting compensation in R.14-10-003.

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 NOI 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.

VIII. Conclusion.

The Clean Coalition respectfully but strongly opposes the Alternate Proposed Decision of Commissioner Liane M. Randolph, and requests the Commission adopt the Proposed Decision of Administrative Law Judge Kelly Hymes. Additionally we again urge the Commission to adopt and publish clear guidance, and provide timely determination, regarding intervenor customer status and eligibility for all intervenors.



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Dated: February 21, 2019

Attachment:

R.15-02-020 Clean Coalition Ex Parte Letter recommending Intervenor Compensation Standards

VERIFICATION

I am authorized to make this verification on behalf of the Clean Coalition. I have read the foregoing “COMMENTS OF THE CLEAN COALITION ON THE ALTERNATE PROPOSED DECISION OF COMMISSIONER LIANE M. RANDOLPH REGARDING INTERVENOR COMPENSATION TO THE CLEAN COALITION” dated February 21, 2019. 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 February 21, 2019 in Santa Cruz, California.

Respectfully submitted,



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