BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for Development of Distribution Resources Plans Pursuant to Public Utilities Code Section 769	Rulemaking 14-08-013 (Filed August 14, 2014)
And Related Matters	Application 15-07-002 Application 15-07-003 Application 15-07-006

(NOT CONSOLIDATED)

In the Matter of the Application of PacifiCorp (U901E) Setting Forth its Distribution Resource Plan Pursuant to Public Utilities Code Section 769.	Application 15-07-005 (Filed July 1, 2015)
And Related Matters	Application 15-07-007 Application 15-07-008

COMMENTS OF THE CLEAN COALITION ON THE PROPOSED DECISION OF REGARDING INTERVENOR COMPENSATION TO THE CLEAN COALITION

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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 Proposed Decision ("PD") of Administrative Law Judge ("ALJ") Robert M. Mason III issued May 26, 2020.

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 PD, which adopts the conclusions of Decision 19-03-023, adopted March 28, 2019 and issued April 5 2019, in proceeding R.14-10-003.

Decision 19-03-023 ("Decision") rests on analysis performed in D.18-11-010 (issued in R.15-02-020) and the June 30, 2018 ruling (issued in A.15-02-009)[1] which adopts numerous errors of law and fact in its finding that the Clean Coalition is categorically ineligible for intervenor compensation. A request for rehearing of D.18-11-010 was timely filed by the Clean Coalition on December 19, 2018, and a subsequent Request for Rehearing of D.19-03-023 was timely filed by the Clean Coalition on April 26, 2019, and both are pending before the Commission.

Based on the unresolved matters delineated in the two requests for rehearing, it is inappropriate to rely on the conclusions of these prior Decisions to deny this claim for intervenor compensation at this time. In light of the matters of fact and law raised in the December 19, 2018 and April 26, 2019 requests for rehearing, the PD errors in stating that the "Clean Coalition has not provided new information about its status that would lead to a different outcome."[2]

Furthermore, the work performed in association with this intervenor compensation claim occurred in years prior to D.18-11-010, which was the first Decision of the Commission finding

[1] D.19-03-023 at 4
[2] Proposed Decision ("PD") issued May 26, 2020, Part I(B) at 4

the Clean Coalition ineligible for compensation, despite repeated requests by the Clean Coalition for an updated finding in multiple Notices of Intent for Intervenor Compensation filed with the Commission in this and related proceedings, and no contest of eligibility by any party in any proceeding in response to Notices of Intent or prior Decisions consistently awarding compensation. In the Proposed Decision issued by Administrative Law Judge ("ALJ") Hymes verifying substantial contribution to D.16-12-036 and D.15-09-022 dated July 12, 2018, the ALJ noted that D.16-05-049 (issued on May 26, 2016) found that CC has demonstrated significant financial hardship. The ALJ stated "We find it appropriate to grant this claim, based on the finding of eligibility in D.16-05-049 (R.14.07-002), rather than denying the claim based on the findings of CC's ineligibility made in A.15-02-009" because the Clean Coalition was participating in that proceeding without a warning that we were not eligible to claim compensation. There was no finding of ineligibility in response to the NOIs submitted in that proceeding (R.14-10-003) or this current proceeding.

Summarizing the issues warranting rehearing of D.18-11-010 and D.19-03-023 and reversal or abeyance of the current PD, the Clean Coalition makes the following claims:

First, the findings D.18-11-010, and by extension those of D.19-03-023, 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 Decisions cite to statements and documents not properly in the record, including many apparently obtained outside of the formal record of either 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" denied Clean Coalition due process to address or correct material misrepresentations based in this independent research, and are a fundamental basis for the requests for rehearing, which should be resolved before relying upon them in this PD.

Third, despite no parties having contested the Clean Coalition's eligibility in any proceeding, the Administrative Law Judge ("ALJ") acted in the combined roles of investigator, prosecutor and judge in D.18-11-010. In that process, 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. D.19-03-023 states that the

Commission, in reviewing the Clean Coalition's comments on the Alternate Proposed Decision ultimately adopted, had not found valid information and arguments that would support the allegations errors of law and fact,[3] but fails to provide specific reference or rebuttal to our assertions of error of law and fact.

Fourth, in at least two crucial instances, the facts in the record directly contradict the findings of the D.18-11-010 upon which D.19-03-023 and the current PD rely, and numerous other conclusions in D.18-11-010 are either unsupported or in error.

Fifth, while well intentioned, the conclusions of D.18-11-010 introduced new and ill-defined standards regarding intervenors' eligibility for compensation that are carried over in D.19-03-023 and the current PD, adding uncertainty and inhibiting public participation in the Commission's proceedings.

Sixth, the Decision penalizes the Clean Coalition for the Commission's own repeated failures to perform is statutory obligations to render preliminary decisions on Notices of Intent to File for Intervenor Compensation. 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 eligible underrepresented ratepayer interest. There is neither claim nor evidence that the positions actually advocated by the Clean Coalition reflect any conflict of interest or associated bias. The Decision asserts that the Clean Coalition represents market participants, but offers no evidence or examples of such representation. The resulting denial of eligibility after the fact and without evidentiary foundation greatly increases uncertainty and risk to 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.

Additionally, the fact that the Proposed Decision in R. 14-10-003 written by ALJ Hymes granted the claimed compensation in full, and Commissioner Rechtshafften's statement during the public voting session on the matter that of the Alternate Proposed Decision, stated that the determination was a close call, lend weight to the appropriateness of reconsideration.

The Clean Coalition therefore requests that the Commission revise the Proposed Decision to reverse the denial of eligibility for intervenor compensation during the period of the claim.

[3] D.19-03-023 at 11

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.[4]

IV. The PD relies on a series of conclusions and statements in D.18-11-010 and D.19-03-023 that are contested and not based in the record to reach its 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 D.18-11-010, upon which D.19-03-023 relies, the link between raw evidence and findings is frequently absent, as specified in the following sections of these comments. 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).)

[4] R.15-02-020 Clean Coalition Ex Parte Letter recommending Intervenor Compensation Standards. Direct link: CPUC: Establishing an intervenor compensation standard | August 10, 2018

1. **The Proposed Decision relies in part 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 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,"[5] not only without evidence, but in direct contradiction of the plain language of the bylaws. D.18-11-010 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

[5] D.18-11-010 at 24

and/or compete in these markets."[6] However, neither has the Clean Coalition existed 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's small ratepayers. Key among sustainability concepts is a deep concern among these ratepayers that a renewable energy be achieved in a cost effective manner, avoiding unwarranted transfer of wealth out of their communities, such as to utility shareholders and transmission owners. The organization's *raison d'etre* is intimately related to the environmental concerns of small ratepayers to 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, the prior Decisions point to nothing in the bylaws or actual activities of the organization 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."[7] Increasing market participation results in more competitive markets and lower margins for suppliers, not greater profits. Lowering barriers to market participation reduces the cost of clean energy for eligible ratepayers; whether these cost reductions are distributed to also benefit other ratepayers is determined by the Commission.

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

2. D.18-11-010 and the following D.19-03-023 fundamentally err in stating, without support, that Clean Coalition's advocacy is not aligned with its clear efforts to address underrepresented ratepayer interests.

The Decisions upon which the current PD rests rely 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."[8] This

[6] ibid
[7] ibid
[8] D.18-11-010, at 17

fundamentally critical conclusion not supported by evidence in the record in either this proceeding or any other, and is contrary the extensive history of the organization's engagement at the Commission. (*See attached Request for Rehearing for additional background and discussion*)

3. D.18-11-010 and D.19-03-023 inappropriately applied a novel economic requirement retroactively in establishing ratepayer representation, and denies an opportunity to demonstrate compliance.

The discussion in D.18-11-010 of the Clean Coalition's constituents, referenced in D.19-03-023 is factually in error and is not grounded in evidence in the record. D.18-11-010 effectively establishes a new litmus test, disqualifying organizations without paid membership from compensation. D.18-11-010 rests largely upon a newly elucidated and novel criteria of paid membership as evidence of representation of ratepayer interest which has not been otherwise implemented or adopted as policy by the Commission. The Clean Coalition has sought to address this and related questions without response from the Commission.[9] And by introducing this issue retroactively it denies the Clean Coalition a meaningful opportunity to conform to the apparent new standard.

D.18-11-010, at page 21, appears to create a new standard out of whole cloth that only organizations with paid membership by eligible ratepayers may be considered to represent these ratepayers interests, while those offering free membership may not. This rule is not found in statute or any prior decisions. Clearly organizations receiving membership fees from ineligible entities have been determined by the Commission to have interests conflicting with the goals of the intervenor compensation program and are ineligible for compensation from the program, but that does not apply in this case. D.18-11-010 asserts without evidence, and the PD carries forward, the conclusion that there is a difference between the authorization to represent eligible 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. Indeed, the purpose of the

[9] R.15-02-020 Clean Coalition Ex Parte Letter recommending Intervenor Compensation Standards. Direct link: CPUC: Establishing an intervenor compensation standard | August 10, 2018

intervenor compensation program is to overcome the financial barriers to encourage representation of the interests of eligible ratepayers for whom participation would otherwise be burdensome. To require payment for representation is contrary to this goal. To impose a new requirement retroactively is also arbitrary and unfair. (*See attached Request for Rehearing for additional background and discussion*)

Clean Coalition filed our compensation request consistent with the intervenor compensation policies that were in effect at that time. D.18-11-010 errs because it applies new intervenor compensation policies without notifying the parties or allowing all parties the right to comment on the new policies. We note that the Commission has changed intervenor compensation policies in D.98-04-059 and D.06-12-041, issued in a rulemaking to consider changes to the intervenor compensation program. D.98-04-059 was issued in R.97-01-009, and D.06-12-041 was issued in R.06-04-022. In both rulemakings, parties were allowed to file comments and reply comments prior to the issuance of a PD. (See D.98-04-059, slip op. at 4-6 and D.06-12-041 slip op. at 1-2)

D.18-11-010, D.19-03-023 and the instant PD fail to follow established standards for making changes to the intervenor compensation program. Instead, they establish new policies in a single intervenor compensation request. violates the due process rights of parties when it seeks to change this process. PUC § 1708 (emphasis added) states that:

> The commission may at any time, **upon notice to the parties, and with opportunity to be heard** as provided in the case of com- plaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

These contested Decisions and the PD violate due process because notice of the new intervenor compensation policies was not served on all intervenors and notice was not given to all parties that the Commission intended to consider modifications to its intervenor compensation policies. Meaningful notice and opportunity to be heard are fundamental to the guarantees of procedural due process.

Second, the D.18-11-010 misquotes and mispresents the very document it cites in support of its positions--the Clean Coalition website text describing its relationship with its supporters.[10] The Decision elides the distinction between Clean Coalition supporters, eligible ratepayers whose interests it represent, 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.[11] 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."

While the text here and across the organization's website was never written with particular consideration to the intervenor compensation program, yet alone intended as evidence of eligibility, 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 environmental interest of eligible ratepayers. 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

[10] Attachment to D.18-11-010, at 31
[11] D.18-11-010 at 22, and fn 38

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 asserted 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[12] 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 repeated affirmed that efficient market mechanisms are in the public interest, and improving these mechanisms for the sourcing and

[12] D.18-11-010 at 24

development of renewable energy is directly in the environmental interest of eligible ratepayers. Supporting greater efficiency in market mechanisms benefits these 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 benefits to eligible ratepayers as a class and as individual small ratepayers participating in the market when selecting Green Tariff Shared Renewables, Enhanced Community Renewables, and other tariff options from their regulated utility, including those ordered by the Commission but currently offered at a premium that has greatly hindered these programs from achieving their public policy goals. This advocacy on behalf of interested small ratepayers 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 warrant rehearing, should be reversed, and should not be relied upon pending rehearing.

5. The PD rests upon unsupported conclusions in D.18-11-010 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. The PD and D.19-03-023 rest upon D.18-11-010's mere speculation that the Clean Coalition is seeking contracts that may arise out of its work representing ratepayer interests in local energy. For example, the D.18-

11-010 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 each of these proceedings 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. Relevantly, no party has ever contested our eligibility or objected to our claim for compensation. Importantly this includes eligible parties acknowledged by the Commission as representing ratepayer interests who are actively involved in the same proceedings and intimately familiar with our positions and advocacy, many of whom we have collaborated with and jointly developed comments. (*See attached Request for Rehearing for additional background and discussion*)

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, cited by the PD, 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 D.18-11-010 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.

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

The PD is in error 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 (D.18-11.010), in R.14-10-003 for D.19-03-023 and in R.14-08-013 for this PD,[13] 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, D.19-03-023 fails to reference the Clean Coalition's request for a finding of financial hardship in its NOI submitted in this proceeding on 12/26/2014, referring only to the expiration of a prior rebuttable presumption.[14] This again mirrors D.18-11.010 which stated in error regarding the more recent NOI in that proceeding 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

[13] 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. No ruling on the amended NOI issued.
[14] D.19-03-023 at 2

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, D.18-11-010 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 reward 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.

VI. The PD's reliance on D.18-11-010 and D.19-03-023 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 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, these Decisions should be set aside until a rehearing is concluded. The record shows that the Clean Coalition made a showing of significant financial hardship and is a customer representative organization, and the evidence of a substantial contribution to the proceeding confirmed such that an award of 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 the PD 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. 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 later 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

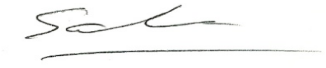
ruling. See, for example, D.17-01-029, the Decision issued January 23, 2017, granting compensation in A.12-01-008, A.12-04-020 and A.14-01-007; D.17-03-008, the Decision dated March 2, 2017, granting compensation in R.13-09-011; and the Proposed Decision dated July 12, 2018 granting compensation in R.14-10-003.

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.

VIII. Conclusion.

The Clean Coalition respectfully but strongly opposes the Proposed Decision, and requests the Commission address the matters of categorical eligibility and financial hardship either without reliance upon the contested Decisions or subsequent to a rehearing of those Decisions. 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: June 12, 2020

Attachments:

- R.14-10-003 Application for Rehearing of D.19-03-023 denying intervenor compensation (02_ksw, 26 Apr 2019)

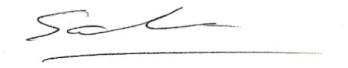
VERIFICATION

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 PROPOSED DECISION OF REGARDING INTERVENOR COMPENSATION TO THE CLEAN COALITION dated June 12, 2020. 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 June 12, 2020 in Santa Cruz, California.

Respectfully submitted,



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