

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

Order Instituting Rulemaking to Integrate and Refine
Procurement Policies and Consider Long-Term
Procurement Plans.

Rulemaking 12-03-014
(Filed March 22, 2012)

**DISTRIBUTED ENERGY CONSUMER ADVOCATES
MOTION FOR RECONSIDERATION**

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July 17, 2012

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Pursuant to Section 11.1 of the California Public Utilities Commission (“CPUC”) Rules of Practice and Procedure Distributed Energy Consumer Advocates (DECA) respectfully moves for reconsideration of the Administrative Law Judge's Ruling (hereinafter “the Ruling”) of July 13, 2012 denying party status in the above-captioned proceeding (R.12-03-014).

DECA's party status was already granted by ruling on July 9, 2012 and the Ruling of July 13, 2012 is precluded under the principle of *res judicata*. The Ruling denying DECA's motion for party status is arbitrary and capricious and denies the rights of a key group of Californians from being represented before the Commission during a critical period of policy development that directly affects them. The Fair Political Practices Commission (FPPC) has already ruled that DECA is not subject to any ban on appearances before the Public Utilities Commission based on who founded the organization and the CPUC errs by ignoring this ruling. On reconsideration, the ALJ should throw out the Ruling of July 13, 2012 and let stand the previous ruling granting DECA's Motion for Party Status. Should the CPUC reject the *res judicata* argument raised

herein, the Ruling should be reversed because DECA has acted in good faith consistent with FPPC and CPUC guidance and the CPUC has failed to establish a non-arbitrary bar for addressing the “revolving door” issues that serve as the basis for the Ruling. The relief sought herein requires timely action by the administrative law judge or the Commission in order to prevent ongoing harm to the record of this proceeding and to DECA's members. If the Commission cannot address these issues in a timely manner DECA seeks permission to late file testimony, comments and replies as well as, if necessary, participate in hearings it may be precluded from participating in during any delay in consideration.

I. DECA's motion for party status was already granted.

On June 27, 2012 DECA filed a motion for party status in the above-captioned proceeding. In granting DECA's motion from the bench on July 9, 2012 administrative law judge Gamson noted on the record that no party objected to DECA's motion or party status.¹ Having ruled accordingly, on the record and consistent with the Commission's own Rules of Practice and Procedure, DECA's party status has been established. The July 13, 2012 ruling ignores a matter already judged less than a week prior and should be rejected under *res judicata*. If the CPUC wishes to overturn the July 9, 2012 ruling it should do so via a Commission decision, not a ruling because it would be establishing or changing a Commission precedent.

II. No actions by DECA merit revocation of DECA's party status in the Long Term Procurement Planning proceeding.

DECA has not acted in any manner that merits revocation of party status. Revocation of party status is an exceedingly rare and injurious action for the Commission to take. Accordingly, revocation of party status should only occur with full and public discourse of the reasons for such

¹ See Pre-Hearing Conference Transcript at p. 156.

action. No such discourse occurred before the Ruling, nor were parties provided with the opportunity for such discourse.

III. The Ruling was not based on any material in the record in the proceeding.

DECA is not aware of any material in the record that was relied on to make the determination that DECA should be denied party status. By relying on extra record material the Ruling denies DECA and other parties the benefit being able to contest (or support) the Ruling.

IV. DECA's has standing in this proceeding and its members are irrevocably harmed by the Ruling.

DECA has members throughout the state of California and in the footprints of the state's three largest investor owned utilities. No entity that DECA is aware of is capable of representing this crucial residential customer class in the way that DECA does. Without DECA's participation in this proceeding its members will not receive adequate representation before the Commission and the record will suffer as a result.

V. The Fair Political Practices Commission, not the CPUC, is the appropriate entity for determining conflicts of interest associated with “revolving door” issues.

DECA is not aware of any reference to “revolving door” issues in the CPUC Rules of Practice and Procedure, any CPUC decision, or CPUC-related statute. Neither DECA nor DECA's founder has been provided with any material related to CPUC “revolving door” issues other than the Political Reform Act and the Fair Political Practices Commission. By invoking “revolving door” issues while applying a standard other than those established by the FPPC the Ruling is arbitrary and capricious.

VI. The Fair Political Practices Commission has ruled DECA is not subject to any ban under the Political Reform Act that may apply to its founder or any employee.

DECA's founder, upon direction of the California Public Utilities Commission's legal counsel, sought advice regarding "revolving door" policies from the Fair Political Practices Commission (FPPC). In advice letter I-12-074 dated May 29, 2012 the FPPC stated DECA is not subject to any "revolving door" restrictions under the Political Reform Act that may apply to its founder. That letter states unequivocally that, despite being founded by a person subject to some restrictions under the Political Reform Act's revolving door provision, "the Act does not prohibit others from DECA from communicating with or appearing before the CPUC or an administrative law judge".²

VII. DECA conveyed the Fair Political Practices Commission advice letter to the Public Utilities Commission legal division and was told it could participate in Commission proceedings prior to the Ruling.

DECA conveyed the whole of the FPPC advice letter to Lionel Wilson, the CPUC's deputy general counsel in charge of conflicts of interest, seeking to prevent precisely the kind of arbitrary and capricious actions reflected by the Ruling. While Mr. Wilson did not comment on the Long Term Procurement Planning proceeding specifically, in an email dated June 15, 2012 Mr. Wilson stated "If the proceeding [DECA seeks to participate in] happens to be an advice letter proceeding, I believe DECA can participate". DECA is not aware of any distinction between the advice letter process or rulemakings that would allow DECA to be a party in an advice letter but not in a rulemaking. If such a distinction exists the Ruling did not make it nor

² While it appears that the administrative law judge is aware of DECA's founder through other means, DECA intentionally omits the name of its founder in this motion in an abundance of caution regarding the restrictions associated with the Political Reform Act's "revolving door" policies. Consistent with that omission the citation to the advice letter references only the date and number of the advice letter and not name of the recipient of the advice.

did it cite any authority to draw such a distinction.

VIII. The Ruling errs in associating the founder of an organization with the independent board of an organization once that organization has been incorporated.

DECA is, consistent with California law, a public benefit corporation. As such DECA has an independent board that controls the organization. DECA's founder has, accordingly, relinquished control of the organization to the board. Because DECA has an independent board the role of the founder is ministerial in nature and represent “control” of the organization only for purposes of filing initial documents with the state of California, et cetera. In any event those actions ceased to be long before DECA filed its motion for party status in the LTPP. By relying on DECA's founder as the reason for denying DECA's motion for party status the Ruling is therefore arbitrary and capricious.

IX. The Commission has failed to provide non-arbitrary rules regarding “revolving door” issues despite apparently holding a contrary interpretation of the Political Reform Act than the Fair Political Practices Commission.

The CPUC has, since at least 1997, had designated employees under the Political Reform Act seek guidance from the FPPC regarding “revolving door” issues.³ Those advice letters are all inconsistent with the position the serves as the foundation for the Ruling. The CPUC undoubtedly has been aware of FPPC advice letters that reflect a different interpretation of the

³ See the FPPC's *Weil* Advice Letter, No. A-97-247 and Reid Advice Letters I-05-187 and I-05-178.

state's one-year ban than those reflected in the Ruling, but failed to establish any explicit, non-arbitrary rules of its own during that time period. This lack of clarity from the CPUC inappropriately subjects organizations such as DECA to arbitrary and capricious judgements such as the July 13, 2012 Ruling.

X. CONCLUSION

For the foregoing reasons, the the ALJ should reverse the Ruling of July 13, 2012 and let stand the previous ruling granting DECA's Motion for Party Status.

By _____
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