

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

Order Instituting Rulemaking to Oversee the  
Resource Adequacy Program, Consider Program  
Refinements, and Establish Annual Local  
Procurement Obligations

Rulemaking 11-10-023  
(Filed October 20, 2011)

**MOTION OF SIERRA CLUB TO LATE-FILE A  
NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION**

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Dated: December 19, 2012

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**I. INTRODUCTION**

Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, the Sierra Club respectfully requests permission to late-file its Notice of Intent to Claim Intervenor Compensation (NOI) in this proceeding. The late-filed NOI accompanies this motion.

The Sierra Club is a non-profit environmental organization incorporated under the laws of the State of California. Over 187,000 of Sierra Club’s members live and purchase utility services in California. Sierra Club’s mission is to promote the responsible use of the earth’s ecosystems and resources; educate and enlist humanity to protect and restore the quality of the natural and human environment; and use all lawful means to carry out these objectives. Sierra Club is a leader in the effort to reduce California’s and the nation’s dependence on fossil fuels. The highest priority of Sierra Club’s work is eliminating the need for fossil fuel-fired power plants through the development of affordable renewable energy.

Section 1804(a) of the Public Utilities Code and Commission Rule 17.1 sets forth the timing under which a Notice of Intent to Claim Compensation (NOI) may be filed.<sup>1</sup> In the instant proceeding, the Commission’s Order Instituting Rulemaking (OIR) directed that NOIs must be filed no later than November 28, 2011.<sup>2</sup> However, Commission Rules allow for flexibility and discretion. Rule 1.2 permits deviation from Commission Rules “for good cause shown.” Good cause exists here.<sup>3</sup> At the time the OIR was issued and when Sierra Club became

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<sup>1</sup> Pub. Util. Code § 1804(a); Public Utilities Commission Rules of Practice and Procedure § 17.1(a) (NOI may be filed: 1) within 30 days after prehearing conference; 2) where there is no prehearing conference, within 30 days after time for responsive pleadings; 3) in a petition for rulemaking, 30 days after the time for responses; and 4) for proceedings that take less than 30 days, a deadline established by the Administrative Law Judge).

<sup>2</sup> Order Instituting Rulemaking 11-10-023 at 11 (Oct. 27, 2011).

<sup>3</sup> Sierra Club notes that a Motion to Late-File an NOI filed by The Utility Reform Network based on “inadvertent error” has been granted in this proceeding. Administrative Law Judge’s Ruling Granting Motion to Late File NOI, dated Aug. 31, 2012.

a party to this proceeding, the extent to which the Commission would tackle issues that closely relate to Sierra Club's interests and expertise was unclear. With the recently issued Phase II Scoping Memo, it is now clear that the Commission will focus on efforts to alter the structure of the resource adequacy program and address resource adequacy in the context of distributed energy resources. These questions fall squarely within Sierra Club's core concerns and are issues that the Sierra Club has been engaged in over the past year before the California Independent System Operator (CAISO). At the time the NOI was originally due, over one year ago, the Sierra Club could not have reasonably predicted that the Commission would ultimately engage with these issues in this proceeding or that they would intersect and relate closely with the Sierra Club's recent advocacy at the CAISO. In recognition that the NOI is late-filed, the Sierra Club requests that the Commission grant this motion, but limit the Sierra Club's eligibility for intervenor compensation to time spent responding to issues raised in Phase II (and future phases if applicable) of this proceeding.

## **II. BASIS FOR REQUESTED RELIEF**

The Sierra Club has tracked the Resource Adequacy proceeding since its inception and filed a Motion for Party Status on April 25, 2012. While the OIR included an Appendix listing potential topic areas to explore, such as deliverability for distributed generation and incorporating load following capabilities into the resource adequacy program, it was uncertain if and when these issues would be addressed. Although there were workshops and comments to attempt to address these questions, Phase I ultimately focused on 2013 Resource Adequacy requirements for LSEs and did not contemplate significant structural changes to the existing Resource Adequacy program. Given this more limited scope, the Sierra Club determined it was unnecessary to invest significant resources in that Phase of this proceeding. The Sierra Club did

not file an NOI given the difficulty in predicting the extent of its potential future involvement. With the Phase II Scoping Memo issued on December 6, 2012, it is now clear that the Commission will be addressing issues where the Sierra Club has already significantly engaged, where the Sierra Club is prepared to make a substantial contribution, and which may have environmental implications central to the Sierra Club's mission. Given the relevancy of the recently disclosed Phase II issues outlined in the December 6<sup>th</sup> Scoping memo to Sierra Club's advocacy work, the Sierra Club believes good cause exists to grant its motion to late-file an NOI.

The first issue for comment in Phase II is the Joint Parties' Proposal on RA Flexible Capacity Procurement. The Joint Parties' Proposal is premised on modeling by the CAISO that purports to show significant future need for flexible resources. Through its expert Bill Powers, P.E., the Sierra Club submitted extensive comments critical of CAISO modeling assumptions in the CAISO's Flexible Capacity Procurement stakeholder process.<sup>4</sup> The Sierra Club is concerned CAISO modeling overstates need and will result in unnecessary and additional commitments to fossil fuel generation that will undermine achievement of California's greenhouse gas reduction objectives and come at significant and needless ratepayer expense. Notably, this same modeling provides the justification for the proposed flexible capacity procurement now before the Commission. The Sierra Club already has expertise in this issue through its involvement in the CAISO process and believes it can significantly assist the Commission as it reviews the Joint Parties proposal.

Phase II also contemplates a workshop on RA Deliverability for Distributed Generation (DG). The Sierra Club also submitted comments on this issue to the CAISO when its

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<sup>4</sup> See <http://www.caiso.com/Documents/SierraClubCA-Comments-FlexibleCapacityProcurementRevisedDraftFinalProposal.pdf>.

methodology for allocated deliverability for DG was developed.<sup>5</sup> Like its comments to the CAISO on the proposed Flexible Capacity Procurement, this issue ripened well after the NOI was due in November 2011. The Sierra Club's experience in the ISO DG Deliverability process will provide useful perspective if and when the Commission takes up this question in Phase II.

### III. CONCLUSION

Because the Phase II Scoping memo has recently delineated specific issues relevant to the Sierra Club's work and mission that could not have reasonably been anticipated when the original OIR was issued, the Sierra Club respectfully asks the Commission to grant Sierra Club's Motion to Late-File a Notice of Intent to Claim Intervenor Compensation.

Dated: December 19, 2012

Respectfully submitted,

/s/

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<sup>5</sup> See <http://www.aiso.com/Documents/SierraClub-CommentsDeliverabilityDistributedGeneration-DraftFinalProposal.pdf>; <http://www.aiso.com/Documents/SierraClub-Comments-DeliverabilityDistributedGeneration.pdf>