

**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 13-12-010
(Filed December 19, 2013)

**MOTION FOR RECONSIDERATION OF ALJ RULING ON PROTECT OUR
COMMUNITIES FOUNDATION'S SHOWING OF SIGNIFICANT FINANCIAL
HARDSHIP**

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I. INTRODUCTION

Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, the Protect Our Communities Foundation (“POC”) submits the following Motion for Reconsideration of ALJ Gamson’s August 6, 2014 Ruling finding that POC has failed to demonstrate significant financial hardship in its Notice of Intent to Claim Intervenor Compensation (“NOI”). This motion is being filed concurrently with POC’s Amended Notice of Intent to Claim Intervenor Compensation, and a copy of POC’s Amended NOI is included with this Motion as Attachment

A. For the reasons set forth below, Commission should grant this motion, accept POC’s Amended NOI as filed, and grant POC a finding of significant financial hardship based on POC’s Amended NOI.

II. PROCEDURAL BACKGROUND

On March 27, 2014, POC timely filed its NOI in this proceeding. As this was POC's first NOI filed before the Commission, POC sought both a finding of "customer status" as required by Cal. Pub. Util. Code 1802(b), and a finding of "significant financial hardship" as required by Pub. Util. Code 1803 (and defined by Section 1802(g)). Both findings are necessary for POC to be eligible for intervenor compensation.

POC asserted customer status as a Category 3 customer, which Pub. Util. Code Section 1802(b)(1)(c) defines as:

A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive electric service from an electrical corporation.

POC asserted significant financial hardship using the "Option 1" undue hardship test. Option 1, set forth at Public Utilities Code Section 1804(g), requires that the party demonstrate that:

[T]he customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation.

On August 6, 2014, ALJ Gamson issued a ruling on POC's NOI (the "Ruling"). The ruling found that POC had established its customer status as a Category 3 customer,¹ but had failed to establish significant financial hardship:

POC asserts its eligibility to claim intervenor compensation as a "Category 3" customer...

In order to demonstrate significant financial hardship, this customer category has to show that "the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding" (Cal. Pub. Util. Code Sec. 1804(g)). Instead of using the "comparison test", POC asserts that bearing the cost of participation without intervenor compensation would severely limit

¹ 20140806 11:06 AM

POC's ability to participate in the proceeding [Citation]. This showing does not demonstrate significant financial hardship for the customer category asserted by POC.²

The Ruling found that in order to qualify for intervenor compensation, "POC must properly demonstrate [significant financial hardship] in its subsequent request for intervenor compensation."³

III. THE COMMISSION ACCEPT POC'S AMENDED NOI AS FILED AND RECONSIDER POC'S SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP

The Commission accept POC's Amended NOI as filed and reconsider POC's showing of significant financial hardship based on POC's amended NOI. It is far more efficient for the Commission to resolve POC's significant financial hardship status now than it would be to wait for POC to file its intervenor compensation claim the end of the proceeding. POC is a small organization with limited resources. The nature and scope of POC's participation in the proceeding will depend, in part, on POC's ability to recoup its expenditures through intervenor compensation. Although POC recognizes that intervenor compensation is contingent on its making a substantial contribution to the proceeding, whether or not POC will even be *eligible* for intervenor compensation is a threshold question that must be answered for POC to make rational decisions regarding its participation and investment of resources in this proceeding.

In addition, reconsidering POC's showing of significant financial hardship now, rather than at the end of the proceeding, will allow POC to avoid a significant financial burden by qualifying for a transcript fee waiver. The Commission provides transcripts free of charge to Parties who are eligible for intervenor compensation. Otherwise, the Commission charges at

² [Commission Order No. 2019-04](#)

³ [Commission Order No. 2019-05](#)

least \$2.00 per page for transcripts. For a large, complex proceeding such as this, the transcript cost could run into the thousands of dollars, a significant burden for a small nonprofit like POC.

Granting this motion will not result in prejudice to any other party, and will not require a significant expenditure of Commission resources. Per the ALJ's Ruling,⁴ POC is entitled to make a showing of significant financial hardship in POC's Intervenor Compensation Claim at the end of the proceeding. POC is not asking for an additional bite at the apple, POC is simply asking to make its showing of significant financial hardship now rather than waiting until the end of the proceeding.

IV. POC IS ENTITLED TO A FINDING OF SIGNIFICANT FINANCIAL HARDSHIP

POC is entitled to a finding of significant financial hardship based on its Amended NOI. In his Ruling, ALJ Gamson directed POC to use the Option 2 comparison test to demonstrate significant financial hardship. As examples, the Ruling referred POC to two previous rulings where the Commission found that Category 3 customers had successfully demonstrated significant financial hardship using the Section 1802(g) comparison test: the ALJ's December 20, 2011 ruling on Green for All's NOI in proceeding A.11-05-017; and the ALJ's October 31, 2011 ruling on the Center for Accessible Technology's NOI in proceeding A.10-03-014.

POC's Amended NOI closely follows ALJ Gamson's guidance, applying the Section 1802(g) comparison test as follows:

POC represents the interests of a specific constituency: San Diego area residential and small business ratepayers, including ratepayers in smaller communities whose interests are often not adequately represented in Commission proceedings. POC represents the interests of this constituency and POC's supporters within this constituency. POC's constituents and supporters are SDG&E ratepayers. POC certifies that the economic interest in this proceeding of any individual POC constituent or supporter is small compared to the cost of effective participation in this proceeding. Although POC's goal

⁴ 2011-10-31-014

in this proceeding is to make a substantial contribution that will result in lower electricity bills for POC's constituents and supporters, for any individual POC constituent or supporter this impact will be small compared to the cost of participation in this proceeding. This is especially true given the complex and technical nature of this Long Term Procurement Plan proceeding, which POC anticipates will require a significant investment of attorney and expert time.⁵

POC's amended NOI makes a showing of significant financial hardship that is closely parallel to the examples provided in the Ruling. In the first example, the ALJ's December 20, 2011 ruling approving Green For All's NOI in proceeding A.11-05-017, the ALJ found that Green for All ("GFA") had satisfactorily demonstrated significant financial hardship based on the following language:

When compared to the costs of GFA's participation in this proceeding, GFA states that the costs to ratepayers will far outweigh the benefits for any individual ratepayer. Since GFA is representing the interests of its supporters in California who are customers of utilities under the jurisdiction of the Commission, these customers share an interest in the environmental and economic impacts of this proceeding. GFA proffers that while some of these California-residents may eventually experience lower and/or more stable electricity bills because of its participation, that the economic interest represented by such a potential savings is small when compared to the expenses incurred by GFA to present its views in this proceeding.⁶

In the second example, the ALJ's October 31, 2011 Ruling approving the Center for Accessible Technology's ("CforAT") NOI in proceeding A.10-03-014, the ALJ found that the Center had satisfactorily demonstrated significant financial hardship based on the following language:

While it is not possible to quantify the economic benefit of providing accessible billing statements to customers who would be unable to utilize standard billing formats, there is no dispute that such customers receive a substantial benefit. In addition, the utility benefits by providing accessible billing statements in that it better serves its customers and it reduces the risk of legal action asserting that it is not providing access to its customers with disabilities. Because these interests are difficult to quantify in a financial sense, they cannot be weighed against the costs of effective participation. Nevertheless, no individual person with a disability is likely to incur the costs of participating at the

⁵ See amended NOI, Attachment A, ¶¶ 1-3.

⁶ See Ruling on Green for All's Showing of Significant Financial Hardship.

Commission in order to obtain these benefits.

While CforAT seeks to obtain these benefits for its constituents, it does not collect any money from the people it seeks to benefit. As a small non-profit entity with limited assets, CforAT would not be able to engage in representation of people with disabilities before the Commission without the availability of compensation through the intervenor compensation program.⁷

POC's Amended NOI makes a showing of Significant Financial hardship that is equivalent to the showings made by GFA and CforAT. Like GFA and CforAT, POC has demonstrated that it represents the interests of its constituents and supporters. Like GFA and CforAT, POC has demonstrated that its constituents and supporters are utility ratepayers. And like GFA, POC has demonstrated that the cost of participating in this proceeding is far greater than the benefit of participating to any individual constituent or supporter.

POC's showing of significant financial hardship is also equivalent to the Commission-approved showings made by a number of other organizations in recent proceedings. For instance, in a April 23, 2012 ruling in proceeding A.11-05-023, the Commission found that the California Environmental Justice Alliance had demonstrated significant financial hardship based, in part, on the following language:

The average utility bill of the individual California members and supporters of the six organizations of CEJA are small compared to the costs of effective participation in this proceeding. In particular, this proceeding is evaluating whether to approve three costly whether it is appropriate for the Commission to approve these contracts. Due to these factors, CEJA, representing each of the six member organizations, is entitled to a finding of significant financial hardship pursuant to Public Utilities Code Section 1802(g).⁸

⁷ [Commission Ruling on Center for Accessible Campaigning's Showings](#), [Case No. 10-03-014](#), [http://www.cpuc.ca.gov/CaseDetails.aspx?CaseID=1003014](#).

⁸ [Commission Ruling on CEJA's Showing of Significant Financial Hardship](#), [Case No. 11-05-023](#), [http://www.cpuc.ca.gov/CaseDetails.aspx?CaseID=1105023](#), April 23, 2012.

Similarly, in an August 6, 2014 Ruling in the instant proceeding, R.13-12-010, ALJ Gamson found that the Natural Resources Defense Council (NRDC) had demonstrated significant financial hardship based on the following language:

The economic interest of individual NRDC members is small when compared to the costs of effective participation. NRDC is representing the interests of its members in California who are customers of utilities under the jurisdiction of the Commission. These customers share an interest in the environmental and economic impacts of this proceeding. While some of these California- resident members may eventually experience lower and/or more stable electricity bills because of NRDC’s contribution in this proceeding on the design, implementation, and review of the state’s procurement authorizations, the economic interest represented by such savings is very small in comparison to the expenses incurred by the organization to present its views in this proceeding.⁹

Another example can be taken from TURN’s NOI in R.11-11-008. In that proceeding, TURN, a Category III customer, was found to have demonstrated Option 2 significant financial hardship by including its annual factual showing of significant financial hardship as an attachment to its NOI. This statement claims that “TURN represents an interest-- the residential customer class-- that would not otherwise be adequately represented in this proceeding.”¹⁰

POC’s showing of significant financial hardship in its Amended NOI is equivalent to the showings made by CEJA, NRDC, and TURN. Like CEJA, NRDC, and TURN, the individuals represented by POC are utility ratepayers. Like CEJA and TURN, POC has demonstrated that it represents the interests of its supporters and constituents. Like CEJA and NRDC, POC has demonstrated that the interest of any individual that the organization represents is small compared to the cost of participating in the proceeding.

⁹ Gamson, ALJ Ruling on NRDC’s Showing of Significant Financial Hardship, August 6, 2014, R.13-12-010, available at <http://www.cpuc.ca.gov/Pages/decisions.aspx?id=114888>.

¹⁰ TURN, Notice of Intent to File a Claim as an Intervenor, R.11-11-008, filed August 19, 2011, available at <http://www.cpuc.ca.gov/Pages/decisions.aspx?id=108888>.

V. CONCLUSION

For the reasons set forth above, POC asks that the Commission grant its motion for reconsideration, accept POC's Amended NOI as filed, and approve POC's showing of significant financial hardship based on POC's Amended NOI.

Respectfully Submitted,

Dated: September 8, 2014

 /S/

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