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

Application of Pacific Gas and Electric Company  
for Authority, Among Other Things, to Increase  
Rates and Charges for Electric and Gas Service  
Effective on January 1, 2017. (U39M)

Application 15-09-001  
(Filed September 1, 2015)

**MOTION OF COLLABORATIVE APPROACHES TO UTILITY SAFETY  
ENFORCEMENT (CAUSE)  
SEEKING PERMISSION TO LATE-FILE RESPONSE TO ALJ's GUIDANCE  
REGARDING NOTICE OF INTENT  
TO CLAIM INTERVENOR COMPENSATION**

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**I. INTRODUCTION**

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, Collaborative Approaches to Utility Safety Enforcement respectfully requests permission to late-file our response to directions given by the ALJ with regard to the Notice of Intent to Claim Compensation (NOI) in this proceeding. CAUSE timely filed its NOI, but after the case was submitted, a ruling directed that changes be made within two weeks. CAUSE intends to complete the late-filed amended NOI responding to this guidance in the near future, but did not want to delay this filing further.<sup>1</sup>

The ALJ issued a ruling rejecting the previously filed NOI on February 2, 2017. CAUSE now requests that the Commission find that it is appropriate under the unusual circumstances at hand to accept CAUSE's late-filed response to his directions.

**II. BASIS FOR REQUESTED RELIEF**

**A. CAUSE Did Not Timely Learn of the Ruling Due to Its Expectation that it Would not Have an Opportunity to Make any Further Substantial Contribution to the Case Until the Proposed Decision Issued.**

Although there appears to be a misunderstanding\*, CAUSE attorney Scott Rafferty understood based on a communication on August 10, 2016, that the ALJ had resolved concerns and intended to grant the NOI, although he would be unable to do so under after returning from

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<sup>1</sup> CAUSE reserves the right to request that the denial be overturned on the merits.

vacation. At this time, the settlement had already been entered. After deciding that it was not necessary for CAUSE to participate in the January 24, 2017 workshop, and having not expected further direction related to the NOI, attorney Rafferty decided to avoid charging time to this proceeding until there was a proposed decision. He did not review in detail the large number of notices that he received as a result of being on the service list, having received over 200 Commission-related emails since January 1, 2017. When CAUSE received the service email entitled “Proposed Decision of ALJ Roscow,” issued on March 2, 2017, Rafferty resumed active engagement in the case and began working through dozens of prior emails related to the case, the workshop, modeling procedures, and other aspects of the case, including several entitled “ALJ Ruling” without further indication of the subject in the title. To his chagrin, he discovered that, one, issued four weeks earlier, directing that corrections be made within 14 days. Therefore, by the time he discovered the ruling, the time to respond had already lapsed. (Furthermore, 14 days was not enough time to collect home addresses of every member, seek unanimous consent, or change the bylaws even if CAUSE had actual notice immediately upon the issuance of the ruling.)

In asking that this delay be excused, CAUSE notes that its decision to avoid committing time to this case was not unreasonable or imprudent, given the impact on CAUSE’s resources of having participated for over 14 months without any compensation (consistent with the after-the-fact approach of the Intervenor Compensation Program). Plus, despite its erroneous belief that its eligibility had been resolved, CAUSE was acting based on the assumption that it would only be able seek compensation for work that made a significant contribution, and reasonably concluded that the next occasion to do so would be upon issuance of the Proposed Decision.

**B. Since Learning of the Filing, CAUSE Has Devoted Considerable Attention to Determining an Appropriate and Ethical Response.**

At the point it belatedly discovered the ruling, CAUSE was very intensively involved in responding to the Proposed Decision. The ruling placed requirements on CAUSE that posed both logistical challenges and serious issues as to whether CAUSE could lawfully comply. CAUSE communicates with members by mail, so merely compiling the complete list of mailing addresses involved a significant effort. More seriously, attorney Rafferty believed that compliance would violate the rights and expectations of CAUSE's members and directors, several of whom had expressed concern about their privacy and liability. Research into the California Corporations Code seemed to make these issues even more vexing. CAUSE notes that, in this proceeding, it took another intervenor more than three months to process a bylaw change that raised much less complex issues.

CAUSE promptly sought assistance from staff of the Commission who were not subject to the ex parte restrictions<sup>2</sup>, in order to understand whether there were opportunities to comply with the ruling while preserving the statutory and constitutional rights that he believed were at issue. CAUSE also filed requests under Government Code Section 6253, et seq., in order to understand the timing and provenance of the various versions of the NOI that had given rise to the inconsistencies identified by the ALJ. This was necessary because multiple rejections of the NOI (based on the perception of the docketing office that it did not comply with PDF/A requirements) had led to many versions. CAUSE had received notices of only a portion of these rejections, and they did not supply or identify which version was being rejected. There also appear to be discrepancies, even as to the title of the organization, between the docket

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<sup>2</sup> Including the general counsel, chief ALJ, and public adviser.

identification and the authentic document. CAUSE wanted detailed information to ensure that any excuse or explanation to be provided to the ALJ in response to the concerns raised in the ruling would be as accurate as possible. The Commission has invoked extensions to the statutory timeframe to respond to CAUSE's request under Government Code Section 6253, et seq., so CAUSE does not yet have all of this information.

CAUSE also sought guidance from more experienced parties. PG&E kindly organized a conference call. Parties made suggestions on how to proceed, but also indicated that they were also heavily engaged in reviewing the Proposed Decision itself, as well as other proceedings. As such, they would be unable to review any draft filings until after the comments had been filed. Rafferty believed that this input from parties more experienced in intervenor compensation would be valuable in assuring that future filings met the expectations of the Commission, and thus further delayed responding to the ALJ's ruling.

CAUSE also notes that some of the guidance in the ALJ ruling raises complex ethical concerns for attorney Rafferty, who is a member of the California Bar. He has needed to ensure that his communications with the client are adequate and accurate. *See* California Rule of Professional Conduct 3-600. He also has concerns about how embedding his identity as a director in the bylaws, as the ruling requires, could be perceived. Because CAUSE has not yet found any precedent for identify directors in the bylaws of any association or corporation, research into the ethical implications has been time-consuming and complex. The complexity is increased by the prospect that the California Supreme Court could imminently approve the complete revision of the Rules of Professional Conduct that the State Bar has submitted, which would impose even more complex strictures.

In sum, CAUSE's oversight is only a partial cause of the need for more time. CAUSE's

directors would not have been able to meet and process any bylaw change within two weeks of the ruling. Logistical tasks, such as collecting the home addresses of every member, were also time consuming. Even after three weeks, CAUSE has not been able to resolve the legal liabilities that the organization could face if it complied, nor the ethical obligation of Rafferty and the other directors.

**C. The Commission Should Exercise Its Discretion and Permit Filing of Materials Sought by the ALJ's Ruling.**

The Commission has the discretion to accept a late-filed NOI, consistent with its duty pursuant to Public Utility Code § 1801.3(b) to administer the intervenor compensation program “in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.” The Commission has previously granted motions for approval to file initial NOIs as much as eight months after the statutory deadline.<sup>3</sup> The Commission has also denied late-filed initial NOIs, while providing compensation for work performed prior to the missed deadline.<sup>4</sup> (CAUSE complied with the statutory deadline.)

CAUSE fully acknowledges that the effective and efficient participation standard includes the intervenor being responsible for recognizing Commission directives included in an ALJ ruling and acting in a manner consistent with those directives. However, denial of this motion and a refusal to find CAUSE eligible to seek intervenor compensation in this proceeding

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<sup>3</sup> D.98-08-016 (granting motion by NRDC); ALJ Ruling of September 29, 1998 in A.98-05-038 (granting motion by TURN); ALJ Ruling of April 20, 2001 in A.00-11-038 (granting motion by Golden State Power Cooperative); ALJ Ruling of June 25, 2001 in A.00-06-023 (granting motion by TURN); ALJ Ruling of May 15, 2010 in P.09-06-022 (granting motion by TURN even though the NOI was filed eight months late).

<sup>4</sup> In D.04-08-009 the Commission denied in part TURN's motion for acceptance of a late-filed NOI, due partly to the fact that the NOI was filed 17 months after the statutory deadline. However, the Commission granted compensation for work completed prior to the prehearing conference that triggered the NOI deadline (R.02-06-041). In D.00-03-044 the Commission denied a late-filed NOI that was filed after the proceeding had been closed. In A.07-10-013 the ALJ denied TURN's motion to accept a late-filed NOI that should have been filed 30 days after the PHC. In that case TURN filed its NOI and motion 44 days late.

would substantially harm CAUSE, both in terms of our ability to continue to participate in a proceeding that we expect will benefit from that participation, and CAUSE's ability to recover the significant costs and expenses already incurred for this proceeding. Therefore, CAUSE submits that permitting the late-filing of the amended NOI under the present circumstances is the outcome most consistent with the legislative intent underlying the intervenor compensation statute.

**D. In the Alternative, the Commission Could Permit Late-Filing But Limit the Finding of Eligibility To Exclude the Period of Neglect.**

CAUSE urges the Commission to permit late-filing of the NOI and make the usual determination of CAUSE's eligibility for all of its work in this proceeding, as the late filing was due to inadvertent error which CAUSE diligently sought to remedy upon its discovery. However, should the Commission seek an outcome that imposes some adverse consequence on CAUSE, CAUSE suggests permitting the late-filing, but limiting the effective dates in any finding of eligibility. For example, CAUSE could be deemed ineligible for compensation during January and February 2017, given the failure to monitor the case adequately during that period.

**III. VALUE OF CONTINUED PARTICIPATION**

As noted above, CAUSE has been extremely active during the critical phase following the issuance of the Proposed Decision, despite the pressing need to resolve its eligibility for compensation. CAUSE conferred with the other parties to the Settlement Agreement about possible joint comments on the standards for evaluating settlements, carefully reviewed drafts, and provided corrective edits, even though CAUSE was unable to subscribe to those comments.

CAUSE is the only party to have submitted comments defending the modifications to the settlement that the Proposed Decision has imposed. Whatever the merits of this position, it has

been in the public interest to present this defense for the consideration of the Commission. Inevitably, the priority that CAUSE has given to the public interest in ensuring this perspective was available impaired its ability to respond more quickly to establish its eligibility for compensation. The Commission should consider this a significant mitigation.

#### **IV. CONCLUSION**

CAUSE fully acknowledges its error in failing to take notice of the ruling issued on February 2, 2017 in this proceeding. Given that CAUSE's error was inadvertent, that the guidance raised complex legal and ethical issues and the need accurately to ascertain facts in advance to making a substantive response, and that CAUSE promptly sought the assistance of appropriate personnel of the Commission in ascertaining facts and precedents essential to making an accurate response, CAUSE respectfully requests that the Commission grant CAUSE's request for permission to late-file its amended NOI in response to the February 2, 2017 ruling.

Date: March 24, 2017

Respectfully submitted,

By:                     /s/                      
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\* A "misunderstanding" exists because the ruling appears to indicate that there is currently disagreement about what was communicated orally. CAUSE does not admit that it is uncertain of its prior statements regarding the communication on August 10, 2016. On October 19, 2016, Rafferty wrote the ALJ; "I fully appreciate your oral reassurances that you intend to accept the NOI and that the technical rejections were the only remaining obstacle. Still, the suspense of my NOI has created a dilemma that further compromises the quality and effectiveness of CAUSE's participation." He offered to file an ex parte statement.