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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)

**ADMINISTRATIVE LAW JUDGE'S RULING ADDRESSING
THE NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION OF
COLLABORATIVE APPROACHES TO UTILITY SAFETY
ENFORCEMENT AND RELATED MOTIONS**

Summary

This ruling addresses several related filings in this proceeding, reaching the following results:

- (1) The March 23, 2017 Motion of Collaborative Approaches to Utility Safety Enforcement Seeking Permission to Late-File Response to ALJ's Guidance Regarding Notice of Intent to Claim Intervenor Compensation is granted.
- (2) The April 5, 2017 Motion of Collaborative Approaches to Utility Safety Enforcement to be Relieved of Obligations Imposed by Ruling Denying Eligibility for Intervenor Compensation and to Be Found Eligible is denied.
- (3) Based on the above and after review of the April 5, 2017 amended Notice of Intent filed in this proceeding, it is preliminarily determined that Scott J. Rafferty is eligible for intervenor compensation in this proceeding. Pursuant to Public Utilities (Pub. Util.) Code Section 1802(b)(1)(A) Dr. Rafferty is found to be eligible as a "participant representing consumers, customers, or subscribers of any

electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.” At Dr. Rafferty’s request, and as provided by Commission practice, the showing of financial hardship required pursuant to Pub. Util. Code Section 1802 (g) is deferred until the filing for an award of compensation.

1. Background

A. First ALJ Ruling Rejecting the 2016 Amended NOI

On November 30, 2015 Collaborative Approaches to Utility Safety Enforcement (CAUSE) timely filed and served its Notice of Intent (NOI) to claim intervenor compensation in this proceeding (hereinafter, the “2015 NOI”). CAUSE sought to be found eligible to claim compensation as a customer under Pub. Util. Code Section 1802(b)(1)(C), *i.e.*, as a “Category 3 customer” that is “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 bundled electric service from an electrical corporation.” Also, in its motion for party status filed the same day CAUSE stated, “if, for any reason, the Commission declines to extend party status to CAUSE, this motion requests that it grant party status to Dr. Rafferty, a residential ratepayer of PG&E, as a category 1 intervenor.”¹ The 2015 NOI includes a partial statement to the same effect, though the full sentence appears to have been truncated due to a formatting error (see second page of NOI).²

¹ November 30, 2015 Motion for Party Status by Collective Approaches to Utility Safety Enforcement (CAUSE)” at 2-3. CAUSE filed an amended motion for party status on February 25, 2016. The assigned Administrative Law Judge granted that motion on March 11, 2016.

² The full text in the NOI reads: “If, for any reason, the Commission declines to grant Category 3 status to CAUSE, CAUSE requests that you find”.

Pursuant to Pub. Util. Code Section 1802(b)(1)(A) a “Category 1 customer” is a participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the Commission.

On July 25, 2016 the assigned Administrative Law Judge (ALJ) issued a ruling rejecting the 2015 NOI and providing additional guidance in the event that CAUSE decided to file an amended NOI. The ruling determined that the NOI had not demonstrated the party’s status as a “customer” for two reasons. First, at that time CAUSE was not authorized by its bylaws to represent residential utility customers. Second, information in the record was inadequate to support a finding that CAUSE has a separate identity from the individual who filed the NOI. The ruling stated that in order to determine CAUSE’s eligibility as a Category 3 customer, the Commission would require verified information such as the total number of members of CAUSE, and a complete list of the names and titles of CAUSE’s directors.

On August 10, 2016 CAUSE filed an amended NOI, along with a “Motion to Amend” the NOI. On October 20, 2016, CAUSE replaced the “Motion to Amend” with a cover document entitled “Amendment to the Notice of Intent to Claim Intervenor Compensation by CAUSE” that described the amended NOI and bylaws, stated that CAUSE has more than 20 members, and listed the names and titles of CAUSE’s directors. This ruling refers to this amended NOI as the “2016 amended NOI”.

B. Second ALJ Ruling Rejecting the 2016 Amended NOI

On February 2, 2017 the assigned ALJ issued a ruling rejecting the 2016 amended NOI, and providing additional guidance in the event that CAUSE decided to file another amended NOI. The ruling determined that the 2016

amended NOI did not cure the defects identified with respect to the 2015 NOI and concluded: (1) the 2016 amended NOI has not demonstrated the party's status as a "customer" and; (2) the 2016 amended NOI has not adequately described the scope of anticipated participation.³

Before turning to the substance of the instant ruling, this background section provides additional detail regarding the requirements imposed by the February 2, 2017 ruling.

1. Customer Status

First, with respect to its conclusion that the 2016 amended NOI did not demonstrate the party's status as a "customer" the ruling explained that in Decision (D.) 98-04-059, the Commission noted an increase in customer groups participating at the Commission who represent small business customers as well as residential ratepayers, and directed that such groups should indicate in the NOI the percentage of their membership that are residential ratepayers. This information is required to be included in Part I, Section A, Item #4 of the Commission's standard NOI template.⁴ The instructions on the NOI template state that the NOI may be rejected if this information is omitted.

The ruling also explained that pursuant to Pub. Util. Code Section 1802.3, "a representative of a group representing the interests of small commercial

³ The ALJ also provided additional guidance in Section 4 of the ruling, requesting that CAUSE correct confusing formatting of its bylaws, reminding CAUSE that the Commission may audit the records and books of intervenors, and stating that CAUSE may not have unlimited opportunities to perfect its NOI.

⁴ Until it was revised in April, 2017 the standard NOI template did not actually include a numbered Item #4 in Part I, Section A. However, the instructions on the prior version of the NOI template clearly indicated where the party should provide this information, in a text box in the template immediately following Item #3 in Part I, Section A.

customers who receive bundled electric service from an electrical corporation shall not be eligible for an award of compensation pursuant to this article if the representative has a conflict arising from prior representation before the commission. This conflict may not be waived.” For this reason, in Part I, Section B of the NOI a party intending to claim intervenor compensation is required to state whether the customer is a representative of a group representing the interests of small commercial customers who receive bundled electric service, and if so, affirm that it does not have a conflict arising from prior representation before the Commission.

After reviewing these requirements, the February 2, 2017 ruling found that the 2016 amended NOI submitted by CAUSE has not satisfied either the D.98-04-059 requirement or the Section 1802.3 requirement.

With respect to the D.98-04-059 requirement that customer groups who represent small business customers as well as residential ratepayers should indicate in the NOI the percentage of their membership that are residential ratepayers, the ruling noted that CAUSE had not completed Part I, A, Item #4 of its NOI to indicate the percentage of its membership that are residential ratepayers.⁵

With respect to the Section 1802.3 requirement, CAUSE did indicate in Part I, B. of its 2016 amended NOI that it is a representative of a group representing the interests of small commercial customers who receive bundled

⁵ Elsewhere in the NOI, Part III.B, CAUSE states “[t]he members of the association are all residential ratepayers”. However, this statement does not absolve CAUSE from the responsibility to accurately complete the NOI template by providing required information in the proper sections, especially a section that states “the NOI may be rejected if this information is omitted.”

electric service from an electrical corporation. However, because the NOI did not provide the percentage of members who are residential ratepayers, and did not (as instructed in July 25, 2016 ruling rejecting the 2015 NOI) provide the total number of members of CAUSE, nor a complete list of the names and titles of CAUSE's directors, the February 2, 2017 ruling directed that any further amended NOI filed by CAUSE shall include revision of CAUSE's Bylaws and/or NOI as follows:

- 1) The NOI should specify the total number of members of CAUSE, and
- 2) The Bylaws should provide a complete list of the names and titles of CAUSE's directors.

The February 2, 2017 ruling explained that "provision of this information in a separate document is not sufficient. This is not a matter of splitting hairs: as directed by statute, the Commission reviews the NOI, in order to determine eligibility for compensation. As instructed in the Commission's NOI template, any supporting documentation shall be listed in Part IV of the NOI, and attached to the NOI." The Commission requires uniformity in filings in order to facilitate its review of the significant volume of filings made in a wide variety of proceedings, and to avoid burdening Commission staff from sifting through documents in search of required information. The requirements listed above are reasonable because they are consistent with this need for uniformity in filings.

Even if the inconsistencies noted above could have been overlooked (after all, CAUSE did provide a membership count and did list its directors in its separate October 20, 2016 cover document entitled "Amendment to the Notice of Intent to Claim Intervenor Compensation by CAUSE"), the February 2, 2017 ruling also imposed a new requirement that cannot be overlooked. The ruling directed CAUSE to provide new information to address a new discrepancy

created by CAUSE after it filed its 2016 amended NOI on August 10, 2016 and the October 20, 2016 amendment cover document. This discrepancy arises from a comparison of CAUSE's 2015 NOI in this proceeding, and the NOI that it filed on November 28, 2016 in Application (A.) 16-09-001, the General Rate Case application of Southern California Edison (SCE). In the SCE NOI, CAUSE states that "100% of its members are residential ratepayers of SCE", while in the 2015 NOI in the instant proceeding, CAUSE states that "100% of its members are residential ratepayers of PG&E".

The February 2, 2017 ruling directed that in order to provide clarity on this matter, CAUSE shall file, under seal, a complete list of its members' names and addresses as an attachment to any amended NOI. The ruling referenced Rule 11.4 of the Commission's Rules of Practice and Procedure (Motion for Leave to File Under Seal), which describes the process and procedures to be followed when filing a motion for leave to file material under seal.

2. Scope of Anticipated Participation

Pursuant to Pub Util. Code Section 1804(a)(2)(A)(ii) the NOI template also requires provision of an itemized estimate of the compensation that the party expects to request, based on the anticipated duration of the proceeding. The February 2, 2017 ruling also noted that the 2016 amended NOI did not adequately describe the scope of anticipated participation because Part II. B of the NOI appears to include several typographical errors in the estimated cost amounts, which rendered them unintelligible and made it impossible to review the estimated compensation claim.

3. Additional Guidance Provided by the ALJ

Finally, the February 2, 2017 ruling directed that any revised bylaws should be formatted to clarify dates of amendments and effective dates, and to

accurately list changes made to the bylaws over time. The ruling also directed that if CAUSE chose to file a second amended NOI, that NOI should be filed no later than 14 calendar days from the date of the ruling (i.e., no later than February 16, 2017).

C. CAUSE's Responses to the February 2, 2017 Ruling

The deadline for filing an amended NOI passed without any filing by CAUSE. On March 23, 2017, 35 days after the deadline established in the February 2, 2017 ruling, CAUSE filed a motion "Seeking Permission to Late-file Response to ALJ's Guidance Regarding Notice of Intent to Claim Intervenor Compensation" (Motion to Late-file).

On April 5, 2017, 2 days before the deadline for other parties to respond to its March 23, 2017 Motion to Late-file, CAUSE filed its amended NOI, along with five attachments. One of the attachments is CAUSE's motion "To Be Relieved of Obligations Imposed by Ruling Denying Eligibility for Intervenor Compensation and to Be Found Eligible" (Motion for Relief).⁶

2. Discussion

A. Motion to Late-file Response to ALJ's Guidance

In its Motion to Late-file, CAUSE explains that Dr. Rafferty was not checking e-mails for some unspecified period of time in January and February 2017 and did not see the February 2, 2017 ruling until four weeks after it had been issued. CAUSE "fully acknowledges" its error in

⁶ Pursuant to Rule 11.1 (e) of the Commission's Rules of Practice and Procedure responses to written motions must be filed and served within 15 days of the date that the motion was served. Thus, CAUSE sought permission to late-file documents, but then proceeded to file those documents 2 days before the deadline for other parties to register their opposition to any such filing (no parties responded to CAUSE's Motion to Late-file).

failing to take notice of the ruling but argues that the error was inadvertent, and requests permission to late-file its amended NOI in response to the February 2, 2017 ruling. CAUSE also argues that denial of its motion and finding CAUSE ineligible to seek intervenor compensation in this proceeding would harm CAUSE in terms of its ability to continue to participate in this proceeding and its ability to recover costs already incurred. On this basis, 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.

CAUSE's motion seeking permission to late-file its response to the ALJ's February 2, 2017 ruling should be granted. Unlike the rules governing a party's initial NOI, there is no statutory limit barring the Commission from accepting amended NOIs, and doing so is consistent with the intent of the Legislature and the Commission to encourage broad participation in Commission proceedings. By granting this motion and accepting those late-filed documents, the Commission can now move on to address the underlying substantive matters in CAUSE's pleadings.

B. Motion to Be Relieved of Obligations (Motion for Relief)

In its Motion for Relief, CAUSE seeks "to be relieved of conditions stated in the ALJ's ruling rejecting CAUSE's [2016] NOI and to be found eligible for

intervenor compensation.”⁷ CAUSE seeks relief from the following conditions that it believes are imposed by the February 2, 2017 ruling:⁸

- 1) That CAUSE disclose the home addresses of every member;
- 2) That CAUSE entrench its current directors in the bylaws; and
- 3) That CAUSE forego its ability to adopt bylaw amendments with different transitional provisos.

Despite its objections to these conditions, CAUSE states that it has conformed its bylaws to give effect to the ruling with respect to items (2) and (3) on the list above.⁹

Now that CAUSE has revised its bylaws, the only outstanding compliance item required by the February 2, 2017 ruling is that “CAUSE shall file, under seal, a complete list of its members’ names and addresses as an attachment to any amended NOI”.¹⁰ As explained above, the ruling noted a discrepancy between CAUSE’s 2015 NOI in this proceeding, and the NOI that it recently filed in A.16-09-001, the SCE General Rate Case:

⁷ It is noted that a ruling on the Motion for Relief cannot address CAUSE’s eligibility (only a ruling addressing the actual NOI can do that) so this section of this ruling only addresses CAUSE’s request to be relieved of certain conditions imposed by the ALJ’s February 2, 2017 ruling

⁸ Motion for Relief at 1. CAUSE mischaracterizes the February 2, 2017 ruling, which did not require that CAUSE “disclose” its member’s home addresses. Nor did the ruling condition approval of CAUSE’s NOI on CAUSE foregoing its ability to adopt bylaw amendments with different transitional provisos. As explained above, the ruling did require CAUSE to provide a complete list of the names and titles of CAUSE’s directors in its bylaws in order to determine whether CAUSE did exist as an organization. That request was reasonable given the confusion created by CAUSE in its earlier filings.

⁹ *Id.* at 34.

¹⁰ February 2, 2017 Ruling at 8.

In that NOI, CAUSE states that “100% of its members are residential ratepayers of SCE”, while in the original NOI in the instant proceeding, CAUSE states that “100% of its members are residential ratepayers of PG&E”.

The ruling explained that the Commission should ensure that the NOIs of newly formed organizations comply with all the requirements of the intervenor compensation program, and directed CAUSE to file, under seal, a complete list of its members’ names and addresses as an attachment to any amended NOI. To be clear: the ruling imposed this requirement in order to obtain factual information that would resolve the contradictory claims contained in two pleadings signed by CAUSE. Rule 1.1 of the Commission’s Rules of Practice and Procedure requires that any person who signs a pleading or brief agrees to comply with the laws of this State and never to mislead the Commission or its staff by an artifice or false statement of fact or law. When presented with contradictory claims, the Commission must determine the truth of the matter. For this reason, the February 2, 2017 ruling directed CAUSE to submit, confidentially and under seal, a complete list of its members’ names and addresses.

In its Motion for Relief, CAUSE seeks to be relieved of this obligation, arguing that the ruling imposes conditions that are unconstitutional and unreasonable. CAUSE argues that (1) the Commission cannot lawfully penalize CAUSE for failing to protect the constitutional rights of its members; (2) directing an organizational party to file its membership under seal violates the ex parte prohibition in the Public Utilities Code; and (3) California law prevents CAUSE from complying without its members’ unanimous consent.¹¹

¹¹ Motion for Relief at 27-32.

Specifically, CAUSE argues that there is no “compelling state interest” that supports the request for the names and addresses of CAUSE members.¹² CAUSE asserts that “[t]he rulings do not articulate a compelling, or even rational, purpose to impose these provisions...”.¹³ CAUSE’s argument is unavailing.

The “compelling state interest” that requires the Commission to thoroughly review CAUSE’s NOI (and the NOIs of any new intervenor that seeks compensation) should be obvious: in each of its NOIs in this proceeding, CAUSE provides itemized estimates of the compensation that it expects to request at the conclusion of this proceeding that exceed \$300,000. While even a finding of significant financial hardship in no way ensures compensation (see Pub Util. Code Section 1804 (b)(2)), any compensation that is paid to eligible intervenors in this proceeding will be collected in rates paid by PG&E’s ratepayers. Pursuant to Pub Util. Code Section 451, “All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.”¹⁴

¹² Motion for Relief at 2: “Members of unincorporated associations have a right to anonymity unless the government can demonstrate a compelling state interest that cannot be met through less intrusive means” (emphasis added).

Motion for Relief at 7: “Members are entitled not have their home addresses provided to the Commission, with the possible consequence of public release, especially in the absence of (1) any attempt to articulate any compelling state interest;...” (emphasis added).

Motion for Relief at 29: “Even if a compelling state interest existed, which is not the case here, the Commission would be obliged to use the least intrusive means” (emphasis added).

¹³ *Id.* at 33-34.

¹⁴ Stats. 1951, Ch. 764, Amended by Stats. 1977, Ch. 700. Emphasis added.

In other words, by statute the Commission is barred from increasing rates to compensate a group like CAUSE – and any other party that seeks intervenor compensation – until the Commission is certain that the group meets all statutory requirements. Determining the facts surrounding the contradictory membership claims made by CAUSE is necessary before addressing CAUSE’s request that it be granted eligibility for compensation as a Category 3 customer. Given this compelling state interest, CAUSE’s refusal to comply with the ruling is reason enough to deny its Motion for Relief.

If the Commission now seeks information that CAUSE alleges “has apparently never previously been sought from any other intervenor”¹⁵ it is because no previous intervenors have presented such an inconsistent and contradictory set of filings to the Commission for its review. The February 2, 2017 ruling enumerated and explained each problem and offered CAUSE a reasonable means of resolving these inconsistencies by filing information under seal, which is a Commission practice embedded in its Rules of Practice and Procedure that is routinely followed by regulated entities and other intervenors. CAUSE refused, leaving this as the single unmet requirement of the February 2, 2017 ruling.

After providing its arguments, CAUSE concludes:¹⁶

CAUSE has accommodated the instructions of the ruling to the limits of what it has determined to be legally and ethically allowable, given the rights of its membership. After extensive research, however, it has concluded that disclosure of the names and home addresses of its members would violate their

¹⁵ Motion for Relief at 8.

¹⁶ *Id.* at 34.

constitutional and statutory rights. Accordingly, it asks that it be recognized as a “customer,” found to have shown “financial hardship,” and be held eligible to apply for an award of intervenor compensation.

The February 2, 2017 ruling directed CAUSE to meet three requirements in order to have its request for Category 3 customer status evaluated. CAUSE complied with two of the three items, but has not demonstrated good cause for its non-compliance with the third item. Therefore CAUSE’s Motion for Relief is denied.

Since CAUSE has failed to provide the information necessary to determine its eligibility for compensation as a Category 3 customer, its NOI will not be reviewed on that basis. However, CAUSE included an alternate request in its Motion for Relief, and in the amended NOI itself: to consider granting Dr. Rafferty eligibility as a Category 1 customer. The amended NOI is reviewed on that basis below.

C. The April 5, 2017 Amended NOI

In compliance with the February 2, 2017 ruling, the April 5, 2017 amended NOI provided corrected numerical estimates of the anticipated claim, and included as an attachment revised bylaws. In addition, the April 5, 2017 amended NOI includes the statement that “if CAUSE is not granted Category 3 status for any reason, CAUSE requests that Category 1 or 2 status be granted to CAUSE or its president”, Scott J. Rafferty.¹⁷

¹⁷ April 5, 2017 amended NOI at 3.

Category 2 status means that the customer, Scott J. Rafferty, authorizes CAUSE to represent him in this proceeding. This option is not acceptable because CAUSE has not fully complied with the February 2, 2017 ruling.

A Category 1 customer is a “participant [in a Commission proceeding] representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.” Similarly, as defined in the NOI document itself, “a Category 1 customer is an actual customer whose self-interest in the proceeding arises primarily from his/her role as a customer of the utility and, at the same time, the customer must represent the broader interests of at least some other customers.”¹⁸ Dr. Rafferty has participated in this proceeding by submitting written testimony and is a signatory of a settlement agreement that addressed nearly all the contested issues in this proceeding. The April 5, 2017 NOI signed by Scott J. Rafferty includes information that demonstrates that Dr. Rafferty satisfies the Category 1 criteria. Therefore, with respect to Category 1 status, the

¹⁸ NOI template at 1.

amended NOI should be accepted and Category 1 status should be granted to Scott J. Rafferty.¹⁹

IT IS RULED that:

1. The March 23, 2017 “Motion of Collaborative Approaches to Utility Safety Enforcement Seeking Permission to Late-File Response to ALJ’s Guidance Regarding Notice of Intent to Claim Intervenor Compensation” is granted.
2. The April 5, 2017 “Motion of Collaborative Approaches to Utility Safety Enforcement to be Relieved of Obligations Imposed by Ruling Denying Eligibility for Intervenor Compensation and to be Found Eligible” is denied.
3. The April 5, 2017 Amended Notice of Intent is accepted and the customer has satisfied the eligibility requirements of Public Utilities Code Section 1804 (a).
4. Scott J. Rafferty is preliminarily determined to be eligible for intervenor compensation in this proceeding pursuant to Public Utilities Code Section 1802 (b)(1)(A).

¹⁹ The amended NOI states that Dr. Rafferty “is unable to provide complete, auditable financial statements at this time, so if the only option is for him to proceed in Category 1, he requests that the showing of financial need be deferred until the claim for reimbursement is made.” *Ibid.* At page 13, the California Public Utilities Commission, Intervenor Compensation Program Guide (revised April 2017) provides that the party may choose to defer the significant financial hardship showing to the Intervenor Compensation Claim.

5. The showing of financial hardship required pursuant to Public Utilities Code Section 1802 (g) shall be included in the Intervenor Compensation Claim when it is filed pursuant to Public Utilities Code Section 1804 (c).

Dated May 10, 2017 at San Francisco, California.

/s/ STEPHEN C. ROSCOW

Stephen C. Roscow
Administrative Law Judge