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FILED

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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02:01 PM

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)
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ADMINISTRATIVE LAW JUDGE’S RULING REJECTING COLLABORATIVE APPROACHES TO UTILITY SAFETY ENFORCEMENT’S NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION

Party intending to claim intervenor compensation: Collaborative Approaches to Utility Safety Enforcement	
Assigned Commissioner: Michael Picker	Administrative Law Judge: Stephen C. Roscow

PART I: PROCEDURAL ISSUES
(Completed by the party intending to claim intervenor compensation)

A. Status as “customer” (see Pub. Util. Code § 1802(b)):¹ The party claims “customer” status because the party is (check one):	Applies
1. 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. In addition to describing your own interest in the proceeding you must show how your participation goes beyond just your own self-interest and will benefit other customers.	<input type="checkbox"/>
2. A Category 2 customer is a representative who has been authorized by actual customers to represent them. Category 2 involves a more formal arrangement where a customer or a group of customers selects a more skilled person to represent the customer’s views in a proceeding. A customer or group of customers may also form or authorize a group to represent them, and the group, in turn, may authorize a representative such as an attorney to represent the group. A representative authorized by a customer must identify the residential customer(s) being represented and provide authorization from at least one customer. <i>See</i> D.98-04-059 at 30.	<input type="checkbox"/>
3. A Category 3 customer is a formally organized group authorized, by its articles of incorporation or bylaws to represent the interests of residential customers or	

¹ All statutory references are to California Public Utilities Code unless indicated otherwise.

small commercial customers receiving bundled electric service from an electrical corporation. ² Certain environmental groups that represent residential customers with concerns for the environment may also qualify as Category 3 customers, even if the above requirement is not specifically met in the articles or bylaws. <i>See</i> D.98-04-059, footnote at 3.	<input checked="" type="checkbox"/>
<p>The party's explanation of its customer status must include the percentage of the intervenors members who are residential ratepayers or the percentage of the intervenors members who are customers receiving bundled electric service from an electrical corporation, and must include supporting documentation: (i.e., articles of incorporation or bylaws).</p> <p>As demonstrated in its bylaws, CAUSE has been organized for the exclusive purpose of researching the potential for industrial accidents at California utilities and advocating for management systems and measures to mitigate risk. 100% of its members are residential ratepayers of PG&E.</p> <p>If, for any reason, the Commission declines to grant Category 3 status to CAUSE, CAUSE requests that you find</p>	
Identify all attached documents in Part IV.	
<p>Do you have any direct economic interest in outcomes of the proceeding?³</p> <p>Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/></p> <p>If "Yes", explain:</p>	
B. Conflict of Interest (§ 1802.3)	Check
1. Is the customer a representative of a group representing the interests of small commercial customers who receive bundled electric service from an electrical corporation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. If the answer to the above question is "Yes", does the customer have a conflict arising from prior representation before the Commission?	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. Timely Filing of Notice of Intent (NOI) (§ 1804(a)(1)):	Check
1. Is the party's NOI filed within 30 days after a Prehearing Conference? Date of Prehearing Conference: 10/29/2015	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the party's NOI filed at another time (for example, because no Prehearing	<input type="checkbox"/> Yes

² Intervenors representing either a group of residential customers or small commercial customers who receive bundled electric service from an electrical corporation, must indicate in Part I, Section A, Item #4 of this form, the percentage of their members who are residential customers or the percentage of their members who receive bundled electric service from an electrical corporation. The NOI may be rejected if this information is omitted.

³ *See* Rule 17.1(e).

Conference was held, the proceeding will take less than 30 days, the schedule did not reasonably allow parties to identify issues within the timeframe normally permitted, or new issues have emerged)? (CAUSE has deferred filing until the last day to determine if any other entity sought to be a safety intervenor.)	<input type="checkbox"/> No
2a. The party's description of the reasons for filing its NOI at this other time:	
2b. The party's information on the proceeding number, date, and decision number for any Commission decision, Commissioner ruling, Administrative Law Judge's ruling, or other document authorizing the filing of NOI at that other time:	

PART II: SCOPE OF ANTICIPATED PARTICIPATION
(Completed by the party intending to claim intervenor compensation)

A. Planned Participation (§ 1804(a)(2)(A)(i)):
<p>The party's statement of the issues on which it plans to participate:</p> <ol style="list-style-type: none"> 1. CAUSE intends to advocate for PG&E to implement cost-effective management systems to provide continuous improvement in driving toward zero incidence of industrial accidents caused by PG&E or its contractors. 2. CAUSE will assess the proposed prescription of design standards or other measures designed to improve safety, with regard to their cost-effectiveness and financial impact on rates. 3. CAUSE will examine the cost and incidence of industrial accidents at PG&E, including settlements, judgments, and adverse environmental impacts. 4. CAUSE will examine the extent to which the revenue requirement includes these costs, and how they are allocated within PG&E and among services and classes of ratepayers. <p>The party's explanation of how it plans to avoid duplication of effort with other parties:</p> <p>CAUSE will consult with any party that intends to provide evidence or argument with regard to safety measures in order to avoid duplication.</p> <p>The party's description of the nature and extent of the party's planned participation in this proceeding (to the extent that it is possible to describe on the date this NOI is filed).</p> <p>A. CAUSE plans to take discovery as to the incidence and cost of industrial accidents at PG&E and as to measures that are in place to mitigate these risks. These accidents include any adverse incidents or conditions affecting (1) the safety of individual ratepayers in their homes, including the consequences of outages, (2) worker health and safety, (3) public safety, including physical injuries, property damage, and disruption of transportation infrastructure resulting from explosions, leaks, contaminations, or downed power lines, (4) the effectiveness of responses to external disasters and threats, including the ability to coordinate with law enforcement, first responders and other government agencies, utilities and transit carriers, and other critical parties, (5) environmental degradation, including foreseeable impacts and unanticipated events, (6) the extent to which PG&E employees and ratepayers actually identify (and PG&E effectively responds to) actions that mitigate risk, and (7) the readiness of PG&E to provide and to receive mutual aid from other utilities to address large-scale incidents.</p>

- B. CAUSE plans to confer regularly with parties willing to consider consolidating proposals and witnesses, in order to avoid duplication and to strengthen the support for the proposals.
- C. CAUSE intends to work with PG&E to narrow the scope of disagreements and to explore possible areas of common ground.
- D. CAUSE intends to retain experts from each discipline necessary to evaluate PG&E's risks and actions to mitigate and to propose additional cost-effective measures.
- E. CAUSE expects to present these experts as witnesses, to pre-file written testimony, and to defend any live examination.
- F. CAUSE expects to examine witnesses, particularly those who testify regarding safety.
- G. CAUSE expects to evaluate the rate impact of its own proposals, and of the proposals related to safety made by any party, as well as the tangible benefits of each proposal.
- H. CAUSE expects to file briefs and reply briefs in support of its positions, and such other motions as may be appropriate.
- I. CAUSE intends to identify the extent to which other Commission proceedings affect the consideration of safety measures in this rate case, and to consider the possible need to propose proceedings.

B. The party's itemized estimate of the compensation that the party expects to request, based on the anticipated duration of the proceeding (§ 1804(a)(2)(A)(ii)):

Item	Hours	Rate \$	Total \$	#
ATTORNEY, EXPERT, AND ADVOCATE FEES				
Scott J Rafferty (as attorney)	250	\$570	\$142,500	
Scott J Rafferty (claim preparation)	10	\$285	\$ 2,850	
Scott J. Rafferty (as witness)	100	\$500	\$ 50,000	
Risk management expert (TBD)	50	\$500	\$ 25,000	
Organizational expert (TBD)	50	\$500	\$ 25,000	
Additional experts	120	\$500	\$ 60,000	
Subtotal: \$305,350.00				
OTHER FEES				
Secretarial Assistance	200	\$25	\$ 5,000	
Subtotal: \$5,000				
COSTS				
postage, supplies			\$500	
Travel	12 days 4 witnesses		\$4,000	
Subtotal: \$4500				
TOTAL ESTIMATE: \$314,850.00				
Estimated Budget by Issues:				
Allocated among issues defined in II.A above				
1. 60%, 2. 10%, 3. 20%, 4.10%				

PART III: SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP
(Completed by the party intending to claim intervenor compensation)

A. The party claims “significant financial hardship” for its Intervenor Compensation Claim in this proceeding on the following basis:	Applies (check)
1. “[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” (§ 1802(g)); or	<input type="checkbox"/>
2. “[I]n the case of a group or organization, 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” (§ 1802(g)).	<input checked="" type="checkbox"/>
3. A § 1802(g) finding of significant financial hardship in another proceeding, made within one year prior to the commencement of this proceeding, created a rebuttable presumption in this proceeding (§ 1804(b)(1)). Commission’s finding of significant financial hardship made in proceeding number: Date of Administrative Law Judge’s Ruling (or CPUC Decision) in which the finding of significant financial hardship was made:	<input type="checkbox"/>
B. The party’s explanation of the factual basis for its claim of “significant financial hardship” (§ 1802(g)) (necessary documentation, if warranted, is attached to the NOI:	
<p>The members of the association are all residential ratepayers. The association does not expect to seek rate reductions that would result in a monetary benefit to these ratepayers. The only economic interests are indirect - (1) reducing the remote possibility that a member could be personally affected by an industrial accident, (2) a share of the public benefit of avoiding environmental impacts associated with accidents, and (3) avoiding the possible future rate effects from settlements and judgments resulting from accidents. These benefits may be offset by expenses and investments that PG&E would need to undertake to implement the safety measures that the association will propose.</p> <p>To the extent that these interests are tangible and can be quantified, they are insignificant compared to the costs of participation detailed above.</p>	

ADMINISTRATIVE LAW JUDGE RULING

<p>1. The Notice of Intent to Claim Intervenor Compensation (NOI) has not demonstrated Collaborative Approaches to Utility Safety Enforcement’s (CAUSE) status as a “customer” for the following reason(s):</p> <p>a. CAUSE is not authorized by its bylaws to represent residential utility customers</p> <p>In its NOI, CAUSE claims customer status pursuant to Section 1802 (b)(1)(C) where “customer” is defined as:</p> <p>A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers,</p>	<input checked="" type="checkbox"/>
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or to represent small commercial customers who receive bundled electric service from an electrical corporation.

An organization claiming customer status under Section 1802(b)(1)(C) must provide a copy of its articles or bylaws, noting where in the document it is authorized to represent residential or small commercial utility customers (Section 1802(b)(1)(C); Rule 17.1(d)). The Articles or bylaws must include some language that indicates that the organization is authorized to advocate or litigate the interests of these customers before the Commission, government agencies, or in judicial proceedings.

CAUSE's bylaws do not indicate that CAUSE is authorized "to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation" as required by Section 1802 (b)(1)(C).

Instead, CAUSE's bylaws state:

The objectives and purposes of this association shall be:

To study utility safety; to advocate for effective systems to achieve and maintain utility safety; to provide expert testimony and advice to utilities and to governmental decision-makers; and to take any additional actions reasonably believed to promote utility safety."
(CAUSE Bylaws, Section 3).

Furthermore, CAUSE states in its NOI that "as demonstrated in its bylaws, CAUSE has been organized for the exclusive purpose of researching the potential for industrial accidents at California utilities and advocating for management systems and measures to mitigate risk."
(CAUSE NOI, Part I, Section A.3., emphasis added)

These provisions do not authorize CAUSE to represent the interests of residential or small commercial customers before government agencies or in judicial proceedings. Absent the required authorization (affirmative or reasonably inferable), CAUSE has not established Section 1802(b)(1)(C) eligibility to claim compensation. Although CAUSE asserts that 100% of its members are residential ratepayers of PG&E (NOI Section A.3.) and CAUSE states its intent to advocate for management systems and measures to mitigate risk, these statements are insufficient support for a reasonable inference that CAUSE's bylaws authorize CAUSE to represent the interests of residential or small commercial customers before the Commission or other government agencies.

<p>b. Information in the record is insufficient to determine customer status</p> <p>As explained by CAUSE in its Motion for Party Status in this proceeding, it is a newly formed organization: “[CAUSE] is being created in response to President Picker’s suggestion that the Commission may expand the role of safety intervenors in relevant proceedings” (Amended Motion of CAUSE for Party Status filed February 25, 2016, at 2). The Commission should ensure that the NOIs of newly formed organizations comply with all the requirements of the intervenor compensation program. Information in the record is inadequate to support a finding that CAUSE has a separate identity from the individual who filed the NOI.</p> <p>CAUSE is an “unincorporated association,” which is an “unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not.”⁴ To determine CAUSE’s eligibility as a customer under Section 1802(b)(1)(C), 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.</p>	
<p>2. The Administrative Law Judge provides the following additional guidance (see § 1804(b)(2)):</p> <p>Should CAUSE choose to do so, it may file an amended NOI that addresses the issues identified in this Ruling. This ruling also does not preclude CAUSE from participating, at its own cost, in this proceeding.</p> <p>Since the NOI does not demonstrate CAUSE’s customer status under either Category 1, 2 or 3, other issues, such as the scope of anticipated participation and significant financial hardship, are not discussed in this Ruling.</p> <p>A final issue that would require clarification and correction in an amended NOI relates to the provisions in the Bylaws for CAUSE’s finances. Section 9 of the Bylaws states, in relevant part,</p> <p style="padding-left: 40px;">The association is authorized to open a bank account, which may use the tax identification number of the president, provided he agrees to accept the</p>	<input checked="" type="checkbox"/>

⁴ Cal. Corp. Code § 18035.

<p>obligation to report the resulting income, to avoid comingling this account with any personal assets, and to remit such funds as are necessary to satisfy the obligation of the association. If this is not possible, or if it is expedient for tax or reporting purposes, the association may assign or transfer, or request that the payor remit directly, to a nonprofit corporation or to an individual who has committed to distribute such funds to lawyers and experts employed by the association.</p> <p>The provision allowing CAUSE to use the tax identification number of the President, subject to certain commitments by that individual, is inadequate for purposes of ensuring that any future intervenor compensation awards can be easily verified and audited. CAUSE has estimated the costs of its participation to be over \$300,000. While even a determination of eligibility for intervenor compensation would not in any way ensure that such an award would be found reasonable and granted, the possibility that such a large amount of money could be comingled with the personal funds of the President of CAUSE for tax purposes is a matter of concern for the Commission. An NOI that includes this provision should not be approved.</p>	
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IT IS RULED that:

1. The Notice of Intent to Claim Intervenor Compensation filed by Collaborative Approaches to Utility Safety Enforcement is rejected.	<input checked="" type="checkbox"/>
2. Additional guidance is provided to Collaborative Approaches to Utility Safety Enforcement as set forth above.	<input checked="" type="checkbox"/>

Dated July 25, 2016, at San Francisco, California.

/s/ STEPHEN C. ROSCOW

Stephen C. Roscow
Administrative Law Judge