FILED
4-05-17
04:59 PM

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) TO BE RELIEVED OF OBLIGATIONS IMPOSED BY RULING DENYING ELIGIBILITY FOR INTERVENOR COMPENSATION AND TO BE FOUND ELIGIBLE

SCOTT J. RAFFERTY

1913 Whitecliff Court
Walnut Creek, California 94596
(202)-380-5525
E-mail: rafferty@gmail.com

Attorney for
COLLABORATIVE APPROACHES TO
UTILITY SAFETY ENFORCEMNT

April 5, 2017

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

TREATISES

REGULATIONS

COMMISSION DECISIONS

COMMISSION RULINGS

INTERNATIONAL STANDARDS

MOTION OF COLLABORATIVE APPROACHES TO UTILITY SAFETY ENFORCEMENT (CAUSE) TO BE RELIEVED OF OBLIGATIONS IMPOSED BY RULING DENYING ELIGIBILITY FOR INTERVENOR COMPENSATION AND TO BE FOUND ELIGIBLE

INTRODUCTION

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, 20 C.C.R. §11.1, Collaborative Approaches to Utility Safety Enforcement (CAUSE) respectfully requests to be relieved of conditions stated in the ALJ's ruling rejecting CAUSE's Notice of Intent to Seek Intervenor Compensation (NOI) and to be found eligible for intervenor compensation. The ruling defers making a finding of "financial hardship" until CAUSE meets three conditions simply to be considered a "customer." CAUSE must (1) disclose the home addresses of every member; (2) entrench its current directors in the bylaws; and (3) forego its ability to adopt bylaw amendments with different transitional provisos. This is the third set of substantive conditions imposed over a period of 14 months, and follows an understanding in August 2016 that eligibility would be granted. *See* fn.5, *infra.* CAUSE has no donors, no assets and no affiliates, and none of its directors participate in the utility industry; but its members are real ratepayers who value their privacy. Having established that it is an organization authorized by its bylaws to represent residential and small-business customers, CAUSE asks to be relieved of any further condition related to its legal status and character.

CAUSE's search has failed to identify any case in which an unincorporated association has been required to disclose the identities of its members, let alone their home addresses. 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. It also violates the ex parte prohibition in Public Utilities Code § 1701.3 for a decision maker to request a sealed filing listing supporters of a position in litigation, potentially alerting him privately to the views of elected officials or other influential persons.

When solicited to join, even potential members who hold no office expressed specific concerns, such as potential resentment from neighbors who work for PG&E, or other adverse social or economic consequences. In response, CAUSE provided an assurance of privacy, which disclosing this information to the Commission would violate, particularly since CAUSE can no longer assure them that further information or other actions would not be required. The Corporations Code may require unanimous consent, not merely a bylaw change, to change such a commitment. See p. 31, infra. CAUSE made this promise because it intended to rely upon the "comparison test" option granted by the statute, the evident purpose of which is to avoid the disclosure of personal data.[1]

[1] The Legislature allowed an organization authorized by its bylaws to represent residential or small business subscribers ("Category 3 customer") to show "financial hardship" by the

CAUSE has also been unable to identify any corporation or association that must amend its bylaws each time its changes a specific director. This is inconsistent with the right of directors to resign at will, which shields them from liability for any further acts of the association. While bylaws are usually effective immediately upon adoption, changes that affect the rights and expectations of incumbent members and directors sometimes require transitional provisos. CAUSE believes it may have been possible to negotiate unanimous consent of its membership if the Commission limited or clarified the effect of these provisions. Unfortunately, the ruling precludes any amendment that is contingent on the unanimous consent of the members, or that delays the application of bylaws to protect the expectations of incumbents, by requiring all bylaw amendments adopted on a certain date to be simultaneously effective.

To accommodate the ruling, the amended NOI also abandons representation of small business customers, but CAUSE notes with concern recent rulings that rejected a "residential-only" NOIs, citing "inconsistency" and "confusion" because the bylaws authorize the group to advocate in other fora or because "members" (defined to include

---

"comparison test." In lieu of showing that its members who face "undue hardship" in financing participation, the group may simply assert 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." Public Utilities Code 1802(h). *See, e.g.,* A-02-05-004 (ruling of Aug, 27, 2002) ("Aglet asserts that the economic interests of its individual members are small in comparison to the costs of effective participation in this proceeding because typical residential bills are on the order of $1,000 annually, which is less than Aglet's estimated cost of participation in the proceeding. None of Aglet's current members is a large commercial or industrial customer that might use great quantities of energy.")

social-media contacts) own small businesses. Few, if any, existing intervenors could survive this level of scrutiny, which is not consistent with the statute or commission precedent.

In the past, the Commission has held a group eligible based on the membership of a single residential ratepayer.[2] Groups can represent both small businesses and residential customers. D.98-04-59 at 32. The Commission also announced that, unless the group is "actually … attempting to improve business prospects rather than [residential] service," even large business members do not disqualify it from compensation. *id.*, at 30 & n.14. Awards have been made to groups whose membership was only 30% residential. *See* n.26, *infra*. If these principles have changed, the Commission should say so and apply new, written standards uniformly. Otherwise, it is unjust and arbitrary to disqualify CAUSE after it has invested resources for 14 months.

SUMMARY OF ARGUMENT

Neither the current nor any prior ruling[3] states any legitimate reason to deny

[2] *See, e.g.,* A.01-05-002 (ruling of May 1, 2001) (10810.pdf) (group with bylaw authorization and a single residential customer of applicant eligible without further inquiry).

[3] The Commission has provided the following instructions, which CAUSE refers to as "directives" below: Directive 1 Feb. 25, 2016 (via email), requiring UA-100; Directive 2, unnumbered ruling dated July 25, 2016, requiring bylaw amendments regarding purpose and bank account; Directive 3, ex parte telephonic communications following 25 July 2016 at 14:47, Roscow, Stephen C. wrote: "Hello Mr. Rafferty, After you have had a chance to review this ruling, please call me so that we can discuss procedural remedies, assuming you wish to file an amended NOI. I'd like to speak with you directly about those procedures, rather than have you work with our ICOMP team, so that we can process things most efficiently." Obtain and submit EIN ; Directive 4, unnumbered ruling dated February 2, 2017.

eligibility to CAUSE[4], which has devoted considerable resources to the case and made a substantial contribution despite the immense financial hardship imposed by the delay of its eligibility determination (which the statute required within 30 days). No ruling disputes that CAUSE meets the criteria set forth in the statute and in D.98-04-059, as that decision was interpreted in prior cases involving unincorporated associations. There is no claim of duplication, nor any suggestion that CAUSE did not advocate on behalf of an otherwise underrepresented interest. There is no basis to suggest that CAUSE participates in the utility industry, or has any conflict of interest. CAUSE expected the Commission to honor its commitments to "help parties conserve resources by making well-considered and timely decisions" and "not unduly [to] discourage first-time and small-party intervenors." D-98-04-059, App. A, Principles Nos. 2 & 8. Indeed, in 2012, the Commission committed to the State Auditor to ensure that reminders were sent to ALJs as the 30-day deadline approached.

Over 14 months, CAUSE has followed instructions again and again, only to have the new directives set demands that could have, and should have, been provided in the first instance. *See id.*, Principle 9 (prohibiting "underground regulations" and unwritten requirements). Furthermore, because CAUSE sought eligibility before the scoping memo, if the Commission had acted within the statutory deadline, CAUSE's president could have and would separately sought eligibility under Category 1 or 2 (which

[4] The perceived deficiency of the Bylaw authorization has been remedied. *See* page 1, *infra*.

CAUSE suggested as an alternative in its original NOI). CAUSE also relied on his understanding of an assurance from the ALJ, made during a series of August phone conversations, that eligibility had been established. Unfortunately, these conversations were not on the record, but the understanding was not corrected after CAUSE confirmed it in writing.[5]

Fourteen months of delay coupled with unjustified conditions and allegations have created extreme financial hardship and have impugned the professional reputation of its president without due process. The directives required CAUSE to reconstruct and amend documents that had properly been archived months earlier (in uneditable form), and then criticized two typographical errors in unnecessarily harsh terms. Twice, rulings have cast aspersions on the integrity on CAUSE's president. The second set of conditions accused him of "***commingling*** personal funds" when he

[5] In a series of telephone conversations on August 10, 2016 (Directive 3), the ALJ provided substantive directions to Rafferty, such as getting and submitting a EIN. Rafferty was on vacation, but managed to conform the documents. In the last conversation, Rafferty understood that all substantive issues with the eligibility finding had been resolved, and that final action was expected on August 12, 2016. The series of rejections based on PDF-A compliance ensued. Rafferty confirmed his understanding in an email to the ALJ on 19 October 2016 at 07:39 (asking if an ex parte notice was indicated): "I fully appreciate your oral reassurances that you intend to accept the NOI and that the technical rejections were the only remaining obstacle." This understanding was not corrected, which is why it is referred to in the A.16-09-001 NOI. CAUSE understanding that the ALJ may have a different recollection of his intent, but Rafferty's understanding seems reasonable, since CAUSE had satisfied all the substantive conditions and did not foresee yet another round of directives.

proposed that CAUSE create a separate account to ***facilitate*** a Commission audit.[6] CAUSE was following long-standing practice by unincorporated intervenors that had never been questioned and was the exact opposite of "commingling." The fourth set of conditions, alleges a "contradiction" between bylaws (1) restricting membership to residential members and (2) including authorization to represent small business customers before this Commission or elsewhere. "Depending on which Section of its Bylaws is accurate, this may or not [sic] be a ***misrepresentation*** of fact to the Commission." For reasons explained in detail, *see* pp. 24-27, *infra*, the Commission should follow its many precedents and allow CAUSE to represent interests of both classes of ratepayers. But even if it rejects this theory of standing, both bylaw provisions are truthful and neither constitutes a "misrepresentation of fact."

A more fundamental obstacle is that CAUSE is unable to meet the new conditions because it cannot legally or ethically violate the constitutional rights of its members. CAUSE has not accepted donations, but has granted membership. 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; (2) CAUSE's inability to reassure the members

[6] The condition is ironic for two additional reasons. First, it prevents Rafferty from capitalizing the entity, which is contrary to the stated goal of a separate personality. *See* n.22, *infra*. Second, while the separate account was intended to facilitate auditing, the Commission reimburses very few expenses. Intervenor Compensation Guide, at 8.

that the disclosure will not lead to even more intrusive demands; and (3) the failure of the Commission to accept proposals for less intrusive means to verify information that has apparently never previously been sought from any other intervenor.[7] A second demand effectively prevents the members from electing new directors, which also constitutes an unprecedented intrusion into the rights of the organization, its members and its directors under the Corporations Code. While asking to be relieved of the second condition, CAUSE has also prepared bylaws that conform to the ruling. Having been subjected to four sets of conditions over a 14-month period, CAUSE requests to be relieved of any further demonstration related to its legal status, character, or governance, at least until it has received an award.

BACKGROUND

CAUSE timely filed its NOI on November 30, 2015, prior to the scoping order. No response opposed its claim of eligibility. Pursuant to statute, it expected an initial determination of eligibility no later than December 30, 2015. CAUSE attached its president's utility bill and requested that if its eligibility under Category 3 could not be established, that its president be granted status under Category 1, which would have

[7] Email, Rafferty to Aguilar, 12 March 2017 at 23:26. CAUSE has suggested that the membership list might be verified by a third party, preferably without the Commission taking custody.

required a disclosure of the president's family finances.[8] (Had the Commission acted within 30 days, the president would have timely submitted an additional NOI in his own right.) CAUSE received no response within the statutory deadline of 30 days, and its president proceeded at his personal risk, based largely on his confidence that the Commission would follow its precedents involving Aglet Consumer Alliance ("Aglet"), the model for CAUSE.

On February 25, 2016, Directive 1 required CAUSE to provide the official acknowledgement of the "information statement" (UA-100) that it had filed with the Secretary of State.[9] This filing designates an agent for service of process, but is not relevant to CAUSE's status as a legal entity. 2 Ballantine & Sterling, CALIFORNIA CORPORATIONS LAW §22.08[3] at 2-42 (2015) (association can be established without writing). Obtaining the acknowledgement required significant time and expense, and led to a delay of more than a month.[10] However, CAUSE was reassured by the ALJ's

[8] CAUSE would prefer that it be designated as a Category 2 customer, representing Rafferty and his wife, so that the Commission could continue to use the comparison test. See at 92 (Conclusion of law 8). Rafferty has insufficient time to prepare a complete new worth statement prior to filing the amended NOI, but may attempt to file some information on financial hardship as soon as possible. If the Commission requires full financial statements, he asks that the finding be deferred until the award submission.

[9] Filing the UA-100 is voluntary, and its main benefit is enabling the association to require that legal service be made on a designated agent. (Otherwise, service on any member is effective as to the entire association.) In contrast to corporate records, filings relating to unincorporated associations cannot be searched or retrieved electronically, and are subject to a backlog.

[10] In contrast to corporate records, filings relating to unincorporated associations cannot be searched or retrieved electronically, and are subject to a processing backlog. Satisfying this

expectation that the refiling "will be routine."[11]

> The original NOI stated:
>
> 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.[12]

CAUSE envisioned the possibility of assisting self-regulating municipal utilities, as well as those subject to Commission regulation. Consistent with the principle that the object stated in Bylaws should "be general in their application,"[13] CAUSE stated its purpose without referring to this Commission ("to advocate for effective systems to achieve and maintain utility safety; to provide expert testimony and advice to utilities and to governmental decision-makers…") Its Bylaws also limited membership to "residential ratepayers of any California utility."

On July 25, 2016, a second ruling (at 5-6) determined that this Bylaws statement "did not authorize CAUSE to represent residential ratepayers." Accordingly, CAUSE added a specific object, quoting the statute: "To represent the interests of residential customers or small commercial customers receiving bundled electric service from an

---

requirement required two trips to Sacramento and the intervention of the Secretary's chief of staff, which led to the discovery that CAUSE's statement had been misplaced in their office.

[11] Email, Roscow to Rafferty, 18 February 2016 at 16:58

[12] This led to a typo in the SCE rate case, as a result of an edit replacing PG&E with SCE. *See* fn. 5 *supra* & 18 *infra*.

[13] Roberts Rules of Order Newly Revised, 11th ed. (2011) p. 571, ll. 5-6. (hereinafter "RONR" or "ROBERT'S RULES")

electrical corporation." This ruling also required CAUSE to identify its directors and to disclose the number of its members, although this information is not specified by the statute and had not been required of unincorporated associations in the past (or of corporate entities in this proceeding). CAUSE provided the information.[14] There is no published guideline setting for an acceptable range of membership size, so selectively requiring this information without explanation eight months into the proceeding seems unfair to a party who has already invested heavily. The timing and lack of foundation for such inquiries suggests that the Commission may be exercising standardless discretion in determinating access to a limited public forum.[15]

After CAUSE complied with the new conditions, the ALJ instructed him orally (Directive 3) on August 10, 2016, to obtain an employee identification number. *See* fn. 5, *supra*. EINs now issue on line automatically, so CAUSE obtained one, although it does not meet the IRS's criteria for need. CAUSE submitted the corrected NOI the same day and understood that the ALJ intended to issue a ruling finding eligibility on Friday, August 12, 2016. *Id.*

---

[14] Because the requested information is not called for on the form, CAUSE sought leave to file it as a motion, and when the ALJ objected, as a notice responding to his order.

[15] This would violate the First Amendment even if the Commission views the selection of eligible intervenors as a proprietary function, which is not consistent with the Public Utilities Code, §1801.3 (administration of intervenor compensation must "encourages the effective and efficient participation of all groups that have a stake"). *See* Lehman v. City of Shaker Heights, 418 U.S. 298, 303-4 (1974) (lack of standards creates impermissible risk of viewpoint discrimination, even in non-forum).

Next, however, the docketing office rejected CAUSE's response at least three times, based on erroneous determinations that it was not PDF/A-compliant.[16] In one case, CAUSE was not notified of the rejection for seven weeks. Although the Commission has not retained records of CAUSE's actual filings[17], CAUSE believes the response it initially filed was error free, and that all submissions were PDF/A compliant. The table of projected expenses was accurately embedded as an spreadsheet object when the file was archived using the 2012 version of the standard (PDF/A-3), and a statement that all members were customers of PG&E, true when made, had been updated. When the docketing office erroneously asserted that the document was not PDF/A compliant,

---

[16] transaction number 0000101156, received on 8/24/2016; 0000100984, received on 8/19/2016; email message from the undersigned, dated August 24, 2016; 0000101275, received on 8/29/2016 (notified, 10/20/16)

[17] Numerous telephone and email inquiries to the docketing office have not been returned. In February 2017, CAUSE filed a Public Records Act Request 17-85 for the rejected filings and related documents. In March 2017, he learned that they had been routinely "deleted." Email , CPUCElectronicFiling@cpuc.ca.gov (Patricia Chinn-Gambale) to rafferty@gmail.com. March 28, 2017: "After an efiling is rejected, the computer system deletes the whole filing." While apparently categorical, this disclosure had not occurred in prior rejections.
This deletion of all evidence of that a document has been submitted may not be the normal practice. It is not consistent with state document retention practices. Government Code 12275; Sched. ALJ-4 (SOS Approval 2015-001). The Commission has not revised its internal resolution on document retention (L-204) since 1978, before the internet was invented, despite the fact that it is no longer consistent with the statute (*e.g.*, Gov. Code 12275(c)). But even L-204 requires retention for 30 years. Public Utility Code 311.5 further requires the Commission to maintain on the internet a docket card listing "all documents filed... until final disposition, including disposition of any judicial appeals, of the corresponding proceedings. " SB-512, see floor analysis *supra*, eliminates any conceivable argument that the docketing office can deny record status to a filing simply by rejecting it on formal or other grounds.
Apparently, the docketing office sometimes provides "courtesy notices" with "efile control numbers." *e.g.*, Nakahara email to service list, 24/08/2016 at 10:18AM. This only makes the deletion of the relevant paper trails more difficult to understand.

CAUSE tried using the earlier 2011 standard (PDF/A-2), accepted when used by other parties, but this treats tables as images (the characters in which must be optically recognized). The conversion process introduced three stray "1"s into the table. A resubmission apparently reintroduced the obsolete statement that all CAUSE members subscribed to PG&E.[18] The ruling subsequently cited these errors as "deficiencies and obvious inconsistencies noted above indicate a lack of attention to detail that is not acceptable." February 2017 Ruling at 9. CAUSE regrets the errors, but they would not have occurred but for the improper rejection of the initial PDF/A-compliant filing.[19]

The February 2017 ruling imposed a fourth set of conditions, although it did not indicate the compliance would result in a finding of eligibility or even end the inquiries. First, it demanded (at 8, item 1.b.1) that CAUSE betray assurances of privacy that it gave to its members in reliance on settled Supreme Court precedent. Second, the ruling

[18] Precisely because CAUSE was attempting to maintain consistency with the NOI, this led to an inaccurate statement in A.16-09-001 that all members subscribed to SCE.

[19] On October 18, 2017, CAUSE wrote ALJ Roscow: "I am writing you (rather than communicating through the docket office or the intervenor compensation coordinator) in response to your request that I deal with you directly on this procedural matter. Please let me know if an ex parte notice is appropriate. You asked that I provide an email receipt from my most recent attempt to file my NOI. Actually, I have not been receiving any email acknowledgements until the filing is accepted or rejected… When you advised me that I needed to submit them for a fourth time. I acted expeditiously…..I am confident that every one of my filings was compliant at the time it was transmitted from my computer. However, I do not have access to the documents as they existed after having been processed and tested for PDF/A compliance by the docket office, so …. I cannot definitively explain why the docket office is rejecting CAUSE filings as noncompliant with the PDF/A standard. …"I fully appreciate your oral reassurances that you intend to accept the NOI and that the technical rejections were the only remaining obstacle."

dictated specific bylaw provisions that interfere with the proper governance and operating capacity of CAUSE. After extensive research and consideration, CAUSE has concluded that it cannot legally or ethically comply. CAUSE asks that its inability to do so not disqualify it from reimbursement of fees and expenses, especially since these have already been incurred. CAUSE would have sought to confirm the adequacy of this response with the Intervenor Compensation Office, but the Commission recently confirmed that the direction not to communicate with that office remains in effect.[20]

ARGUMENT

I. CAUSE HAS AN IDENTITY AS A LEGAL ENTITY THAT SATISFIES THE STATUTORY CRITERIA AND LONG-STANDING INTERPRETATIONS OF THE COMMISSION.

As the July 25, 2016 ruling recognizes (at 7), Corporations Code 18035 entitles as few as two people to form an unincorporated association. The creation and existence of such an entity do not require the filing of an information statement with the Secretary of State, although CAUSE had filed such a statement. CAUSE supplied the Secretary's acknowledgement as soon as possible after the ALJ requested it, even though, through no fault of CAISE, this resulted in six weeks' delay. However, this acknowledgement confirms the existence of the entity and its designation of an agent, and should have ended any inquiry into its legal existence.

[20] Email, Sarah Thomas to Rafferty, 23 March 2017 at 10:47. CAUSE attempted to reach the alternative contact, but was not successful.

For several decades, this Commission has found unincorporated associations eligible for intervenor compensation and authorized awards. Aglet, for example, intervened in dozens of proceedings and was the model for CAUSE. Many of the awards that the Commission made to Aglet's consist entirely of reimbursement for expenses Aglet's principal, Mr. James Weil (a former ALJ of this Commission) incurred and for his personal time.[21] The longevity of such an administrative interpretation entitles it to deference. New Cingular Wireless PCS, LLC v. Public Utilities Commission, 246 Cal.App.4th 784, 812; 201 Cal., Rptr. 652 [April 2016]. CAUSE's reliance on Aglet's practices is particularly compelling, since the Commission relied heavily on the recommendations of Mr.Weil when it determined to make policies for intervenor compensation "understandable [and] predicable." *See* D.98-04-059 at 44-45. Aglet argued persuasively against the disqualification of "professional advocates" and "self-appointed representatives." *Id.*, Findings 13 & 14 at 86. Nothing in the Intervenor Compensation Guide or in any other published rule or regulation calls into question the propriety of a single-witness model. In this case, CAUSE intended to recruit and retain additional expert witnesses, provided they were prepared to accept deferred compensation. This has not yet occurred for the obvious reason that CAUSE has not

[21] D.03-07-10 (July 14, 2003) (27997.pdf) at 4 & n.5 (sufficient for Category 3 status that membership include residential ratepayers of applicant); D.04-12-039 (Dec. 20, 2004) (42403.pdf); A-02-12-027 (request of May 16, 2005) (customer status and comparison test satisfied summarily)

even been found eligible and therefore cannot commit to pay fees, even on a deferred basis, with assurances that would be sufficient for any but the most committed advocate. Therefore, CAUSE's president has been its sole witness.

The Directives have justified increasingly intrusive requests on a stated concern that CAUSE is not "separate" from the individual who signed its NOI (and is so far the only person who has testified or signed documents submitted on its behalf). Under California law, Rafferty is not an alter ego of CAUSE.[22] But this objection is also pointless. If, as the directives suggest, Rafferty were the alter ego of CAUSE, it ends any suggestion that CAUSE is a front for large business users, with whom he denies having any relationship. One option would be to let CAUSE represent him as a Category 2 customer, or grant Rafferty eligibility as a Category 1 customer. Whatever the concern over the alleged lack of "separation," this is a case where delay and unusual conditions

[22] There is no reported case of any California association found to be an alter ego of an individual. See 9 Witkin, SUMMARY OF CALIFORNIA LAW 10TH ED., Corporations, §41. By adding Section 18630 to the Corporations Code, the Legislature adopted 33 Cal. L. Revision Comm'n Reports 729 (2003), which made clear that alter ego could only be applied "to prevent fraudulent use of the nonprofit association form as a shield against personal liability." Even if CAUSE were incorporated, there is no "unity of purpose" in the decision to create an entity as an unincorporated association, pending probable incorporation. Arnold v Browne (1972) 27 Cal App 3d 386, 103 Cal Rptr 775. The Law Revision Commission made clear that the absence of assets or capitalization was not relevant to the "unity of purpose" element if the entity reasonably anticipated no liabilities. 33 Cal. L. Revision Comm'n Reports at 767-68. But the particular party seeking to invoke the alter ego exception must also show that it is necessary to "promote injustice." Even assuming the broader application of alter ego for corporations, without both factors, California courts cannot even consider piercing the veil of the organization's legal status. Robbins v. Blecher (1997) 52 Cal. App. 4th 886, 892. Even then, the entity is not disregarded for other purposes, so it retains full legal capacity. *Id*.

have created the very circumstance of which the ruling complains. These technicalities also ignore decades of precedents treating Aglet, Mussey Grade and Peninsula Rate-payers Association ("PRA") as Category 3 customers. In contrast to Aglet, CAUSE did intend to incorporate and to become an established advocate before this Commis-sion and in other fora.[23] But it cannot incur the substantial costs and burdens of incorpora-tion prior to the prospect of any reimbursement.

Even though CAUSE has not grown as intended, the perceived control of the association is not material to its existence, its legal capacity, or its eligibility. Yet, even after CAUSE supplied UA-100, a second directive asked for the number of members and the identity of its directors. CAUSE promptly supplied this information.[24]

A. There is No Inconsistency Between the Residential Character of the Membership and the Broader Interests that the Bylaws Authorize CAUSE to Promote.

The rulings fail to distinguish between (1) the members of an organization and (2) the identity of those whose interests they represent. The statute envisions that an organization can assert the standing of residential or small business ratepayers by expressing the purpose in its bylaws. By default, nonprofit corporations are completely

[23] *See* Corporations Code §§ 200.5, 18360.

[24] CAUSE did not act unreasonably in omitting to list this information in Part IV, because it is not called for on the form. Not a single other intervenor supplied any of these data, and none was disqualified or reprimanded. When the ALJ privately criticized the use of a motion, CAUSE supplied a notice providing the information as ordered. This is an appropriate procedure before other commissions and tribunals, but did not meet the ALJ's expectations.

governed by directors who are not members. California law actually ***prohibits*** nonprofit public benefit corporations from even having members, unless the articles or bylaws provide otherwise. Corporations Code §5310(a).[25] It is the nature of many charities that the members and directors who contribute funds and govern the entity are ***not*** members of a class benefited by the interests they promote. It is not unusual, for example, that an organization whose members (or directors) are wealthy commit themselves to promoting interests of the poor.

As D.98-04-59 at 30 & fn.14 made clear, an organization with the purpose of representing low-income ratepayers, but no individual ratepayers as members, is eligible unless there is a showing that it is "***actually*** representing business customers ***attempting to improve business prospects*** and not services to low income customers." Since CAUSE has not accepted contributions, it would be far-fetched to suggest (1) that it is a front organization for companies seeking to profit from supplying safety mitigations that the Commission may order and (2) that it is not advocating for safety. But D.98-04-59, the principal precedent of this Commission, makes clear that ***both*** elements would be required to disregard the purpose stated in the Bylaws and find an entity ineligible. D.98-04-059 (at 32) makes clear that applicants do not even have to

[25] By default, nonprofit corporations are completely governed by directors who are not members. Where the corporation opts to have members, Section 5313 also allows any person to be to a member unless the articles or bylaws provide otherwise.

disclose the percentage of their members who were residential ratepayers, unless they undertake to represent both residential and small business classes.[26]

The ruling has disregarded long-standing Commission practice, which has awarded compensation to Category 3 customers without regard to the identity or existence of their members. Most of these intervenors in this case are incorporated, and many of them have no members. The number and distribution of CAUSE members are typical of unincorporated associations that have received compensation in the past, such as Mussey Grade Alliance, PRA and Aglet, which (as previously noted) was the model for CAUSE. Aglet participated in over 300 reported Commission decisions from 1999 until the recent retirement of its principal. Typically, the principal was its only expert witness and the only person for whose services fees Aglet sought compensation. From 2008 to 2012 alone, Aglet received 24 awards totaling $910,000 in intervenor compensation.[27] Aglet was never required to supply the number of its members, let alone their identities.

In at least six decisions, the Commission found it noteworthy that, while all of Aglet's members were residential, 30 percent of them also owned small businesses (even though Aglet did not claim that they procured service under a non-residential

[26] A.05-12-030 (ruling of Dec. 23, 2005) (56138.pdf) found customer status based on a residential membership of only 30%.

[27] State Auditor, Report 2012-118 at 37.

tariff for bundled electric service).[28] One Commission ruling even makes explicit that a single member who is a residential customer with a separate business telephone account qualified Aglet to represent small business customers in an ***electric*** rate case. CAUSE's president satisfies that criterion.

As explained below, CAUSE is prepared to abandon its representation of small business users, but only if this accommodation leads to a finding of eligibility. This reluctant choice is contrary to the purpose of the statute, which provides the groups representing small businesses "meet the same tests as all other intervenors." Stat. 2003, Ch. 300, Senate Floor Analysis at 6.[29] In R.14-07-002, the Coalition of Energy Users (CEU) checked Box B.1 (representation of small businesses) "no," but its amended NOI was still rejected as "inconsistent," "unclear," and "confused." As a corporation, CEU has no legal members, but the ruling expressed concern that a survey of showed that 39% of its social-media followers owned small businesses. CEU's Bylaws authorized representing residential or small business customers, but also referred to advocacy on behalf of electric users in other fora, which the ruling found "overbroad." R.14-07-002

[28] "All of Aglet's members are residential customers; Aglet estimates that about 30% of its members also operate small businesses. Aglet is a Category 3 customer because it is an organization authorized by its bylaws to represent the interests of residential customers." R-04-04-026 (ruling of March 30, 2004) at 2; see also R-04-04-025 (ruling of Feb. 28, 2006) at 2) (both residential and small business based solely on bylaws without any reference to membership; financial hardship based on prior ruling); A.02-05-022, Ruling of July 22, 2002 at 3 (17527.pdf); R-04-04-003 (Ruling of July 12, 2005) at 2 (47853.pdf); *see also* cases cited at fn. **Error! Bookmark not defined.**

[29]

(ruling of Oct. 17, 2016) (168532978.PDF) at 5-6. CEU resubmitted, explaining that the small business owners were all residential members, but a further ruling (dated February 16, 2017) (175482411.PDF) at 7, said the second amended NOI "confused… even more" "the foundational matter [of] whether its constituents are residential customers or include small businesses as well." This ruling claimed that the statutory formula, adopted in the bylaws, required CEU to represent either residential or small business, but not both; and that the bylaws were somehow "inconsistent" with the claim that 39% of the social-media followers owned small businesses. *Id.*, n.7.

CAUSE should be an easier case, because it has certified that it has no conflict of interest[30] (and there is no reasonable suggestion that it is a front for large users). Unlike CEU, it does have a clear membership, is not a coalition aligned with a foundation, and does not solicit donations. Unlike CEU, CAUSE is promoting safety and environmental interests, which are distinct from those advocated by other intervenors. Still, the CEU rulings suggest that once CAUSE opts to represent residential customers only, its NOI will be rejected if any of them own small (or large) businesses.

The rulings regarding CAUSE and CEU depart from D.98-04-059 and create a puzzle that would disqualify most or all long-term intervenors, even the most

[30] Stat. 2003, Ch. 300, Senate Floor Analysis at 6: "This provision is intended to prevent any party from skirting the prohibition on providing intervenor compensation to customers who are financially able to represent themselves by also representing small business customers."

successful.[31] The heightened scrutiny of "newly formed organizations" appears to be deliberate.[32]. This is directly contrary to the instruction of D.98-04-059 at 96: not to "discourage first-time and small-party intervenors."

B. A Safety Advocate Should Be Considered no Less Favorably Than Other Environmental Groups.

The interests that CAUSE was created to serve all relate directly to ratepayer interests. CAUSE seeks to minimize the social costs of *all* accidents caused by utility operations, whether those accidents spoil the environment; release uncontrolled radiation; endanger customers; injure workers; damage property; compromise critical infrastructure; interrupt essential heating, lighting or critical power requirements; compromise customer data or cybersecurity; or impair public resilience in an emergency.[33] Particularly at the time that CAUSE applied in this rate case, no one else had specifically committed to represent these interests, so there is an unrepresented

---

[31] The bylaws (90725879.pdf) of Mussey Grade Alliance make no reference to either residential or small business customers and include very general purposes.
TURN's bylaws state a "purpose" of representing both small business and residential and has small business members, but checks box B.1 "no," denying that it is representing small business.
A4NR represents that 90% of its members are residential, but undertakes to represent small business as well, stating that they share identical interests.

[32] July ruling at 7: "The Commission should ensure that the NOIs of newly formed organizations comply with all the requirements of the intervenor compensation program." February 2017 ruling at 8 (same)

[33] In at least one case, an environmental group was granted an award for diverting $20 million in ratepayer assets to the establishment of urban parks in low-income areas, a public purpose completely unrelated to utility operations. D.04-08-025 (I02-04-026) (39057.PDF) at 18 By contrast, CAUSE does ***not*** seek to divert funds collected from ratepayers to health care, traffic infrastructure, or any other aspect of public safety that is not directly affected by utility operations.

interest and no risk of duplicated effort.[34] CAUSE does not expect to achieve immediately quantifiable reductions in the requested revenue requirement; economic benefits will result from the avoidance of long-term liabilities and externalized social costs. CAUSE also expects to work with TURN and other parties to ensure the rate impact of programs calculated to reduce long-term social costs is minimized, equitably distributed, and implemented to avoid sudden rate shocks. But since CAUSE does not expect to achieve any bill savings for its members to offset the costs of participation, so the comparison test is also clearly satisfied.

Environmental accidents are a subset of CAUSE safety concerns. As such, CAUSE is entitled to treatment no less favorable than other environmental groups. Furthermore, although the Intervenor Compensation Guide (at 6) and notations on the eligibility form recognize that D.98-04-059 (at 30) exempted environmental groups even from having to show a purpose in their bylaws, the decision stated a more general principle that applied to advocates for the poor and other social issues. *See also, id.*, Conclusion of Law 8 at 92 (Commission may allow comparison test even to group without bylaw authorization).

C. The Commission Has Consistently Found Entities Eligible Without Regard to Their Membership.

[34] except for NAAC, to the extent that pursued executive compensation as a means of providing incentive to improve safety.

In this very proceeding, the Commission has found corporate non-profits eligible even when they have no members at all, despite the explicit requirement that an intervenor state the percentage of their members who are residential ratepayers (or small business customers of bundled service). One eligible intervenor claimed that all of its members in California were "residential ratepayers," when its membership solicitation shows that the group is open to anyone over 18 willing to pay dues, which includes transient or institutionalized residents, as well as tenants who do not pay power bills (because they receive service procured by a landlord who may not even qualify as a small-business). One intervenor found to be eligible admits labor unions as members, but they are not residential ratepayers and may not even qualify as small businesses. Apart from CAUSE, which expressly limits its membership to residential members, only two other intervenors in this case satisfy the "percentage" requirement with anything more precise than references to "the vast majority" or similar substitute for the mandatory representation. Finding these entities eligible is appropriate, but inconsistent with the exclusion of CAUSE.

D. CAUSE Was Entitled To Claim Standing To Represent Small Businesses, Without Regard to its Membership

CAUSE made a deliberate and appropriate choice to represent small businesses in this proceeding, ***if*** it was permitted to do so. CAUSE did not have the conflict of interest that, under the statute, precludes an intervenor from being reimbursed for representing

small businesses.[35] It was prudent for CAUSE to recognize that residential ratepayers could have standing to advocate that safety-related recommendations might be specific to the small-business tariff, and to avoid any procedural restriction.[36] Dr. Rafferty has worked for state consumer advocates whose legislative mandates includes representation of small business, as well as those whose mandates exclude small business representation.[37] CAUSE was aware that the California Legislature has directed ORA ***not*** to represent small business interests, including those related to safety, where they may place burdens on the residential class, and directed the Commission to "promote participation" by making private groups representing these interests eligible for

[35] In 1992, AB 1975 amended Public Utility Code §1802(b) to authorize intervenor compensation for representatives of small business customers. Stat. 1992, Ch. 942. In 2003, SB 521 added Public Utilities Code §1802.3 disqualifying certain representatives of small business customers (but not representatives of residential customers) based on previous representation. Stat. 2003, Ch. 300.

[36] There is certainly a safety interest in street lighting, which is not a residential tariff charge. Residential ratepayers may have a safety interest in the reliability of electricity needed by grocery stores to preserve food or the affordability of lighting provided by stores or landlords in parking lots.

[37] Dr. Rafferty has worked for the state consumer advocate in Hawaii, Delaware and Arizona, among other states. e.g., INCLUDES: HI Rev Stat § 269-51 (2013) ("The consumer advocate shall represent, protect, and advance the interests of all consumers, including small businesses, of utility services."); EXCLUDES: AZ Rev Stat § 40-462. DISCRETIONARY: DE Code, Title 29, Section 8716 (2) "To advocate the lowest reasonable rates for consumers consistent with the maintenance of adequate utility service and consistent with an equitable distribution of rates among all classes of consumers, provided, however that the Public Advocate shall principally advocate on behalf of residential and small commercial consumers and shall not be required to advocate for any class of commercial or industrial consumers that the Public Advocate determines in his or her sole discretion on a case by case basis has the ability to advocate on its own behalf before the Public Service Commission."

compensation.[38] In A.15-09-001, no other intervenor had undertaken to advocate safety interests related to small commercial use. Finally, there was no internal safety advocate at the time that CAUSE made this election. Stat. 2016 Ch. 806, §1, adding Public Utilities Code 309.8 eff. Jan. 1, 2017.

Authority to represent small business interests would avoid issues of standing that might restrict CAUSE's advocacy and the extent of its substantial contribution. Some CAUSE members belong to a homeowners' association, and pay a pro rata share of the entity's electricity costs, paid on a commercial tariff, most of which are associated with safety issues regarding heating and lighting of common areas. All CAUSE members share a safety interest in assuring that restaurants and grocery stores have reliable power to preserve the food they eat. This is a "direct ratepayer interest" because residential and small business customers must pay for the common infrastructure and verification to ensure that power is reliable, especially for critical activities. It would directly contradict the purposes of intervenor compensation to prohibit CAUSE from representing the broadest range of underrepresented interests that it was willing to undertake, and then

[38] "[S]ome cases have the effect of pitting certain groups of ratepayers against one another. For example, once the amount of money a particular utility is entitled to receive is determined, the PUC has to decide how to apportion that requirement between customers. In this case, residential, small business, and industrial customers will each want the others to bear the burden. As a matter of practice in these types of cases, ORA has advocated for residential customers." Senate Floor Analysis of SB 521 (2003) at 5.
"The bill would authorize the commission to modify or change the definition of "small commercial customer," to promote participation in commission proceedings by organizations representing small businesses." Stat. 2003, Ch. 300, Legislative Counsel Digest, §2.

to restrict its compensation based on the scope of its "substantial contribution." Again, the suspense is self-fulfilling. Even if the issue is ultimately resolved in CAUSE's favor, the delay imposed such an extraordinary risk that it inhibited CAUSE's ability to present the best possible and most comprehensive advocacy.

E. There Was No "Misrepresentation"

It is profoundly misplaced to suggest that alleged discrepancies within the Bylaws or regarding a subsequent NOI is a different proceeding constitute possible misrepresentations. The bylaws properly authorize the representation of small businesses, in addition to residential ratepayers. It was entirely appropriate for CAUSE to leave open the possibility that it might represent small business interests, either with or without compensation, before this Commission or elsewhere. *See* ROBERT'S RULES, *supra* fn.13.

Since CAUSE is not affected by a disqualifying conflict, it may elect to assert standing to represent small-business, or not elect to do so, as it did in a later proceeding. At the time the SCE rate case was filed, there was an internal safety intervenor. Since the ruling states that this is a "conflict … that must be corrected," CAUSE has completed the form to indicate that it no longer represents small businesses in this case.[39] CAUSE intends this to resolve the matter.

II. THE RULING IMPOSES CONDITIONS THAT ARE UNCONSTITUTIONAL

[39] Again, CAUSE regrets the inaccurate statement that all CAUSE customers subscribe to SCE, *see* fn. 18, *supra*, but this is a typographical error, not a misrepresentation.

AND UNREASONABLE.

The ruling requires CAUSE to disclose the identities of its members, as well as their home addresses, under seal. CAUSE assured prospective members that it would not disclose their identities. Breaching this commitment would not only violate the constitutional rights of the members, but would create an existential threat to CAUSE itself, particularly since CAUSE can provide no assurance that the Commission can prevent public disclosure, or that a fifth directive will not require more private information. Standing alone, the proposed disclosure violates both the First Amendment and the ex parte prohibition of the Public Utilities Code.

A. The Commission Cannot Lawfully Penalize CAUSE for Failing to Protect the Constitutional Rights of its Members.

In NAACP v. State of Alabama ex rel. Patterson (1958), 357 U.S. 449, 463 a state court had ordered an unincorporated association in Alabama to provide its membership list to the state attorney general. The Supreme Court reversed, holding that "compelled disclosure of affiliation with groups engaged in advocacy may be as effective a restraint on freedom of association as direct action," making privacy "inviolab[le]." As here, the unincorporation association did not object "to divulging the identity of its members who are employed by or hold official positions with it. It has urged the rights solely of its ordinary rank-and-file members." 357 U.S. at 464. As the California Supreme Court has made clear, NAACP v. Alabama is not limited to protecting "dissident" organizations that advance "unorthodox or unpopular

views," or face violent reactions. Britt v. Superior Court, 20 Cal.3d 844, 862. & n. 5 example, to be identified with anything that might irritate neighbors employed by PG&E. *See also* cases discussed in 7 Witkin, SUMMARY OF CALIFORNIA LAW 10TH ED., Constitutional Law, §382 at 628-29. Elected officials, and potential candidates for elected office, are particularly careful about revealing positions on issues that they have not publicly addressed – whether the unplanned disclosure is to the public or to state officials. Britt also makes clear that the need for constitutional protection does not hinge upon the state making the information available to the public. It was sufficient that rank-and-file members did not want to "raise the ire" of the authorities themselves. Many of the members are professionals, who would not choose to be publicly associated with some of the criticisms that the ruling has already leveled against CAUSE. As to members holding or aspiring to elected office, they have a legitimate interest in not revealing the issue positions to the Commission until and unless they choose to do so.

The Supreme Court made clear that a governmental demand for the membership list of an advocacy organization is always subject to "strict scrutiny." The fact that CAUSE's beliefs are political and economic, and do not involve racial issues, is "immaterial." 357 U.S. at 460. Even if a compelling state interest existed, which is not the case here, the Commission would be obliged to use the least intrusive means. CAUSE suggested to the General Counsel that the Commission

consider third-party validation, preferably off site, which could have avoided exposing the documents to public release, but this has not been accepted.

As in NAACP, the demand for disclosure is also a threat to CAUSE as an organization. CAUSE communicates with members by email. Compiling home addresses would be a significant burden. But, more critically, for CAUSE to be forced to breach the confidence of its members would inevitably cause its support and membership to be adversely affected. 357 U.S. at 459-60.

The Constitutional impediment to demanding that participants disclose membership information is known to this Commission. In D.00-01-020, *Interim Opinion on Payment of Intervenor Compensation Awards*, the Commission avoided the constitutional question raised by a trade association and excused it from disclosing its corporate membership, including utilities regulated by the Commission. The privacy interest of real individuals is much greater, and the Commission has no legitimate interest in their identity.

The California Legislature has explicitly protected the privacy of those who sign petitions to qualify ballot questions, even though their subscription constitutes a legislative act. Government Code §6253.5. The Public Records Act also contains a number of exemptions for home address, *e.g.*, Government Code §§ 6208.1, 6215.10, 6254.3, 6254.16, 6276.14, but state law lacks the more comprehensive protection for home addresses provided in the federal Freedom of Information Act (5 U.S.C. U.S.C.

§ 552(b)(6), (7)(C)).

Privacy, specifically the need to avoid even showing the Commission financial hardship, is the very reason that the Legislature created standing for Category 3 customers. Public Utilities Code §1804. While this may explain why it did not provide for exemption of members' home addresses and other financial information provided in a NOI, the absence of statutory protection may make it difficult for the Commission to resist a Public Records Act request.[40]

B. To Direct an Organizational Party to File its Membership Under Seal Violates the Ex Parte Prohibition in the Public Utilities Code.

The proposed disclosure would reveal the extent to which CAUSE members are influential elected officials and community leaders. To communicate a list of supporters under seal is undeniably an ex parte communication. Public Utilities Code 1701.3 (eff. Jan. 1, 2017). Members of the public would have a legitimate interest in obtaining this information to order to enable them to make an independent evaluation of the Commission's decision-making process.

C. California Law Prevents CAUSE from Complying without its Members' Unanimous Consent.

The Corporations Code excuses unincorporated associations from almost all of the formality of corporate entities. 2 Ballantine & Sterling, CALIFORNIA CORPORATIONS

[40] Notwithstanding Evidence Code §1040(b)(2), acceptance under seal does not automatically grant exemption from public disclosure. The ruling gives no assurance that the Commission would even invoke §1040.

LAW, 22.08[3] at 2-39, ff. However, it protects the expectations of members from the usual rough-and-tumble of corporate legal maneuvers. Once a "governing principle" is established (Corporations Code §18010), even if it is not written, it cannot be changed without the consent of the members or directors whose expectations would be compromised. A bylaw change is insufficient where the contractual entitlements of members are reduced. Hogan v. Pacific Endowment League (1893) 99 Cal. 248, 250; Wrightington, LAW OF UNINCORPORATED ASSOCIATIONS §62 at 272 (2002); 9 Witkin, SUMMARY OF CALIFORNIA LAW 10TH ED., §37. Thus, CAUSE can neither provide the private information nor expel a member for failing to consent.[41] Corporations Code §18310.

D. The Prescribed Bylaw Provisions Threaten CAUSE's Organizational Integrity.

The February 2017 ruling (at 7) requires CAUSE to entrench its directors in the bylaws. Since the members can vote to add or remove directors, but not to amend the bylaws, this effectively removes them from the governance of the association. It also means that a director cannot resign at will, since a change requires at least one colleague to vote at a meeting to amend the bylaws. This has a number of irrational consequences. It increases the identification of the president and the association, which is the opposite of the ruling's stated goal. It will create a degree of uncertainty about

[41] The Law Reform Commission noted that members of unincorporated associations can only be removed for cause after a hearing. LRC Memo 2003-29 at 5, *citing* Swital v. Real Estate Comm'r, 116 Cal. App. 2d 677, 679 (1953). Section 18310 liberalized this, but does not apply in these circumstances. See 9 Witkin, supra, Corporations at §40.

the association's ability to shield directors (and possibly members) from personal liability. A dissenting director can no longer dissociate from the organization, without his colleague's consent, even if he believed it was improperly or contrary to his beliefs. This restriction will make it difficult to recruit new directors or members.

The requirement that the entire Bylaws have the same effective date is even more exotic. Normally, Bylaw amendments are immediately effective. As ROBERT'S RULES, *supra*, p.569, ll.12-14; p.597,l.1-p.598,l.10, makes clear, however, there are many situations in which an organization makes a ***particular*** change conditional on a certain contingency. CAUSE anticipated transitional amendments to be necessary to achieve the incorporation it had intended. An organization may also delay the effect of a bylaw change to protect the expectations of incumbent directors and members, since there is "virtually a contract between a society and [them]." ROBERT'S RULES, p.597,l.33. Transitional provisos might have allowed CAUSE to negotiate the unanimous consent of members necessary to comply with the directive to disclose home addresses; at a minimum, CAUSE could have required new members to consent to provide private information to the Commission as a condition of continued membership. By requiring all bylaw amendments adopted on a certain day to be simultaneously effective, the ruling handicaps the association's autonomy in unpredictable ways.

The Commission has apparently never imposed these conditions on another entity. The rulings do not articulate a compelling, or even rational, purpose to impose

these provisions, which interfere with the right of CAUSE and its members to associate freely for purposes of advocacy, both before the Commission and elsewhere.[42] However, ROBERT'S RULES, p.3,l.34-p.4,l.2; p.10,ll.28-30; p.580 & n.*, is clear: the order of a lawful authority takes precedence over all bylaws. Therefore, CAUSE has conformed the bylaws to give effect to the ruling.

CONCLUSION:

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 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.

Date: April 4, 2017

Respectfully submitted,

By: _____/s/_____
SCOTT J. RAFFERTY

[42] *See, e.g.,* Retail Digital Network v. Prieto, No. 13-56069 (9th Cir.), argued Jan. 19, 2017 (whether state can condition license on content restriction affecting commercial speech); Agency for International Development v. Alliance for an Open Society Int'l, Inc. (2013), 133 S.Ct. 2321 (government cannot deny funding to private organization due to their failure to adopt policy opposing prostitution); Legal Services Corp. v Velazquez,(2001) 531 U.S. 533 (eligibility for government attorney funding cannot be made conditional on accepting content restrictions); South Dakota v. Dole (1987), 483 U.S. 203 (government cannot use funding to induce recipient to violate First Amendment rights of others).

SCOTT J. RAFFERTY
1913 Whitecliff Court
Walnut Creek, California 94596
(202)-380-5525
E-mail: rafferty@gmail.com

Attorney for
COLLABORATIVE APPROACHES TO
UTILITY SAFETY ENFORCEMNT