



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of SAN DIEGO GAS & ELECTRIC COMPANY (U902 E) for a Permit to Construct Electrical Facilities with Voltages between 50 kV and 200 kV and New Substations with High Side Voltages Exceeding 50 kV: The East County Substation Project | Application 09-08-003 |
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**NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION
AND, IF REQUESTED (and [X] checked), ALJ RULING
ON SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP**

| | | | |
|--|-----------|------------------------------|-----------------------|
| Customer (party intending to claim intervenor compensation): Backcountry Against Dumps (“BAD”) | | | |
| Assigned Commissioner: Michael R. Peevey | | Assigned ALJ: Hallie Yacknin | |
| I hereby certify that the information I have set forth in Parts I, II, III and IV of this Notice of Intent (NOI) is true to my best knowledge, information and belief. I further certify that, in conformance with the Rules of Practice and Procedure, this NOI and has been served this day upon all required persons (as set forth in the Certificate of Service attached as Attachment 1). | | | |
| Signature: | | | /s/ Stephan C. Volker |
| Date: | 4-27-2011 | Printed Name: | Stephan C. Volker |

PART I: PROCEDURAL ISSUES
(To be completed by the party (“customer”) intending to claim intervenor compensation)

| A. Status as “customer” (see Pub. Util. Code § 1802(b)): The party claims “customer” status because it (check one): | Applies (check) |
|---|------------------------|
| 1. Category 1: Represents consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the Commission (§ 1802(b)(1)(A)) | |
| 2. Category 2: Is a representative who has been authorized by a “customer” (§ 1802(b)(1)(B)). | |
| 3. Category 3: Represents a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, to represent “small commercial customers” (§ 1802(h)) who | X |

| | |
|--|--|
| receive bundled electric service from an electrical corporation (§ 1802(b)(1)(C)), or to represent another eligible group. | |
| <p>4. A Category 3 customer is a formally organized group authorized, pursuant to its articles of incorporation or bylaws, to represent the interests of residential customers or to represent small commercial electric customers. According to its Articles of Incorporation (attached hereto), BAD “is a non-profit public benefit corporation” organized “to provide education and defend rural groundwater dependent communities from environmentally unsafe facilities.” BAD’s Bylaws also state that its purpose is to “defend groundwater dependent communities from environmentally unsafe facilities.” BAD has represented and will continue to represent its members’ interest in various fora including state and federal court, the CPUC, and the State Water Resources Control Board. BAD’s members are all residential electric customers. Most of its members live in rural communities in eastern San Diego County. All members have the common purpose of protecting their rural quality of life and the natural resources in and around their communities. Thus, BAD is authorized by its Articles of Incorporation and its Bylaws to represent the interests of its members, who are residential customers, in the present proceeding.</p> | |
| | |

| B. Timely Filing of NOI (§ 1804(a)(1)): | Check |
|---|-------------------|
| 1. Is the party’s NOI filed within 30 days after a Prehearing Conference? Date of Prehearing Conference: February 18, 2011 (the present amended NOI is authorized by ALJ Yacknin’s April 7, 2011 ruling) | Yes X No ___ |
| 2. Is the party’s NOI filed at another time (for example, because no Prehearing 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)? | Yes ___ 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, or ALJ ruling, or other document authorizing the filing of its NOI at that other time: | |
| ALJ Yacknin’s April 7, 2011 ruling on eligibility of BAD to claim intervenor compensation and on its showing of significant financial hardship authorized the filing of this amended NOI. | |

PART II: SCOPE OF ANTICIPATED PARTICIPATION
(To be completed by the party (“customer”) intending to claim intervenor compensation)

A. Planned Participation (§ 1804(a)(2)(A)(i)):

Backcountry Against Dumps (BAD) filed a 16-page protest in this matter on September 14, 2009. Additionally, BAD filed a 19-page scoping comment letter. More recently, BAD participated in the prehearing conference held on February 18, 2011 and submitted two briefs on the question raised therein of whether the present project requires a CPCN. BAD submitted extensive comments on the Draft EIR for this project on March 4, 2011. BAD also submitted prepared testimonies of Donna Tisdale and Jamey Volker on April 4, 2011, and rebuttal testimony of Bill Powers on April 18, 2011. Further, to the extent permitted by the Commission, BAD plans to:

- review testimony served by other parties;
- cross-examine witnesses (if necessary);
- attend all other conferences or hearings related to the present application;
- file briefs, comments, and other pleadings, including the filing of comments on any future CEQA documents produced by the Commission;
- participate, if invited, in settlement negotiations.

BAD will concentrate its participation on the issues identified in the Assigned Commissioner’s Scoping Memo and Ruling filed on March 5, 2011. In general, BAD urges a full CEQA review of the project, including analysis and mitigation of all indirect, growth-inducing, and cumulative impacts. BAD does not expect to duplicate the efforts of any other parties as no other parties protested SDG&E’s application, made an appearance at the prehearing conference, or submitted briefing on the CPCN question. If other environmental groups intervene, intervenor will coordinate, to the extent practicable, with any such groups’ participation.

As requested in ALJ Yacknin’s April 7, 2011 ruling, BAD hereby clarifies that The Protect Our Communities Foundation (POC) and the East County Community Action Coalition (ECCAC) are no longer participating in the present proceeding. BAD is the only group that represents rural ratepayers in this proceeding and is the only group seeking a ruling on its eligibility for compensation.

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 FEES | | | | |
| Stephan C. Volker | 150 | \$650 | \$97,500 | 1 |
| Joshua A.H. Harris | 100 | \$300 | \$30,000 | 2 |
| Jamey M.B. Volker | 200 | \$200 | \$40,000 | 3 |
| | | Subtotal: | \$167,500 | |
| EXPERT FEES | | | | |
| Michael S. McCann | 50 | \$390 | \$19,500 | 4 |
| David Colling | 50 | \$185 | \$9,250 | 5 |
| Bill Powers | 50 | \$225 | \$11,250 | 6 |
| Jamey M.B. Volker | 100 | \$150 | \$15,000 | 7 |
| Unknown Experts | 25 | \$200 | \$5,000 | 8 |
| | | Subtotal: | \$60,000 | |
| OTHER FEES | | | | |
| Paralegal/Law Clerk | 150 | \$150 | \$22,500 | 9 |
| | | | | |
| | | Subtotal: | \$22,500 | |
| COSTS | | | | |
| Photocopying | | | \$500 | 10 |
| Postage | | | \$200 | 11 |
| Travel | | | \$2,000 | 12 |
| | | Subtotal: | \$2,700 | |
| TOTAL ESTIMATE \$: | | | \$252,700 | |

Comments/Elaboration (use reference # from above):
 #1 Mr. Volker has 36 years of specialized experience in environmental litigation and has participated in over one dozen CPUC proceedings. His market rate is \$650-750 per hour. The rate most recently assigned to Mr. Volker by the Commission in D.09-05-011 was

\$330 per hour for work completed in 2008. BAD respectfully requests review and upward adjustment of the rate this Commission has assigned to Mr. Volker because it does not reflect his market rate and is substantially below the rates awarded him by superior courts in California under Code of Civil Procedure section 1021.5, which provides for the recovery of an attorney's reasonable market rate in the relevant legal community.

#2 Mr. Harris's rate is based on the Commission's most recent rate range determination, ALJ-247, wherein the Commission identified a rate range of \$280-300 for attorneys with 5-7 years of experience. Mr. Harris began working as an attorney in October 2003 and thus has over seven years experience, qualifying him for the top rate in the Commission's range.

#3 Mr. J. Volker's (attorney) rate is based on the Commission's most recent rate range determination, ALJ-247, wherein the Commission identified a rate range of \$150-205 for attorneys with 1-2 years of experience. Mr. J. Volker began working as an attorney in December 2010 but has previous and on-going experience working in CPUC proceedings, including extensive work in R.09-08-009, and thus should be compensated at a rate near the top rate of the Commission's range for attorneys with 1-2 years' experience.

#4 Mr. McCann's rate is based on the Commission's most recent rate range determination, ALJ-247, wherein the Commission identified a rate range of \$155-390 for experts with 13+ years of experience. Mr. McCann began working as an appraiser in 1980 and thus has approximately thirty-one years of experience, qualifying him for the top rate in the Commission's 13+ range. Mr. McCann's experience is documented in Exhibit 7 to BAD's comments on the DEIS/EIS for this project.

#5 Mr. Colling's rate is based on the Commission's most recent rate range determination, ALJ-247, wherein the Commission identified a rate range of \$125-185 for experts with 0-6 years of experience. Mr. Colling began working as an electrical pollution assessor in 2005 and thus has approximately six years experience, qualifying him for the top rate in the Commission's range. Mr. Colling's experience is documented in Exhibit 5 to BAD's comments on the DEIS/EIS for this project.

#6 Mr. Powers's rate is based on the Commission's recent decision in proceeding A-09-09-021 wherein the Commission awarded him a rate of \$225 per hour. The Commission had previously awarded Mr. Powers a rate of \$200 per hour in its decisions in proceedings A-08-07-017, A-06-11-007 and A-02-09-043.

#7 Mr. J. Volker’s (expert) rate is based on the Commission’s most recent rate range determination, ALJ-247, wherein the Commission identified a rate range of \$125-185 for experts with 0-6 years of experience. Mr. J. Volker has extensive planning experience, which he has attained through his work as an associate attorney at the Law Offices of Stephan C. Volker (current position) and as a law clerk for Earthjustice’s Seattle and Oakland offices, the Center for Biological Diversity, and the Law Offices of Stephan C. Volker. As part of his daily activities in all three positions, Mr. J. Volker analyzed land use planning documents and environmental impact assessments for land developments and wrote comment letters to public agencies on land use plans, development proposals, and environmental impact assessments. Additionally, Mr. J. Volker gained invaluable planning experience writing and publishing *Water Supplies Finally Take Center Stage in the Land Use Planning Arena*, 35 Ecology L. Q. 573 (2008) and as contributing author to *Travel of Diverse Populations: Literature Review*, Institute of Transportation Studies, University of California, Davis, Research Report UCD-ITS-RR-07-35 (2007). Finally, Mr. J. Volker was a voting member of the U.C. Davis Transportation and Parking Advisory Committee in Davis, California, from September 2005 to June 2006. All of Mr. J. Volker’s experience is documented in his direct testimony submitted to the CPUC on April 4, 2011. Because he has approximately 3-4 years experience, Mr. J. Volker qualifies for a middle rate in the Commission’s range for experts with 0-6 years’ experience.

**PART III: SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP
(To be completed by party (“customer”) intending to claim intervenor
compensation; see Instructions for options for providing this
information)**

| A. The party claims “significant financial hardship” for its claim for intervenor compensation 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 | |
| 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)). | X |
| 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 of eligibility for compensation in this proceeding (§ 1804(b)(1)). | |
| ALJ ruling (or CPUC decision) issued in proceeding number: Date of ALJ ruling (or CPUC decision): | |

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):

As a Category 3 customer, BAD must meet the "comparison test" standard to establish significant financial hardship. The comparison test requires that the economic interest of the individual members of the group or organization be small in comparison to the costs of effective participation in the proceeding.

Here, the cost of the organization's participation in the present proceedings is estimated to be \$252,700. As stated in the attached Declaration of Donna Tisdale in Support of BAD's NOI:

BAD and its members are participating in the present proceeding in order to ensure that all environmental, aesthetic, health and safety, and community character impacts are fully considered in the environmental review and approval process. Additionally, BAD will ensure that the need for and alternatives to the proposed project are thoroughly considered and that, if the project is approved, the Commission conditions its approval to eliminate or mitigate adverse effects on nearby residential areas and to preserve and protect the environment and the community values of affected local communities. BAD's interests, thus, are predominantly non-economic. To the extent that individual members of BAD have economic interests at stake in the proceeding, they are limited to potential, minor property value diminution and thus are small in comparison to the estimated \$252,700 cost of BAD's participation in this proceeding.

Declaration of Donna Tisdale in Support of BAD's NOI, pp. 1-2. These potential, minor property value decreases resulting from the construction and operation of the project are small relative to the costs of participation. It is thus highly unlikely that BAD's members will see financial benefits that exceed its costs of intervention. Thus, participation in this proceeding presents a significant financial hardship for BAD.

As with BAD's previous NOI, if the Commission desires further information regarding either the customer status or financial hardship component of this notice of intent, BAD hereby requests an opportunity to provide such information to the Commission.

**PART IV: THE PARTY’S ATTACHMENTS DOCUMENTING SPECIFIC
ASSERTIONS MADE IN THIS NOTICE**

**(The party (“customer”) intending to claim intervenor compensation
identifies and attaches documents (add rows as necessary.) Documents
are not attached to final ALJ ruling.)**

| Attachment No. | Description |
|----------------|--|
| 1 | Certificate of Service |
| 2 | Declaration of Donna Tisdale in Support of Notice of Intent to Claim Compensation (including Articles of Incorporation and Bylaws as Exhibits 1 and 2 respectively). |

**ADMINISTRATIVE LAW JUDGE RULING¹
(ALJ completes)**

| | Check all that apply |
|--|-------------------------------|
| 1. The Notice of Intent (NOI) is rejected for the following reasons: | |
| a. The NOI has not demonstrated status as a “customer” for the following reason(s): | |
| b. The NOI has not demonstrated that the NOI was timely filed (Part I(B)) for the following reason(s): | |
| c. The NOI has not adequately described the scope of anticipated participation (Part II, above) for the following reason(s): | |
| 2. The NOI has demonstrated significant financial hardship for the reasons set forth in Part III of the NOI (above). | |
| 3. The NOI has not demonstrated significant financial hardship for the following reason(s): | |
| 4. The ALJ provides the following additional guidance (see § 1804(b)(2)): | |

¹ An ALJ Ruling will not be issued unless: (a) the NOI is deficient; (b) the ALJ desires to address specific issues raised by the NOI (to point out similar positions, areas of potential duplication in showings, unrealistic expectations for compensation, or other matters that may affect the customer’s claim for compensation); or (c) the NOI has included a claim of “significant financial hardship” that requires a finding under § 1802(g).

IT IS RULED that:

| | Check all that apply |
|---|---|
| 1. The Notice of Intent is rejected. | |
| 2. Additional guidance is provided to the customer as set forth above. | |
| 3. The customer has satisfied the eligibility requirements of Pub. Util. Code § 1804(a). | |
| 4. The customer has shown significant financial hardship. | |
| 5. The customer is preliminarily determined to be eligible for intervenor compensation in this proceeding. However, a finding of significant financial hardship in no way ensures compensation. | |

Dated _____, at San Francisco, California.

ADMINISTRATIVE LAW JUDGE

Attachment 1: Certificate of Service by Customer

I hereby certify that I have this day served a copy of the foregoing **NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION AND REQUEST FOR ALJ RULING ON SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP**

by (check as appropriate):

- hand delivery;
- first-class mail; and/or
- electronic mail

to the following persons appearing on the official Service List:

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Executed this 27st day of April, 2011, at Oakland, California.

/s/ Joshua A.H. Harris

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