

Decision REVISED PROPOSED DECISION OF ALJ MATTSON
(Mailed 5/20/2008)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 06-05-027
(Filed May 25, 2006)

**DECISION DENYING INTERVENOR COMPENSATION CLAIM
OF SUSTAINABLE CONSERVATION**

Sustainable Conservation seeks intervenor compensation in the amount of \$30,394.50 for contributions to Decision 07-07-027. The claim is denied on the basis that Sustainable Conservation fails to establish significant financial hardship. Sustainable Conservation has made significant contributions to the Commission's work, however, and we welcome its continued participation, as described more below. The proceeding remains open.

1. Background

The California Renewables Portfolio Standard (RPS) Program became law in 2003.¹ As a result, each California retail seller must each year procure, with limited exceptions, an increasing minimum quantity of electricity from eligible renewable energy resources until it reaches 20% by 2010 (with an additional goal

¹ Senate Bill (SB) 1078, effective January 1, 2003 (Stats. 2002, Ch. 516, Sec. 3), codified as Pub. Util. Code §§ 399.11, *et seq.*, as amended by, among others, SB 107 (Stats. 2006, Ch 464). All subsequent code section references are to the Public Utilities Code unless noted otherwise.

of reaching 33% by 2020). The procurement is largely via competitive bids or bilateral negotiations. The program was amended in 2006 to require each electrical corporation also to have a tariff for the purchase of RPS-generated electricity from certain customers.² This proceeding involves implementation and administration of the RPS Program, including implementation of the tariffs.

On October 10, 2006, Sustainable Conservation filed a Notice of Intent (NOI) to Claim Intervenor Compensation asserting, among other things, it is a customer in Category 3.³ On October 30, 2006, Administrative Law Judge (ALJ) Mattson ruled that Sustainable Conservation had not established its eligibility for intervenor compensation. In particular, the ruling found that Sustainable Conservation had neither established itself as a Category 3 customer nor demonstrated significant financial hardship. The ruling concluded that Sustainable Conservation could further address its eligibility in a subsequent pleading or request for compensation.

On July 26, 2007, we adopted an opinion implementing the required tariffs for the purchase of RPS-generated electricity from certain customers. (Decision

² Assembly Bill (AB) 1969, effective January 1, 2007 (Stats. 2006, Ch 731) codified as § 399.20.

³ We identify customers as being in Category 1, 2 or 3 based on the categories in the statute. The statute states: “ ‘Customer’ means any of the following:

- (A) A participant representing consumers, customers or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.
- (B) A representative who has been authorized by a customer.
- (C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small commercial customers who receive bundled electric service from an electrical corporation.” (§ 1802(b)(1).)

(D.) 07-07-027.) On September 24, 2007, Sustainable Conservation filed an Intervenor Compensation Claim, seeking \$30,394.50 for substantial contributions to D.07-07-027. The Claim provided further information regarding Sustainable Conservation's eligibility, including support for its assertions of Category 3 customer status and significant financial hardship.

In a related but different RPS proceeding, on August 17, 2007, Sustainable Conservation filed an NOI asserting, among other things, it is a Category 3 customer. (Rulemaking (R.) 06-02-012.) On November 2, 2007, ALJ Simon ruled in R.06-02-012 that Sustainable Conservation had not demonstrated it is a Category 3 customer eligible for intervenor compensation.

On February 21, 2008, in this proceeding, Sustainable Conservation filed an Amended Intervenor Compensation Claim asserting, among other things, it is a Category 1 customer. The Amended Claim states:

"This amendment modifies and supplements the 'customer status' claim for Sustainable Conservation. In most other respects...the Claim remains as previously filed. That information is provided again below." (Amended Claim, p. 1.)

The Amended Claim also says the September 24, 2007 Claim "should be deemed superseded and rendered moot." (*Id.*)

On March 25, 2008, a proposed decision on the Amended Claim was filed. On April 14, 2008, Sustainable Conservation moved to augment the record with a Declaration, including greater detail on its financial position. It also moved for a finding that Sustainable Conservation would incur significant financial hardship if the Amended Claim is denied. The motion is granted with respect to admitting the Declaration with additional financial information. It is denied with regard to finding significant financial hardship, as explained more below.

With this background, we turn to the statutory requirements for receiving intervenor compensation.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent to claim compensation within 30 days of the prehearing conference, or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contentions or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059),

comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

3. Significant Financial Hardship

The intervenor compensation statute is designed to facilitate participation in Commission proceedings by individuals and groups who would otherwise suffer significant financial hardship absent an award of fees and costs.

(§ 1803(b).) Sustainable Conservation has not demonstrated that it meets this requirement. In particular, the statute provides:

“ ‘Significant financial hardship’ means either that the 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, or that, in 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).)

3.1. Use of Wrong Test

Meeting one of the two statutory tests stated above is necessary to establish significant financial hardship: either an “undue hardship” test for Category 1 and 2 customers, or a “comparison test” for Category 3 customers. (D.98-04-059, 79 CPUC2d 628, 650.) In its Amended Claim, Sustainable Conservation asserts it is a Category 1 customer. For its significant financial hardship showing, Sustainable Conservation offers a comparison test saying, for example:

“For Sustainable Conservation, the cost of the organization’s participation in Commission proceedings substantially outweighs the benefit to the individual donors it represents. Sustainable Conservation is supported in part by individual donors who are residential customers of California’s investor-owned utilities and

whose individual interests in this proceeding are small relative to the costs of participation.” (Amended Claim, p. 8.)

The comparison test is for Category 3 customers. Category 1 customers must meet the “undue hardship” test. We have considered and rejected use of the comparison test for Category 1 customers. (D.98-04-059, 79 CPUC2d 628, 650-52.) By employing the wrong test, Sustainable Conservation fails to meet its burden to establish significant financial hardship.

We have specifically addressed the necessary showing of “not-for-profit corporations, and other organizational customers” who file as Category 1 customers. (*Id.*, 651.) In particular, we require documentation, noting that they “have ready access to their annual income and expense statements and year-end balance sheets.” (*Id.*) Sustainable Conservation fails to provide such documentation as part of its significant financial hardship showing, and thereby fails to meet its burden of proof.

3.2. Undue Hardship

We are also unable to find compliance with the statute even if we evaluate Sustainable Conservation’s significant financial hardship using the undue hardship test. For example, as part of its customer status claim (not its financial hardship claim), Sustainable Conservation provides a copy of its 2006 Annual Report.⁴ The Annual Report includes Sustainable Conservation’s “2006 Financial Highlights.” This includes information on income, expenses and change in net assets.

⁴ Sustainable Conservation uses its 2006 Annual Report as part of its customer status showing. (Amended Claim, pp. 2-7; in particular, p. 3.) Sustainable Conservation does not cite its 2006 Annual Report in support of its significant financial hardship showing. (Amended Claim, pp. 7-9.)

The 2006 Annual Report shows “Total Support and Revenue” of \$2,069,820. Absent other information, we are unable to conclude that the \$30,394.50 cost of Sustainable Conservation’s participation here (i.e., less than 1.5% of its Total Support and Revenue) would create significant financial hardship such that Sustainable Conservation “cannot afford, without undue hardship, to pay the costs of effective participation.” (§ 1802(g).)

Sustainable Conservation states in its Amended Claim that “most of its grants are restricted funds...” (Amended Claim, p. 3.) In such cases, we require that the customer distinguish between discretionary and committed funds. (D.98-04-059, 79 CPUC2d 628, 652.) Sustainable Conservation fails to do so. Nonetheless, from its “Statement of Activities” we see that \$1,077,696 is from grants. Even if 100% of its grant funds are restricted, a balance of \$992,124 remains. Again, absent other information, we are unable to conclude that Sustainable Conservation cannot afford without undue hardship to pay the \$30,394.50 cost of its participation here from a balance of \$992,124 (i.e., less than 3.1% of the balance).

3.3. Further Information

On April 14, 2008, Sustainable Conservation moved to augment the record with a Declaration, including further financial information. While we allow the material, it fails to cure the defect. The defect is that Sustainable Conservation’s Amended Claim (at pages 7-9) continues to use the wrong test to establish significant financial hardship.

Even if we consider the additional material in the context of undue hardship, however, it fails to establish significant financial hardship. Sustainable Conservation has the burden to establish its significant financial hardship. The showing must be understandable, unambiguous and clear. Sustainable

Conservation fails to make a convincing showing, as explained in Appendix 2. We do not conclude that Sustainable Conservation cannot establish significant financial hardship going forward, only that it has failed to do so here.

4. Conclusion

We need not evaluate other elements of Sustainable Conservation's Amended Claim since it fails to establish compliance with the fundamental statutory requirement of significant financial hardship in the absence of compensation. Nonetheless, while we deny its Claim, we note that Sustainable Conservation's perspective and participation have been quite useful to the Commission.

In this proceeding alone, D.07-07-027 discusses several specific matters addressed by Sustainable Conservation, and adopts several of Sustainable Conservation's recommendations (e.g., tariff expansion to other facilities; excess sales option; full market price). Sustainable Conservation's participation has been significant and valuable. We welcome and encourage Sustainable Conservation's continued participation.

Our decision here does not mean that Sustainable Conservation cannot become eligible for intervenor compensation in the future. We conclude only that Sustainable Conservation has not at this time carried its burden to establish eligibility. As we do with any customer, we invite Sustainable Conservation to consult with the Commission's Public Advisor should it decide to seek eligibility for intervenor compensation in the future.

5. Comments on Proposed Decision

In intervenor compensation matters, Rule 14.6(c)(6) of the Rules of Practice and Procedure provides that we may reduce or waive the otherwise applicable 30-day period during which parties may file comments and reply comments on a

proposed decision. We decline to reduce or waive the comment period, and allow the normal 30-day period here on the March 25, 2008 proposed decision of ALJ Mattson.

On March 25, 2008, the proposed decision of ALJ Mattson was filed and served for comment. On April 14, 2008, comments were filed by Sustainable Conservation. No reply comments were filed. Consistent with our rules, we consider comments that focus on factual, legal or technical errors and which, in citing such errors, make specific references to the record. We give no weight to comments which merely reargue positions already taken. (Rule 14.3 of the Commission's Rules of Practice and Procedure.)

In its April 14, 2008 comments, Sustainable Conservation asks for "the same limited period of time to provide any further *specific* information that the Commission has granted to other similarly situated parties." (Comments, p. 1, emphasis in original.) In support, Sustainable Conservation cites an April 3, 2008 Ruling in Application (A.) 07-11-011 wherein four groups⁵ were told they may amend their NOI within 15 days of the date of the ruling to perfect their showing on customer category and significant financial hardship.⁶ (April 3, 2008 Ruling, Ordering Paragraph 2.)

Sustainable Conservation had the same opportunity here. By ruling dated October 30, 2006, several comments were offered regarding Sustainable Conservation's customer status and financial hardship (see October 30, 2006

⁵ The four groups are Sierra Club, CALPIRG, Environment California Research & Policy Center, and California Church Impact.

⁶ The April 3, 2008 ruling in A.07-11-011 does not state specific questions or specific items for the four groups to address.

Ruling, pp. 5-9), and Sustainable Conservation was given not 15 days but an unlimited amount of time to perfect its showing (in either a subsequent pleading or request for compensation). Sustainable Conservation utilized this opportunity and filed a claim on September 24, 2007, an amended claim on February 21, 2008 and a motion on April 14, 2008. Sustainable Conservation has had more than 15 days, and has taken several opportunities, to perfect its claim.

Sustainable Conservation says it has tried diligently to establish eligibility, but that the Commission has provided little guidance. It asks for a reasonable time to provide any further specific information the Commission may request.

There is no specific information we request. The responsibility to establish eligibility is that of the intervenor. Sustainable Conservation has the same information available to it as all potential intervenors (e.g., access to the Public Utilities Code and Commission decisions). The Commission considers each NOI and claim on its own merits. We do so in the context of balancing sometimes competing interests and goals. For example, we must balance (a) encouraging “effective and efficient participation of all groups that have a stake in the public utility process” (§ 1801.3(b)) with (b) ensuring that ratepayers are not required to pay for an intervention until the intervenor meets all statutory requirements (e.g., customer status, significant financial hardship, substantial contribution, avoidance of unproductive and unnecessary participation). We do that here.

As we said recently, we say again here:

“We regret ever having to deny an intervenor compensation for legitimate work in our proceedings. We are mindful, however, that the objective of the intervenor compensation program is to promote and reward effective ratepayer advocacy, and to do so in a way that is efficient and fair to the ratepayers who support the program’s costs. We therefore must deny compensation to individuals or

groups that do not satisfy the program's requirements."
(D.07-06-023, p. 9.)

On May 20, 2008, the revised proposed decision of ALJ Mattson was filed and served for comment. Comments were taken on the revised proposed decision because it addressed new information allowed into the record via the April 14, 2008 Declaration. Pursuant to Rule 14.6(c)(6), the comment period was shortened to 3 days. No comments were filed.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and Anne E. Simon and Burton W. Mattson are the assigned ALJs in this proceeding.

Findings of Fact

1. Category 1 customers must meet the significant financial hardship requirement of the intervenor compensation program by presenting data pursuant to the undue hardship test.
2. Sustainable Conservation's significant financial hardship showing presents comparison test information, not undue hardship information.
3. The financial data cited by Sustainable Conservation in reference to customer status, even if used to evaluate undue hardship, plus the Declaration with additional financial information, fail to establish that Sustainable Conservation meets the undue hardship test (i.e., that Sustainable Conservation cannot afford, without undue hardship, to pay the costs of effective participation).

Conclusions of Law

1. The April 14, 2008 motion of Sustainable Conservation to augment record should be granted, but the request for a finding of significant financial hardship should be denied.

2. Sustainable Conservation has not fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, in that it fails to establish that it will suffer significant financial hardship if not compensated for its participation here.
3. Sustainable Conservation's Amended Claim should be denied.

O R D E R

IT IS ORDERED that:

1. The April 14, 2008 motion of Sustainable Conservation to augment record is granted, but the request for a finding of significant financial hardship is denied.
2. Sustainable Conservation's Amended Claim for \$30,394.50 in intervenor compensation for contributions to Decision 07-07-027 is denied.
3. Rulemaking 06-05-027 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX 1

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D0707027	
Proceeding(s):	R0605027	
Author:	ALJ Mattson	
Payer(s):		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Sustainable Conservation	2/21/08	\$30,394.50	\$0	No	Fails to establish significant financial hardship

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted

(END OF APPENDIX 1)

APPENDIX 2

**COMMENTS REGARDING
SUSTAINABLE CONSERVATION'S
ADDITIONAL SHOWING ON
SIGNIFICANT FINANCIAL HARDSHIP**

Each intervenor has the responsibility to establish eligibility for intervenor compensation. The April 14, 2008 Declaration (with greater detail on its financial position), along with other items discussed below, fail to establish Sustainable Conservation's eligibility. Several (but not necessarily all) examples follow.

Restricted Funds and Reasonable Discretion

Sustainable Conservation declares, for example, that most funds are restricted. It says that carryover restricted funds will appear on the books as assets available, but those funds must be directed to specific purposes.

(Declaration, p. 1, paragraph 3.)

The Statement of Activities, however, separates total funds into three components, with columns titled "unrestricted," "restricted for future use," and "permanently restricted." While we accept Sustainable Conservation's assertion that most funds are restricted, Sustainable Conservation fails to convincingly explain why its accounting of carryover restricted funds shows such funds as "unrestricted" rather than "restricted for future use" or "permanently restricted." Even if we accept that most of the funds in the column titled "unrestricted" are in fact restricted, Sustainable Conservation fails to clearly show how much of that "unrestricted" money is actually restricted.

In further explanation, Sustainable Conservation asserts that it "obtains most of its funding from government grants and private foundations, and further that most of the grants are restricted funds for dedicated projects, programs and activities." (Declaration, p. 1, paragraph 2.) Assuming all (not just most) grants

are restricted, grant funds listed on the Statement of Activities in the unrestricted column total \$650,632. This leaves available funds of up to \$1,644,972. The approximately \$30,000 of funds sought here is a small percentage (less than 2.0%) of these available funds.¹ The percentage is even smaller upon accepting Sustainable Conservation's assertion that not all grant funds are restricted.

Sustainable Conservation states that its policy is to establish a budget for each of its three programs annually, and each program must operate within the available funds.² The financial data, however, does not clearly show the current year restricted amounts. For example, the amounts awarded to each program (including prior year balances but net of amounts restricted for future use), plus funds allocated to administration and fundraising, for 2007 were:

Line No	Program or Item	Dollars	
		Program	Other/Total
1	Restoration on Private Land	\$642,112	
2	Sustainable Agriculture	555,549	
3	Sustainable Business	340,670	
4	Total Program		\$1,538,330
5	Administration and Fundraising		757,274
6	Total		\$2,295,604

¹ Source: Statement of Activities FYE 12/31/2007, Support and Revenues. The \$1,644,972 is the sum of entries for "contributions," "client services," "mitigation funds," "interest and dividends," "other," and "net release from restriction." Even if we remove the amount for "net release from restriction" assuming it is released from "restricted for future use" but remains "restricted for current use," the revised total is \$886,716. The request of about \$30,000 is a small percentage (less than 3.5%) of the total available.

² The three programs are: Restoration on Private Land, Sustainable Agriculture and Sustainable Business.

Sustainable Conservation fails to establish that its Board of Directors did not have reasonable discretion to allocate about \$30,000 of funds differently within the total allocation of over \$2 million. We do not consider whether or not Sustainable Conservation's budgets are reasonable or unreasonable. Rather, we consider the showing as it is but are unable to conclude that Sustainable Conservation would suffer undue hardship.

Sustainable Agriculture Program

Sustainable Conservation asserts that the work for which it seeks compensation here was funded via its Sustainable Agriculture Program. Further, Sustainable Conservation asserts that income accounted on the profit and loss statement for its Sustainable Agriculture Program in all but the "other" category is restricted for specific programs with specific timelines. (Declaration, p. 1, paragraph 4.) The "other" category totals only \$1,297 over the last two years, clearly not enough to fund the approximately \$30,000 sought here.

Nonetheless, the profit and loss statement for the Sustainable Agriculture Program includes the expenditures of about \$30,000 for which intervenor compensation is sought here (some in 2006 and the rest in 2007).³ The profit and loss statement shows expenditures of \$941,715 in 2006 and 2007 out of a total expense of \$1,121,292 in the largest six out of 24 expense categories.⁴ The

³ Sustainable Conservation notes that it initiated its intervention in October 2006; the costs for the intervention are not part of the organization's regular budget; and, according to Sustainable Conservation, one could argue that the intervention costs have contributed to the program's operating deficit for the past two years. (Declaration, p. 2, paragraph 5.)

⁴ These are expense categories of: salaries, other benefits, project support, contractual expenses, subgrants, indirect costs.

showing does not, however, adequately establish that Sustainable Conservation's Board of Directors failed to have reasonable discretion or ability to renegotiate or reallocate these funds to secure about \$30,000 for its intervention here. This discretion appears reasonably available, however. For example, the approximately \$30,000 sought here is in expense categories and apparently was funded from "restricted funds," since only \$1,297 is in the "other" (unrestricted) income category for 2006-2007.⁵

Moreover, the total Sustainable Agriculture Program two-year deficit (for 2006-2007) is \$15,432. Accepting Sustainable Conservation's assertion that the \$30,000 sought here caused that deficit, about half of the \$30,000 was funded by Sustainable Conservation and only about half caused a deficit. It is unclear that Sustainable Conservation could not secure the approximately \$15,000 needed to fund its intervention from other sources within its \$2 million total budget and thereby eliminate this Program deficit.

Similar to our statement above regarding budgets, we do not consider whether or not Sustainable Conservation's profit and loss statement is reasonable or unreasonable. Rather, we consider the showing as it is but are unable to conclude that Sustainable Conservation would suffer undue hardship.

Operating Reserve

⁵ Customer "does not include any state, federal or local government agency." (§ 1802(b)(2).) To the extent Sustainable Conservation is using government grants to fund approximately \$29,000 of its request here (\$30,000 less \$1,000 in the "other" category), those funds may or may not be reimbursable via the intervenor compensation program. Should Sustainable Conservation submit a future claim for intervenor compensation, Sustainable Conservation should consider addressing how this use of government money, if the case, relates, if at all, to its customer status and assertion of significant financial hardship.

Sustainable Conservation asserts that it has an annual operating budget in excess of \$2 million but only has 3 months operating reserve. (Declaration, p. 2, paragraph 6.) Sustainable Conservation does not identify the page or line in its financial data showing this operating reserve. If the operating reserve is 3 months (25%) of the annual (12 month) operating budget, its operating reserve may be about \$500,000 (25% of \$2 million). Alternatively, its operating reserve may be the \$109,569 Sustainable Conservation shows as actual 2007 end of year surplus. Either way, Sustainable Conservation does not establish that it could not fund about \$30,000 out of an operating reserve of something over \$100,000.

Sustainable Conservation asserts that best practice in the nonprofit sector calls for nonprofits to have 6 months operating reserve. At the same time, Sustainable Conservation has operated successfully with only 3 months reserve. While best practice may be 6 months, it is unclear that a reduction from 3 months to slightly less than 3 months creates a significant financial hardship.⁶ Moreover, even without reaching the “best practice” for operating reserves in the nonprofit sector, Sustainable Conservation reports that it earned the highest rating from Charity Navigator, an independent evaluator of financial strength and management of nonprofit organizations. (Amended Claim, p. 6.) Receipt of the highest rating from Charity Navigator is not consistent with a finding of significant financial hardship.

Financial Interest

⁶ That is, funding the approximately \$15,000 deficit in the Sustainable Agriculture Program out of an operating reserve of something over \$100,000 would reduce the operating reserve from about 3 months to something slightly less than 3 months.

Even if a group or organization offers proposals that the Commission ultimately adopts, the Commission does not burden ratepayers with the costs associated with that group's participation when the group has the type of financial interest in the outcome of the proceeding that is contemplated by the intervenor compensation statute. For example, we recently denied a claim for intervenor compensation by San Francisco Community Power (SFCP) for its participation in a consolidated proceeding that involved demand response programs. (Application (A.) 05-06-006, A.05-06-008, A.05-06-017.) We did so on the basis that SFCP financially benefited from the Commission's adoption of SFCP's proposal to implement the Small Customer Aggregation Pilot Program (SCAPP). In particular, SFCP entered into a contract with PG&E to implement the program that SFCP urged that we adopt. We found that SFCP was not entitled to intervenor compensation even though SFCP made a valuable contribution to our final decision, D.06-11-049. Specifically, we found as follows:

"SFCP is correct that the Commission adopted [in D.06-11-049] its SCAPP proposal and [SFCP's] stated support for load shifting programs. However, SFCP is not eligible for compensation for its work on either of these issues...SCAPP is now an existing program that SFCP implements under contract to PG&E. D.06-11-049 authorized PG&E to pay SFCP an additional \$650,000 for [SCAPP] program implementation. SFCP benefited materially and directly from this portion of D.06-11-049. SFCP here acted in its own self interest when it advocated for additional contract funding [for SCAPP]. The Commission has held that the Legislature intended the Commission proceedings to grant 'customer' status 'only to parties (or their representatives) whose self interests and participation in the proceeding arise directly from their interests as customers' (see D.96-09-040 and D.92-04-051). SFCP's advocacy [for SCAPP] put it in the position of being more of a contractor or consultant than a customer. Accordingly, we deny any compensation to SFCP for its

work in this proceeding that concerns the program for which it receives funding [through PG&E], the SCAPP.” (D.07-06-023, p. 8.)

Thus, although SFCP made a significant contribution to D.06-11-049, SFCP’s financial interest in the contract with PG&E based on the outcome of the proceeding rendered SFCP ineligible for intervenor compensation.

Similarly, the Commission routinely relies upon the participation of many groups or organization when making final decisions on matters. However, because these groups or organizations have potential or actual financial interests in our final decisions, these groups either have not requested intervenor funding or we have denied such requests. These groups include, but are not limited to: California Manufacturers & Technology Association, Alliance for Retail Energy Markets, California Biomass Energy Alliance, Independent Energy Producers Association, California Retailers Association, California Large Energy Consumers Association, Center for Energy Efficiency and Renewable Technologies, Southern California Generation Coalition, RCM International, California Wind Energy Association, Silicon Valley Manufacturers Group, Americans for Solar Power, California Forestry Association, California Farm Bureau Federation, and, as noted above, SFCP.

Based on the information before us, we are unable to determine whether Sustainable Conservation has the type of financial interest in the outcome of this proceeding that may render it ineligible for intervenor compensation to fund its participation. Accordingly, we make no conclusions here as to whether such financial interests exist or not. However, because we encourage Sustainable Conservation to continue to participate in our proceeding and have found such participation useful, Sustainable Conservation may want to further explain whether it or, if relevant, any member of its Board of Directors, has any financial

interest in a proceeding in which Sustainable Conservation is seeking intervenor compensation.

For example, if Sustainable Conservation seeks intervenor compensation in the future, it may be helpful if Sustainable Conservation provides more information regarding the financial interest, if any, of its Chairman of the Board of Directors (who is a donor⁷ to Sustainable Conservation), along with the financial interests, if any, of the venture capital firm of which he is a partner (Kleiner Perkins Caufield & Byers).⁸ Specifically, it appears that the outcome in this proceeding has the potential to benefit this venture capital firm, its clients, and possibly the Chairman.⁹ Similarly, it would be helpful if Sustainable Conservation provided more information about the connection, if any, between the outcome of this proceeding (including the effect on dairies of methane digesters as RPS projects) and the financial interests, if any, of a member of the Board Directors (also a donor) who owns a large dairy in California and who is a

⁷ Sustainable Conservation does not claim to have any members, and describes itself as “a formally organized donor and grants supported corporation...[with] approximately 515 individual donors...” (Amended Claim, p. 3.) In its use of the comparison test, Sustainable Conservation says it represents “individual donors.” (*Id.*, p. 8.) See 2006 Annual Report, pp. 6-7, for a list of donors.

⁸ Sustainable Conservation’s web page (February 1, 2008): www.suscon.org. Sustainable Conservation refers the Commission to its web page. (Amended Claim, p. 3, footnote 4.)

⁹ We note, for example, that Kleiner Perkins Caufield & Byers is reported to have announced it will invest \$500 million in green technology companies that are in early stages of growth and are maturing, and an additional \$700 million in the next three years in green-tech startup companies. According to the report, Kleiner Perkins says it has identified 35 subsectors of green technologies, including power generation. (San Francisco Chronicle, May 2, 2008, p. C-1.)

founding partner in the Hilmar Cheese Company (also a donor).¹⁰ We understand that Hilmar Cheese Company accepts milk from about 250 dairies and is the largest single-site cheese plant in the world.¹¹ While we draw no conclusions regarding the financial interests of any of the above-referenced persons and businesses in the outcome of our proceeding, it may be helpful if Sustainable Conservation further addressed this matter.

As mentioned above, we have found Sustainable Conservation's participation in this proceeding useful. We have no reason to doubt that its participation was, and continues to be, guided by a talented and dedicated Board of Directors. Many persons and groups appear before us wherein they may, directly or indirectly, have a financial interest in the matter. Our responsibility includes examining that interest to determine if it is one that permits ratepayer funding for the cost of the intervention.

Conclusion

We welcome Sustainable Conservation's future participation. We also welcome clarification at the appropriate time of matters related to undue hardship and financial interest, some (but not necessarily all) of which are discussed above. Sustainable Conservation, as does each intervenor, has the burden to establish its eligibility, and must do so by a showing that is as simple and direct as possible while being understandable, unambiguous, clear and persuasive.

(END OF APPENDIX 2)

¹⁰ 2006 Annual Report, p. 6.

¹¹ Sustainable Conservation's web page (February 1, 2008).