

Decision 10-09-048            September 23, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking Regarding Whether, or Subject to What  
Conditions, the Suspension of Direct Access May Be  
Lifted Consistent with Assembly Bill 1X and  
Decision 01-09-060.

Rulemaking 07-05-025  
(Filed May 24, 2007)

**ORDER DENYING REHEARING  
OF DECISION (D.)10-05-047**

**I. INTRODUCTION**

This decision disposes of the application for rehearing of Decision (D.) 10-05-047, filed by CALifornians for Renewable Energy (“CARE”). In D.10-05-047 the Commission awarded CARE intervenor compensation for its substantial contributions in D.08-11-056, and rejected compensation for CARE’s participation involving D.09-08-031. In its compensation request, CARE had requested \$40,637.50. The Commission reduced CARE’s request for compensation to \$625.88 due to CARE’s failure to substantiate its substantial contribution, i.e., CARE failed to identify text in either D.08-11-056 or D.09-08-031 in which it provided substantial contribution. (D.10-05-047 at p. 6.) This information was particularly critical because CARE sought intervenor compensation in the two decisions. In the one reference to a Decision, CARE failed to identify the relevant portion or text. In addition, CARE failed to explain and justify the work of each CARE participant performing tasks in the proceeding.<sup>1</sup>

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<sup>1</sup> At page 4 of D.10-05-046, the Commission reminds CARE that “CARE’s records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.” This same warning was made to CARE in two earlier decisions: D.09-09-023 and D.09-08-021. (See *Decision Granting Intervenor Compensation to Californians for Renewable Energy for Substantial Contributions to Decision 08-05-028* [D.09-09-023] (2009) \_\_\_ Cal.P.U.C.3d \_\_\_, at p. 19 (slip op.), *Decision Granting Intervenor Compensation to*

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“According to the timesheets, CARE’s work consisted of reviewing other parties’ documents and was, therefore, unproductive.” (D.10-05-047 at p. 6.) The Commission also lowered the hourly rates for CARE’s counsel, Mr. Martin Homec, who requested an hourly rate of \$520 for 2007 and \$535 for 2008 and 2009. “In our prior decisions, we have adopted for these years: \$170 for his work in the year 2007, adopted in D.09-08-021; \$175 for the year 2008, adopted in D.09-05-012 (application for rehearing denied in D.09-07-053); and \$185 for the year 2009, adopted in D.09-08-021.” (D.10-05-047 at p. 12.)

The intervenor compensation program, set forth in Public Utilities Code sections 1801-1812,<sup>2</sup> requires California jurisdictional utilities to pay the reasonable costs of an intervenor’s participation if that party makes a substantial contribution to the Commission’s proceedings. The Commission determined in D.10-05-047 that CARE’s participation in the post-workshop comments issued on June 16, 2008, alerted the Commission to U.S. Supreme Court’s decision in *Morgan Stanley Capital Group v. Public Utility Dist. No. 1 of Snohomish County* (2008) 171 L.Ed.2d 607. This Supreme Court decision addresses the validity of the contracts that are the subject of this proceeding. (D.10-04-047 at pp. 3 – 4.) Additionally, the Commission determined in the Decision that CARE helped to clarify the issue of Direct Access Residential Energy’s (“DARE’s”) status as a party. (D.10-05-047 at p. 8.) Finally, to a limited degree, CARE provided some analysis on other parties’ cost allocation proposals. (D.10-05-047 at p. 9.) CARE did not raise these issues in its request for intervenor compensation. The Commission identified these contributions on its own motion after finding that CARE’s request wanting. (D.10-05-047 at pp. 6 – 9.) However, the Commission denied CARE intervenor compensation for its work related to CARE’s application for rehearing of

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*Californians for Renewable Energy for Substantial Contribution to Decisions (D.) 06-07-029, D.07-06-022, D.07-12-052, AND D.08-11-008 [D.09-08-021]* (2009) \_\_\_ Cal.P.U.C.3d \_\_\_, at p. 19 (slip op.).

<sup>2</sup> All subsequent section references are to the Public Utilities Code, unless otherwise indicated.

D.08-11-056, which the Commission denied in D.09-08-031, *supra*. (See D.10-05-047 at p. 2.) For the reasons mentioned above, the Commission determined, on its own motion, that CARE made a substantial contribution to the proceeding in certain limited areas.

However, having found substantial contribution, the Commission is further required to inquire into the reasonableness of the requested compensation pursuant to sections 1804(a), 1804(d) and 1806. This review resulted in the Commission finding that CARE's requested number of hours exceeded those reasonably necessary for CARE's substantial contribution in the limited areas recognized by the Commission.

(D.10-05-047 at pp. 8 – 9, & 10.) The Commission also reduced the hourly rate requested for its attorney. (D.10-05-047 at p. 12, & Appendix, p. 14 [unnumbered].)

CARE timely filed an application for rehearing of D.10-05-047. In its rehearing application, CARE challenges the Commission's disallowance of its requested hours and alleges the Commission erred in determining the hourly rate of its counsel, Mr. Homec. CARE also claims a violation of 42 U.S.C. § 1981 (equal rights under the law) and 18 U.S.C. § 242 (deprivation of rights under color of law). Finally, CARE requests oral argument under Rule 16.3 of the Commission's Rules of Practice and Procedure.

We have carefully considered the arguments presented by CARE and are of the opinion that no grounds for rehearing have been demonstrated. Therefore, we deny CARE's application for rehearing.

## II. DISCUSSION

- A. The Commission did not err in rejecting intervenor compensation based on CARE's failure to demonstrate substantial contribution to D.08-11-056 and D.09-08-031 since the FERC litigation issue raised by CARE was not within the scope of the proceeding.**

In its rehearing application, CARE challenges the Commission denial of intervenor compensation for its rehearing application that challenged the lawfulness of D.08-11-056. CARE argued that the FERC litigation related to existing wholesale power

contracts was within the scope of the proceeding. In affirming the Administrative Law Judge's Ruling, the Commission held in D.08-11-056, *supra*, at p. 6 (slip op.) that this issue was not within the scope of the proceeding, and thus, there was no need to dismiss the entire proceeding pending the outcome of the federal litigation. Thus, CARE was not successful on this issue and failed to demonstrate substantial contribution to D.08-11-056. (See D.10-05-047 at pp. 6 - 7.)

CARE timely filed an application for rehearing of D.08-11-056, arguing Commission had erred in making this determination. In D.09-08-031, the Commission denied the rehearing application, and thus, CARE failed to demonstrate substantial contribution to D.09-08-031. (D.10-05-047, p. 8.) CARE did not seek judicial review of D.09-08-031.

Although CARE was unsuccessful, CARE argues that raising the issue nevertheless constitutes substantial contribution to this proceeding. (App. for Rehg. at pp. 2 - 3.) CARE cites the following quotation in *Southern Cal. Edison Co. v. Public Utilities Com.* ("*SCE v. PUC*") (2004) 117 Cal.App.4th 1039, 1052, in support of its position: "[O]nce a customer makes ... a contribution to a [Commission] proceeding, that customer may obtain compensation for the fees and costs of obtaining judicial review, regardless whether that judicial review work made a substantial contribution to the [Commission]." In other words, CARE argues that whether the issue is relevant or not, or applicable to the proceeding or not, the fact that the issue was raised at all provides a substantial contribution to D.10-05-047. (App. for Rehg. at p. 2.) The test for intervenor compensation is whether the intervenor has made "a substantial contribution to the Commission's decision or order" "in the judgment of the commission." (Pub. Util. Code §§1802, subd. (i) & 1803.) Consequently, CARE's position that merely raising the issue constitutes substantial contribution lacks merit.

First, whether an intervenor's participation has resulted in a substantial contribution requires a case-by-case analysis, and is within the Commission's discretion. (*The Utility Reform Network v. Public Utilities Com.* ("*TURN v. PUC*") (2008) 166 Cal.App.4th 522, 535; see also, Pub. Util. Code, §§1801 et seq.) Second, "the critical

factor is not whether the intervenor's position is for or against the [Commission's] position; it is whether the intervenor has assisted the [Commission] in carrying out its statutory mandate to regulate public utilities in the public interest." (*TURN v. PUC, supra*, at p. 535.) In the instant case, the Commission in D.10-05-047 determined that it had not, and thus, concluded that on this federal litigation issue CARE had not made a substantial contribution. Also, CARE does not explain how repeatedly raising the issue unsuccessfully has benefited the Commission in regulating utilities in the public interest and contributed to D.08-11-056 or D.09-08-031. Consequently, CARE's reliance on this issue and the reasoning in *SCE v. PUC, supra*, is not persuasive and fails to establish substantial contribution here. Accordingly, the Commission correctly denied compensation on this issue.

Further, CARE's reliance on *SCE v. PUC* is misplaced because the court's decision states: "once a customer makes...a contribution..." In D.10-05-047, the Commission determined that there was no contribution with the meaning of the statutory provisions.<sup>3</sup> *SCE v. PUC* does not support the flawed argument that merely raising an issue is sufficient to qualify as "substantial contribution."

Therefore, CARE's contention that it provided substantial contribution to D.08-11-056 and D.09-08-031 on the FERC litigation issue lacks merit.<sup>4</sup> Accordingly, the Commission correctly denied compensation on this issue.

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<sup>3</sup> "CARE's request [for intervenor compensation] does not demonstrate that CARE has met the statutory standards for compensation. Independent of CARE's request, we undertook a task of finding out if CARE contributed to D.08-11-056 in areas others (sic) than those mentioned in the request." (D.10-05-045 at p. 8.)

<sup>4</sup> "We find that CARE's participation on these [FERC] issues did not contribute to D.08-11-056." (D.10-05-047 at p. 7.) "We find that CARE did not contribute to D.09-08-031." (D.10-05-047 at p. 8.)

**B. CARE’s contention that it was denied compensation because it sought judicial review of D.08-11-056 is without merit.**

CARE alleges that it made a substantial contribution to D.08-11-056 but does not explain or identify this contribution or the text in the decision to which it is referring. Having asserted some unidentified substantial contribution, CARE cites *SCE v. PUC, supra*, for its claim that it should receive compensation for the fees and costs of obtaining judicial review regardless of whether the judicial review made a substantial contribution. (App. for Rehg. at pp. 2 – 3.) Since the original contribution is not identified, the Commission cannot provide intervenor compensation for its judicial review. This unsupported claim must be rejected for CARE’s failure to set forth specific grounds for a finding that a Commission order is unlawful. (Pub. Util. Code, §1732.) Furthermore, CARE does not identify what, if any, judicial review of D.08-11-056 it obtained. The Commission has no record of a judicial review by CARE of D.08-11-056.

**C. The Commission’s disallowance of hours spent by Mr. Martin Homec, Mr. Michael Boyd, and Mr. Lynne Brown was reasonable and proper.**

The Commission reduced the total number of compensable hours for CARE because “the vast majority of CARE’s hours was spent on issues outside the scope of this proceeding...” (D.10-05-047 at p. 11.) Further, because CARE did not allocate its time by issues in its request for compensation as required,<sup>5</sup> the Commission was forced to quantify CARE’s specific contribution based on the amount of the text in CARE’s documents which produced some contribution as well as on the degree of importance the relevant issues raised by CARE had on this proceeding. (D.10-05-047 at p. 11.)

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<sup>5</sup> “When the customer files its Request for Compensation, the statute says it must provide, at a minimum, a detailed description of the services it provided and the related expenditures, as well as a description of the customer’s substantial contribution.” *Order Instituting Rulemaking on the Commission’s Intervenor Compensation Program; Order Instituting Investigation on the Commission’s Intervenor Compensation Program* [D.98-04-059] (1998) 79 Cal.P.U.C.2d 628, 656, 1998 Cal. PUC LEXIS 429, at p. \*79).

Specifically, the Commission awarded 15% of CARE's hours on the marginal issue of CARE's opposition to DARE's Notice of Intent to request intervenor compensation.<sup>6</sup> (D.10-05-047 at p. 11.) The Commission determined that 7% of CARE's July 29, 2008 comments contributed to D.08-11-056.<sup>7</sup> (D.10-05-047 at p. 11.) Finally, the Commission determined that two pages of CARE's response to cost allocation comments contributed to D.08-11-056.<sup>8</sup> (D.10-05-047 at p. 11.) Exercising its discretion consistent with the law, the Commission appropriately calculated the number of hours for compensation.

In this proceeding, CARE has continued its behavior of not providing clarity with respect to its hours and has failed to identify the CARE participant who performed them in spite of these past Commission admonishments.<sup>9</sup> As the Commission has noted in its previous decisions concerning CARE's failure to identify and substantiate duplicative hours requested by CARE participants, the Commission is required to compensate for *reasonable* advocate's fees, *reasonable* expert witness fees, and other *reasonable* costs of preparation and participation. (Pub. Util. Code, §§1802, subd. (a) & 1803.)

**D. The Commission's reduction of the requested hourly rate for CARE's attorney was reasonable and proper.**

In its request for intervenor compensation, CARE requested an hourly rate between \$520 and \$535 for work performed by its attorney. However, the Commission reduced the amount requested, and awarded an hourly rate between \$170 and \$175

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<sup>6</sup> 0.6 hours for Mr. Boyd, 0.45 hours for Mr. Brown, and 0.15 hours for Mr. Homec. (D.10-05-047 at p. 11.)

<sup>7</sup> 0.14 hours for Mr. Boyd, 0.07 hours for Mr. Brown, and 0.21 hours for Mr. Homec. (D.10-05-047 at p. 11.)

<sup>8</sup> 0.33 hours for Mr. Boyd, 0.44 hours for Mr. Brown, and 0.99 hours for Mr. Homec. (D.10-05-047 at p. 11.)

<sup>9</sup> See Order Denying Rehearing of Decision (D.) 09-08-021, [D.10-07-017] (2010) \_\_\_Cal.P.U.C.3d\_\_\_, and Order Denying Rehearing of Decision (D.) 09-09-023, [D.10-06-050] (2010) \_\_\_Cal.P.U.C.3d\_\_\_.

depending on the year the work was performed.<sup>10</sup> (D.10-05-047 at p. 10.) CARE argues that this reduction in Mr. Homec's hourly rate is wrong. (App. for Rehg, at pp. 10 - 11.) CARE contends the hourly rate awarded its attorney is "[i]n keeping with the Commission's tradition of denying compensation to CARE's attorneys so that people of color will not be permitted to participate as parties in Commission proceedings." (App. for Rehg, at p. 10.)

The Commission is required to take into consideration the market rates paid to persons of comparable training and experience who offer similar services in determining a proper amount of compensation. (Pub. Util. Code, §1806.) In determining the hourly rate for CARE's attorney, Mr. Homec, the Commission applied the same rationale for the hourly rates approved for Mr. Homec in D.09-05-012.<sup>11</sup> In that decision, the Commission considered his past education and experience with the Commission, and stated the following:

CARE requests hourly rates of \$200 in 2008 for Homec's work as an expert witness and \$540 in 2008 for Homec's work as an attorney. Homec has an undergraduate degree in Physics from the University of California (1970) and a law degree from the University of San Francisco (1975). He was employed as a regulatory analyst at the California Public Utilities Commission from June 1983 to October 2007. He also worked as a volunteer lawyer for the Bar Association from 1987 to 2000, representing appellants before the Immigration Appeals Board and plaintiffs in employment law at the U.S. District Court. The Commission has not previously set hourly rates for Homec [but]...[w]e...decline to grant CARE's requested hourly rate of \$540 in 2008 for Homec's work as an attorney. The requested rate exceeds

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<sup>10</sup> Mr. Homec would have been awarded \$185 for work performed in 2009 but for the fact that Mr. Homec failed to identify compensable work for 2009. (D.10-05-047, at p. 10, & Appendix, p. 14, [unnumbered].)

<sup>11</sup> *Decision Granting Intervenor Compensation to Californians for Renewable Energy for Substantial Contribution to Decision 08-11-032* [D.09-05-012] (2009) \_\_\_ Cal.P.U.C.3d \_\_\_, at pp. 14 – 19 (slip op.), as affirmed in *Order Denying Rehearing of Decision (D.) 09-05-012* [D.09-07-053] (2009) \_\_\_ Cal.P.U.C.3d \_\_\_.)

what the Commission has deemed reasonable for the most experienced attorneys practicing before the Commission.<sup>12</sup> Homec has no experience in practicing law before the Commission. His experience as an attorney is limited to part-time volunteer work in the fields of immigration and employment law, which ended in 2000. In light of Homec's lack of recent and relevant legal experience, we will set his 2008 hourly rate as an attorney at \$175, which [is] mid-range for attorneys with 0 - 2 years of experience.<sup>13</sup>

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As required by § 1806, the hourly rate for Homec cannot exceed the market rates paid by the Commission or public utilities to persons of comparable training and experience who offer similar services. Homec's training and experience consists of 24 years at the Commission, most recently as a PURA III. Thus, the comparable market rate paid by the Commission is the salary and benefits paid to PURA IIIs, unless CARE can show that public utilities pay a higher rate. CARE made no effort to show that utilities pay a higher rate.

(D.95-05-012, *supra*, at pp. 16 – 18 (slip op.))

CARE has not offered new evidence in this proceeding or in previous proceedings that would persuade the Commission to consider different hourly rates. Consequently, CARE made no showing that the Commission's determination of an hourly rate for Mr. Homec of \$170 for 2007 and \$175 for 2008 is not appropriate for an attorney of Mr. Homec's experience and education, (D.10-05-047, p. 12 & Appendix. p. 14 [unnumbered]). Therefore, the Commission correctly rejected CARE's request for an hourly rate between \$520 and \$535.

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<sup>12</sup> In D.08-04-010, we set an hourly rate of \$535 for the most experienced attorneys practicing before the Commission. (*Final Opinion Setting Hourly Intervenor Rates for 2008 and Addressing Related Matters* [D.08-04-010] (2008) \_\_\_ Cal.P.U.C. \_\_\_, at p. 5 (slip op.))

<sup>13</sup> *Id.* at p. 5 (slip op.).

**E. CARE's claims of discrimination have no merit.**

CARE contends that its mere allegations of discrimination will support a finding that the Commission “deprive[s] people of color ... representation in Commission proceedings.” (App. for Rehg. at pp. 10 - 11.) Further, CARE contends that these unsupported allegations demonstrate a practice of wrongfully denying compensation to CARE's attorneys in violation of equal rights under law pursuant to 42 U.S.C. §1981 et seq. as well as a deprivation of rights under color of law pursuant to 42 U.S.C. §242. (App. for Rehg. at pp. 17 - 18.) Finally, CARE alleges that denial of its full claim for intervenor compensation is retaliatory discrimination. Without any factual basis to support CARE's allegations of discrimination, the Commission can not make a finding of discrimination or retaliation. Thus, CARE's arguments have no merit.

**1. CARE's claim of criminal discrimination under 18 U.S.C. §242 for conspiracy against civil rights lacks merit.**

CARE contends that its unsupported allegations of violations of CARE's civil rights shift the burden of proof onto the Commission “to demonstrate its compensation award and associated practices is neither based on racial nor age discrimination.”<sup>14</sup> (App. for Rehg. at p. 11.) Further, CARE claims that the Commission has wrongfully denied compensation to CARE's attorneys is a denial of rights under color of law pursuant to 18 U.S.C. §242. (App. for Rehg. at pp. 17 - 19.)

18 U.S.C. § 242 is a criminal statute enforceable by the United States Attorney. The statute requires proof of a specific intent to deprive an individual of a right secured by federal or state law. (See *In re Joshua H.* (1993) 13 Cal.App.4th 1734, 1742.)

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<sup>14</sup> CARE refers to a Superior Court action (App. for Rehg. at p. 11, fn. 10) for age discrimination brought against the Commission without any reference to its bearing on this proceeding. No other facts are presented in CARE's rehearing application to support any claim for age discrimination, including those involving Mr. Homec, Mr. Brown, Mr. Boyd, or any other CARE participant. Consequently, this unsupported claim must be rejected for CARE's failure to set forth specific grounds for a finding that a Commission order is unlawful. (Pub. Util. Code, §1732.)

Because of the criminal nature of a section 242 claim, courts have stated that violation of this statute does not give rise to civil liability. (See *Figueroa v. Clark* (E.D. Pa. 1992) 810 F.Supp. 613, 615.) Intervenor compensation is a civil matter, not a criminal one. Thus, as a private party, CARE lacks standing to assert criminal charges against the Commission. Therefore, CARE cannot assert a claim under 18 U.S.C. §242 before the Commission.

**2. CARE’s claim of discrimination under 42 U.S.C. § 1981 is unfounded.**

CARE claims that the hourly rate for its attorney in past proceedings resulted in CARE having to repeatedly recruit new attorneys. (App. for Rehg. at p. 17.) Unfortunately, no further facts or details are provided by CARE. Because of the serious nature of discrimination claims, they are subject to a burden-shifting analysis so long as the claimant first makes a prima facie case of discrimination. Where a prima facie case of discrimination is alleged, the burden shifts to the accused party to demonstrate there was no discrimination. (*McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 802-803.) However, the burden will not shift until the claimant successfully makes a prima facie claim of discrimination. (See, e.g., *Lindsey v. SLT Los Angeles, LLC* (9th Cir. 2005) 447 F.3d 1138, 1144.)

Here, CARE has failed to allege the Commission had “an intent to discriminate on the basis of race” and that “the discrimination concerned one or more of the activities enumerated in the statute” (i.e., make and enforce contracts, sue and be sued, give evidence, etc.). (*Mian v. Donaldson, Lufkin & Jenrette Securities Corp.* (2d Cir. 1993) 7 F.3d 1085, 1087.) Mr. Homec, CARE’s counsel, does not assert that reduction of his requested hourly rate was based on race. Similarly, Mr. Brown has not demonstrated that the Commission’s determination of an appropriate hourly rate for Mr. Homec was based on any racial animus towards Mr. Brown.

CARE alleges that the Commission’s failure to provide the full compensation for its attorney and expert witnesses “is part of a pattern and practice of the Commission to wrongfully deny compensation to CARE’s attorneys” and, further,

“serves to preclude participation by people of color. (App. for Rehg. at pp. 17 – 18.) CARE fails to demonstrate when or where it has ever been denied the opportunity to participate in Commission proceedings.<sup>15</sup> “It is well established that mere conclusory allegations are insufficient to establish a cause of action for a violation of civil rights.” (*Mazurek v. Wolcott Board of Educ.* (D.Conn. 1993) 815 F.Supp. 71, 77; see also: *Koch v. Yunch* (2<sup>nd</sup> Cir. 1976) 533 F.2d 80, 85.)

**3. CARE’s claim that the Commission used compensation criteria “never before used for any other person claiming compensation” lacks merit.**

CARE contends that the hourly compensation criteria used in D.10-05-046 contained reasoning “never before used for any other person claiming compensation in a Commission proceeding” and did so “to deprive people of color” representation in Commission proceedings. (App. for Rehg, at p. 10.) CARE further contends that the Commission has a “tradition” of denying compensation to CARE’s attorneys “so that people of color will not be permitted to participate as parties in Commission proceedings.” (App. for Rehg, at p. 10.) As previously mentioned, CARE fails to demonstrate when or where it has ever been denied the opportunity to participate in Commission proceedings.

The criteria used to determine hourly compensation rates in D.10-05-046 are identical to those in all the compensation proceedings mentioned by CARE, particularly, D.08-04-010. Furthermore, they are consistent with the statutory requirements in sections 1801, et seq. The methodologies used by the Commission to calculate intervenor compensation are entirely consistent and completely refute CARE’s allegation that it “has reason to believe” that the Commission’s alleged “denial of compensation to be retaliation” for CARE’s representation of low income people of color. (App. for Rehg, at p. 8.) As previously noted, CARE’s counsel, Mr. Homec,

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<sup>15</sup> Individual ratepayers and interested parties may participate in Commission proceedings without representation by counsel. (California Code of Regs., tit. 20, §1.4.)

received a reasonable and appropriate compensation award pursuant to statute and Commission rules as fully announced and explained in D.09-05-012, *supra*, at pp. 14 – 17 (slip op.). CARE fails to describe how these compensation awards are the product of discrimination and retaliation.

**F. CARE’s request for oral argument under Rule 16.3 of the Commission Rules of Practice and Procedure should be denied.**

In its rehearing application, CARE requested oral argument pursuant to Rule 16.3 of the Commission Rules of Practice and Procedure. (App. for Rehg. at p. 19.) It argues oral argument is warranted because the application for rehearing raises the issue of “whether the Commission knowingly deprives people of color participation in Commission proceedings,” and whether the Commission “always discriminates against attorneys representing CARE, an organization specifically representing poor people of color.” (App. for Rehg. at p. 19.) The Commission has complete discretion to determine the appropriateness of oral argument in any particular matter. (See Rule 16.3(a) of the Commission’s Rules of Practice and Procedure, Cal. Code of Regs., tit. 20, §16.3, subd. (a).) Rule 16.3 states:

- (a) If the applicant for rehearing seeks oral argument, it should request it in the application for rehearing. The request for oral argument should explain how oral argument will materially assist the Commission in resolving the application, and demonstrate that the application raises issues of major significance for the Commission because the challenged order or decision: (1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation; (2) changes or refines existing Commission precedent; (3) presents legal issues of exceptional controversy, complexity, or public importance; and/or (4) raises questions of first impression that are likely to have significant precedential impact.

(Rule 16.3 of the Commission’s Rules of Practice and Procedure, Code of Regs., tit. 20, §16.3.)

CARE, however, did not meet the requirements listed above. CARE's request is merely a statement of issues and a claim that D.09-08-021 demonstrates racial discrimination. CARE gives no explanation as to how oral argument will materially assist the Commission in resolving its rehearing application. Thus, CARE has failed to meet the basic requirements of Rule 16.3. (See generally, Code of Regs., tit. 20, §16.3, subd. (a)(1) – (a)(4).) Accordingly, CARE's request for oral argument should be denied.

### **III. CONCLUSION**

CARE's allegations of racial discrimination and retaliation lack any factual support. Rather, the Commission's intervenor compensation awards in this proceeding are consistent with prior Commission decisions, Commission rules, and relevant statutory provisions for intervenor compensation. CARE has failed to provide sufficient grounds for granting rehearing of D.10-05-047. Therefore, the application for rehearing is denied.

**THEREFORE, IT IS ORDERED** that:

1. Rehearing of D.10-05-047 is hereby denied.
2. The order is effective today.

Dated September 23, 2010, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners

Commissioner Bohn, being necessarily absent, did not participate.