

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.

Rulemaking 06-03-004
(Filed March 2, 2006)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
NOTICES OF INTENT TO CLAIM COMPENSATION**

1. Summary

This ruling responds to the notices of intent to claim compensation (NOIs) that were separately filed in this docket by Californians for Renewable Energy (CARE), Consumer Federation of California (CFC), Green Power Institute (GPI), Greenlining Institute (Greenlining), Michael Kyes, Public Solar Power Coalition (Coalition), Strategic Energy Innovations (SEI), The Utility Reform Network (TURN), and Vote Solar Initiative (Vote Solar). Southern California Edison Company (SCE) responded to these NOI requests, urging the Commission to critically assess each intervenor's eligibility. This ruling addresses the requirements of the Pub. Util. Code, Article 5, § 1804. All statutory references are to the Public Utilities Code. After consultation with the Assigned Commissioner, I find that CARE, CFC, Green Power Institute, Greenlining, TURN, and Vote Solar have met all relevant requirements including significant financial hardship and are eligible for compensation in this proceeding. Michael Kyes, the Public Solar Power Coalition, and SEI do not meet the relevant requirements and are not eligible for compensation.

As SCE notes, there is some overlap in the areas of focus between intervenors based on their NOIs. All parties who intend to seek intervenor compensation should ensure that each party's efforts complement or supplement but do not duplicate the efforts of other parties with similar interests. Parties requesting compensation should discuss amongst themselves and the Commission staff the issues each will address to promote efficiency in their showings. Merely appearing, stating a position, and cross-examining will not assure compensation; rather, intervenors must demonstrate that their participation resulted in a substantial contribution to the proceeding by the unique presentation of facts or arguments that were relied upon by the Administrative Law Judge (ALJ) or Commission in resolving this proceeding.

2. Background

Under § 1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference (PHC) is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." The PHC in this proceeding was held on March 23, 2006. All NOIs were timely filed.

Section 1804(a)(2) sets forth those items that must be addressed in an NOI. Pursuant to Decision (D.) 98-04-059, this ruling must determine whether the intervenor is a customer, as defined in § 1802(b) and identify whether the intervenor is a participant representing consumers, or a representative authorized by a customer, or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers. If the customer category identified is "a representative authorized by a customer," the NOI should identify "the residential customer or customers that authorized him to represent that customer." That identification is

needed because this category of customer “connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers’ views in a proceeding.” (D.98-04-059, pp. 28-30.) Participation in Commission proceedings by parties representing the full range of affected interests is important. Such participation assists the Commission in ensuring that the record is fully developed and that each customer group receives adequate representation.

Once the applicable definition of customer is identified, the correct standard of “significant financial hardship” can be applied. Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for award of compensation.

Section 1802(g) defines “significant financial hardship” as follows. “‘Significant financial hardship’ means either that the customer cannot without undue hardship afford 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.”

3. Californians for Renewable Energy

CARE is an organization authorized by its bylaws to represent the interests of residential customers.¹ CARE's goal is increasing self generated solar energy in low-income neighborhoods with the goal of cleaning the air of toxic emissions in low-income areas and contributing to greenhouse gas reductions. CARE's bylaws specifically allow it to supply legal assistance to residential customers with regard to new energy projects in California and "to engage on a nonprofit basis in research and information dissemination with respect to legal rights in a healthy environment by giving legal advice, appearing before administrative bodies, and enforcing environmental laws through court actions." CARE meets the third definition of customer, as defined in § 1802(b)(1)(C).

The economic interests of CARE's individual members are small in comparison to the costs of effective participation in Commission proceedings. In addition, the cost of CARE's participation in Commission proceedings substantially outweighs the benefit to an individual customer it represents. CARE's members are small residential customers and whose individual interests in this proceeding are small relative to the costs of participation.

A rebuttable presumption of eligibility exists for CARE. A finding of significant financial hardship was determined in an ALJ Ruling issued on November 22, 2005 in Rulemaking (R.) 05-06-040. This proceeding commenced within one year of this finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption created in R.05-06-040 is applicable. A finding of significant financial hardship in no way ensures compensation (§ 1804(b)(2)).

¹ CARE provided a copy of its bylaws along with its NOI. CARE confirms that 100% of its members are residential ratepayers.

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. CARE plans to fully participate in all aspects of the proceeding and expects to retain the services of experts to review and assess the impacts of various solar incentive programs. CARE plans to focus on the development of solar incentives for low-income Californians and an increase in market-based incentives.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. CARE estimated a total projected budget of \$342,500 for this case, based on proposed hourly rates which will be addressed in its Request for Compensation. This estimate includes \$240,000 for attorney fees and regulatory/economic experts. This estimate is quite large and I cannot tell whether it is satisfactory because CARE fails to state whether it will coordinate with other parties who have similar interests, such as Greenlining. Like any intervenor, CARE should avoid duplication with other parties and it must fully support its ultimate request for compensation, including substantiating that it has made a substantial contribution in this proceeding.

4. Consumer Federation of California

The CFC is a non-profit federation of several organizations, as well as individual members, including consumer groups, senior citizen groups, labor organizations, and other organizations of California consumers. CFC states that all of its members are residential customers of California investor-owned utilities. CFC provided a copy of its bylaws, which state the organization "shall promote the interests of urban and rural consumers" and "represent consumers before public and private agencies at all levels." The bylaws authorize its Executive Director to represent the interests of members in legislative and

regulatory proceedings.² CFC meets the third definition of customer, as defined in § 1802(b)(1)(C).

The economic interests of CFC's individual members are small in comparison to the costs of effective participation in Commission proceedings. In addition, the cost of CFC's participation in Commission proceedings substantially outweighs the benefit to an individual customer it represents. CFC's members are urban and rural customers whose individual interests in this proceeding are small relative to the costs of participation. Therefore, I find that CFC, as an organization, has demonstrated significant financial hardship according to § 1802(g). A finding of significant financial hardship in no way ensures compensation. (§ 1804(b)(2).)

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. CFC plans to participate in workshops, settlement discussions, and hearings. CFC plans to focus on the cost-effectiveness of proposals for expenditure of CSI funds and the equitable allocation of program costs.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. CFC estimated a total projected budget of \$67,300 for this case, based on proposed hourly rates which will be addressed in its Request for Compensation.

² CFC filed its bylaws along with a motion, dated April 20, 2006, to file the document under seal to maintain privacy. CFC withdrew its request for confidential treatment of the bylaws in a telephone conversation with the ALJ on May 3, 2006.

5. Green Power Institute

GPI is non-profit, public purpose environmental research organization founded in 1987 which qualifies as a 501(c)(3) organization authorized by its bylaws or articles of incorporation to represent the interests of residential customers.³ GPI expects that its participation will not duplicate the interests of other consumer advocates in this proceeding because GPI represents customers who have a concern for environmental quality in California, and these interests are distinct from the interests represented by other consumer advocates. GPI meets the third definition of customer, as defined in § 1802(b)(1)(C).

A rebuttable presumption of eligibility exists for GPI. A finding of significant financial hardship was determined in an ALJ ruling issued on March 6, 2006 in Investigation (I.) 05-09-005. This proceeding commenced within one year of this finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption created in I.05-09-005 is applicable. A finding of significant financial hardship in no way ensures compensation. (§ 1804(b)(2).)

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. GPI plans to participate in hearings and workshops, prepare testimony, and submit motions and briefs as appropriate. GPI expects to concentrate in the areas of treatment of DG output for purposes of the Renewable Portfolio Standard, CSI program rules and policies, and cost-benefit analysis. GPI

³ GPI is a program of the Pacific Institute for Studies in Development, Environment and Security, located in Oakland and Berkeley, California. GPI attached the bylaws of the Pacific Institute to its NOI. GPI states that the Pacific Institute has more than 90 members who are California residential customers of the regulated gas and electric utility companies.

states it will consult regularly with other participating environmental and consumers organizations to avoid duplication.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. GPI estimated a total projected budget of \$40,800, based on proposed hourly rates which will be addressed in its Request for Compensation.

6. Greenlining Institute

Greenlining Institute is a 501(c)(3) organization authorized by its bylaws to represent, among others, low-income communities and residential ratepayers before regulatory agencies and courts.⁴ The interests that Greenlining represents, specifically low-income, minority, inner city, and other vulnerable communities, are frequently underrepresented in Commission proceedings. Greenlining meets the third definition of customer, as defined in § 1802(b)(1)(C).

The economic interests of Greenlining's individual members are small in comparison to the costs of effective participation in Commission proceedings. In addition, the cost of Greenlining's participation in Commission proceedings substantially outweighs the benefits to an individual customer it represents. Greenlining's members are residential customers and small businesses whose individual interests in this proceeding are small relative to the costs of participation.

A rebuttable presumption of eligibility exists for Greenlining. A finding of significant financial hardship was determined in an ALJ ruling issued on

⁴ Greenlining provided the relevant portions of its articles of incorporation in its NOI in A.98-12-005. Greenlining estimates that about 75% of its members are residential ratepayers, with 25% being small business customers.

March 7, 2006 in Application (A.) 05-12-002. This proceeding commenced within one year of this finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption created in A.04-12-014 is applicable. A finding of significant financial hardship in no way ensures compensation. (§ 1804(b)(2).)

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. Greenlining plans to focus its participation on evaluating and suggesting improvements to the California Solar Initiative (CSI) as it affects low-income consumers and minority small businesses, advocating action to make the CSI more accessible to low-income families and housing developers, and seeking a means to offer financing options to the poor.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. Greenlining estimated a total projected budget of \$128,000 for this case, based on proposed hourly rates which will be addressed in its Request for Compensation.

7. Michael Kyes

Michael Kyes is a customer of Pacific Gas and Electric Company and has a solar photovoltaic system in his home. He is served by a net-metering tariff and claims he has a common self-interest with all residential customers on the net-metering tariff. Kyes also sells photovoltaic (PV) systems in the residential market and maintains he can provide insights into the problems and issues raised by residential customers of the utilities with regard to PV systems. SCE objects to Kyes' NOI because he has a financial interest as a seller of PV systems.

Kyes plans to focus his involvement on the areas of cost-benefit analysis, the residential retrofit portion of the CSI program, and the development of performance-based incentives. He estimates a budget of \$26,020 for his

involvement in the proceeding. Kyes opts to defer any showing of significant financial hardship until filing a request for an award of compensation.

I find that Kyes is not eligible for intervenor compensation as a customer because he has a financial interest in the outcome of the proceeding. The Commission has repeatedly found that “compensation [may] be proffered only to customers whose participation arises directly from their interests as customers,” and not for a representative of a business seeking to improve its business prospects. (D.98-04-059, *mimeo.*, at p. 30, fn. 14; *see also*, D.88-12-034; D.92-04-051; D.96-09-040; D.00-04-026.) Kyes appears to have a direct economic interest in the outcome of the incentives for solar installations at issue in this proceeding because he sells such systems to the residential market.

8. Public Solar Power Coalition

The Coalition filed its NOI on February 23, 2006 in the R.04-03-017, which is the predecessor docket to the above-captioned rulemaking.⁵ In its NOI, the Coalition explained that it made its first appearance on January 11, 2006 and asks that its NOI still be considered although it was filed late. I will consider the Coalition’s NOI as timely because at the time it was filed, the Coalition was not aware that the Commission would close the docket and open a new rulemaking. The Coalition, if it had known of the new rulemaking about to open, could simply have waited and filed its NOI at a later date.

The Coalition states it is a non-profit environmental consumer advocacy organization dedicated to solar conversion in an equitable and sustainable manner. It claims that its bylaws specifically authorize representation of

⁵ On March 2, 2006, the Commission closed R.04-03-017 and opened R.06-03-004 to carry on the work of the prior rulemaking.

residential and low-income customers. However, the Coalition has not provided a copy of its bylaws or articles of incorporation with its NOI to support this claim and has not provided information on the percentage of its members who are residential customers. Therefore, the Coalition has not met the requirements to qualify for compensation as an organization, as described in §1802(b)(1)(C).

The Coalition claims the cost of its participation in Commission proceedings substantially outweighs the benefit to the individual members it represents, who are residential and low income ratepayers. Again, because the Coalition has not provided a copy of its bylaws or articles of incorporation, it is not possible to evaluate the Coalition's claims that the economic interest of the individual members of the group is small in comparison to the costs of participation. Therefore, the Coalition has not met the criteria for showing significant financial hardship.

Section 1804(a)(2)(A)(i) requires an NOI to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. The Coalition states that it intends to participate in all aspects of this proceeding and has filed one and a half pages of comments in R.04-03-017 stating its position that investor-owned utilities should not be allowed to own, control, or finance solar energy systems. It intends to file testimony, conduct discovery, participate in workshops and hearings, and file relevant pleadings.

The Coalition estimates a total projected budget of \$444,000 for this case, based on proposed hourly rates it intends to justify in its Request for Compensation. This estimate includes \$360,000 for 1000 hours of work by its Executive Director and \$66,000 for expert witnesses and other consultants.

Southern California Edison Company (SCE) responded to the Coalition's NOI. SCE maintains there are numerous active participants in the proceeding representing supporters of solar power and residential utility ratepayers, including The Utility Reform Network (TURN), the Commission's Division of Ratepayer Advocates (DRA), Americans for Solar Power, PV Now, and the California Solar Energy Industries Association. According to SCE, the Coalition's NOI does not indicate why its participation is necessary to represent residential customer interests above and beyond the work of these active participants. Further, the Coalition has not addressed whether its participation will duplicate the participation of these other active parties. SCE urges the Commission to critically examine whether an expectation of compensation of \$444,000 is reasonable, particularly when these costs are passed through to utility ratepayers at a time of soaring electricity rates.

In response to SCE, the Coalition submitted a document on March 21, 2006, which the ALJ placed in the correspondence file for the proceeding.⁶ The response states that the Coalition's participation is necessary for a fair determination of the proceeding given its Executive Director's vast and unique solar industry experience.

Even if the Coalition had provided its bylaws and met the definition of customer, I find its statement of planned participation and estimated budget lack sufficient explanation of the specific issues within the scope of the case that the Coalition will pursue. In R.04-03-017, the Coalition presented very brief

⁶ As explained to the Coalition's representative at the prehearing conference, the document was not filed because it was lengthy and illegible and therefore, did not comport with Commission rules. (Prehearing Transcript, 3/23/06, at 89-91.)

comments describing general support for solar power and a desire that utilities not control solar installations. Despite this brief statement, the Coalition estimates it will spend close to one-half million dollars on this proceeding, more than any other party requesting eligibility for compensation. I find the Coalition does not satisfactorily explain why this high level of participation is necessary. The number of hours appears excessive, the need for a consultant is not described, and the issue of duplication with other parties is not addressed.

The Coalition should explore with the Commission's Public Advisor whether it would be more advantageous to participate in the proceeding without formal party-status. The Coalition might wish to consider providing correspondence on its viewpoints or speaking to the Commission at public meetings, thus avoiding the lengthy requirements and expense of formal filings. The Coalition should contact the Commission's Public Advisor at 415-703-2074 or 1-866-849-8390 (or e-mail public.advisor@cpuc.ca.gov) to discuss options for participation without formal party status.

9. Strategic Energy Innovations

SEI is a 501(c)(3) not-for-profit organization that claims substantial experience heading up energy programs within California's higher education sector. SEI states it hopes to represent private non-profit and state-funded higher education institutions in the proceeding. According to SEI, it is currently in discussion with a number of California institutions of higher education, including the University of California Office of the President, and Stanford University and is awaiting letters of authorization to represent these institutions.

SEI does not meet the definition of customer as set forth in § 1802(b)(1)(B). As of the filing date of its NOI, SEI has not obtained authorization to represent any customers. Further, Section 1802(b)(2) specifically states that "customer"

does not include any state, federal, or local government agency. Thus, even if SEI obtained authorization to represent the University of California Office of the President, the University is a state-funded institution that does not qualify for intervenor compensation under the statute. If SEI were to obtain authorization to represent Stanford University as a customer, it is unlikely that Stanford University would be able to make a showing of significant financial hardship.

10. The Utility Reform Network

TURN is organized to represent and advocate the interests of consumers of public utility services in California. TURN indicates that it will coordinate with other intervenors to avoid undue duplication wherever practicable. TURN qualifies as a customer because it is an organization that is authorized by its articles of incorporation to represent the interests of consumers, a portion of whom are residential customers.⁷ TURN meets the third definition of customer, as set forth in § 1802(b)(1)(C).

The economic interests of TURN's individual members are small in comparison to the costs of effective participation in Commission proceedings. In addition, the cost of TURN's participation in Commission proceedings substantially outweighs the benefit to an individual customer it represents. TURN's members are small residential customers whose individual interests in this proceeding are small relative to the costs of participation.

⁷ TURN provided the relevant portions of its articles of incorporation in its notice of intent in A.98-02-017, and the articles of incorporation have not changed since then. TURN has in excess of 20,000 dues paying members, the majority of which are residential ratepayers. TURN does not poll its members to determine whether they are residents or small businesses, so no percentage split is available.

A rebuttable presumption of eligibility exists because TURN received a finding of significant financial hardship in an ALJ Ruling issued on November 4, 2005 in A.05-02-027. This proceeding commenced within one year of this finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption created in A.05-02-027 is applicable. A finding of significant financial hardship in no way ensures compensation (§ 1804(b)(2)).

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. TURN expects to participate in workshops, file comments, participate in any evidentiary hearings, file briefs, and comment on any proposed or alternate decisions, as required. TURN expects to address concerns about the structure for photovoltaic rebates, appropriate rebate levels, net metering issues, streamlining elements of the CSI, and other issues as they may develop.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. TURN estimated a total projected budget of \$80,675 for this case, based on proposed hourly rates which will be addressed in its Request for Compensation.

11. Vote Solar Initiative

Vote Solar is a representative authorized by one or more customers of the respondent utilities to represent them in this proceeding. SCE notes that Vote Solar is a non-profit organization dedicated to promoting the development of solar electric technology. SCE questions whether Vote Solar's interests arise from customer interests or the financial interests of its members. In filings in the SCE general rate case A.05-05-023, Vote Solar has provided evidence it represents a

residential customer in the SCE territory. Therefore, Vote Solar meets the second definition of customer, as described in Section 1802(b)(1)(B).

A rebuttable presumption of eligibility exists because Vote Solar received a finding of significant financial hardship in an ALJ Ruling issued on September 16, 2005 in A.05-05-023. This proceeding commenced within one year of this finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption created in A.05-05-023 is applicable. A finding of significant financial hardship in no way ensures compensation (§ 1804(b)(2)).

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. Vote Solar plans to attend workshops, prepare testimony, present witnesses, attend hearings to cross-examine witnesses, and file briefs and comments as required. Vote Solar plans to address issues relating to the program rules and policies for CSI.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. Vote Solar estimated a total projected budget of \$108,000 for this case, based on proposed hourly rates which will be addressed in its Request for Compensation.

Therefore, **IT IS RULED** that:

1. Californians for Renewable Energy (CARE) is a customer as that term is defined in § 1802(b)(1)(C) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship. CARE is found eligible for compensation in this proceeding.
2. The Consumer Federation of California (CFC) is a customer as that term is defined in § 1802(b)(1)(C) and has met the eligibility requirements of § 1804(a),

including the requirement that it establish significant financial hardship. CFC is found eligible for compensation in this proceeding.

3. The April 20, 2006 motion by CFC for confidential treatment of its bylaws is denied. The Docket Office should file CFC's bylaws with the other public documents in this proceeding.

4. Green Power Institute (GPI) is a customer as that term is defined in § 1802(b)(1)(C) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship. GPI is found eligible for compensation in this proceeding.

5. Greenlining Institute (Greenlining) is a customer as that term is defined in § 1802(b)(1)(C) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship. Greenlining is found eligible for compensation in this proceeding.

6. Michael Kyes is not eligible for intervenor compensation as a customer because he has a financial interest in the outcome of the proceeding.

7. The Public Solar Power Coalition (Coalition) has not provided a copy of its bylaws or articles of incorporation and has not met the eligibility requirements of § 1804(a). The Coalition is not eligible for compensation in this proceeding.

8. Strategic Energy Innovations (SEI) is not a customer as that term is defined in § 1802(b)(1)(B) and has not met the eligibility criteria of § 1804(a), including the requirement that it establish significant financial hardship. SEI is not eligible for compensation in this proceeding.

9. The Utility Reform Network (TURN) is a customer as that term is defined in § 1802(b)(1)(C) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship. TURN is found eligible for compensation in this proceeding.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notices of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated May 16, 2006, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.