

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking Regarding Building
Decarbonization.

Rulemaking 19-01-011
(Filed January 31, 2019)

**SIERRA CLUB'S REPLY TO RESPONSES TO MOTION TO DENY PARTY STATUS
TO CALIFORNIANS FOR BALANCED ENERGY SOLUTIONS OR, IN THE
ALTERNATIVE, TO GRANT MOTION TO COMPEL DISCOVERY**

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Pursuant to Rule 11.1(f) of the California Public Utility Commission (“Commission”) Rules of Practice and Procedure, Sierra Club files this Reply to Responses to Motion to Deny Party Status to Californians for Balanced Energy Solutions (“C4BES”), or, in the Alternative, to Grant Sierra Club’s Motion to Compel Discovery. Administrative Law Judge Rizzo granted Sierra Club leave to file its Reply on May 30, 2019, via electronic mail.

I. INTRODUCTION

The responses of C4BES and Southern California Gas Company (“SoCalGas”) only support the denial of party status to C4BES or, at a minimum, the need for the Commission to compel discovery to understand the full extent of SoCalGas’ involvement. C4BES’ response affirms that SoCalGas played a major role in forming and financing C4BES. Indeed, it is highly unlikely C4BES would exist absent the administrative support provided by SoCalGas staff and the consulting services that C4BES does not dispute SoCalGas paid for to ensure C4BES looked like an “authentic and professional organization.”¹ Given SoCalGas’ participation in and influence over C4BES, SoCalGas’ efforts to liken C4BES to the coalitions that routinely appear in Commission proceedings is without merit. SoCalGas was instrumental in forming C4BES as a vehicle to amplify its interests, both C4BES and SoCalGas have sought to mask the depths of SoCalGas’ involvement, and C4BES should not be a party to this proceeding.

To the extent the Commission seeks additional information on the relationship between C4BES and SoCalGas before ruling on C4BES’ party status or is inclined to grant C4BES party status, the Commission should grant Sierra Club’s Motion to Compel Discovery. Contrary to SoCalGas’ assertions, it is well within the Commission’s authority to require SoCalGas and C4BES to respond to Sierra Club’s data requests. The Commission has plenary authority to take

¹ C4BES Response at 8 (May 29, 2019).

all action necessary to supervise and regulate the utilities under its purview. The Commission's oversight role compels disclosure of SoCalGas' involvement with C4BES to assess its purported independence, provide needed transparency, and protect ratepayers.

II. DISCUSSION

A. C4BES' Response Confirms that SoCalGas' Role in C4BES is Substantial.

Stripped of its histrionics, C4BES' response affirms the essential facts raised in Sierra Club's motion. SoCalGas: 1) played a key role in founding C4BES; 2) serves on the C4BES Board of Directors; 3) provides "logistical and administrative support" to C4BES; 4) retained a consulting firm to develop "authentic and professional" materials for C4BES; and 5) provides substantial financial contributions to organizations now serving on the C4BES Board.² C4BES' primary factual disagreement is that SoCalGas' \$25K donation to Matt Rahn, director of the Environmental Leadership Institute at California State University ("CSU") San Marcos, was in an organizational rather than personal capacity. Sierra Club never intended to suggest otherwise. Rather, SoCalGas' donations to organizations serving on the C4BES Board are a factor in assessing its influence.³ In addition to Dr. Rahn's organization, at least eight other entities serving on the C4BES Board have received corporate contributions from SoCalGas.⁴

C4BES' effort to downplay SoCalGas' key role in forming C4BES does not withstand scrutiny. C4BES claims Matt Rahn edited C4BES' Core Principles, yet SoCalGas sent Matt Rahn these materials in finalized form in its email recruiting him to join C4BES.⁵ C4BES also claims that SoCalGas "is just one of thirty voices on the Board" but simultaneously admits that SoCalGas' financial contributions could be just under "a majority of the funds" C4BES has received.⁶ It strains credulity that an entity that receives up to half its funding from SoCalGas is

² C4BES Response at 7-9.

³ See Christopher Ingraham, *Massive new study traces how corporations use charitable donations to tilt regulations in their favor*, Washington Post (Jan. 17, 2019), <https://www.washingtonpost.com/business/2019/01/17/massive-new-study-traces-how-corporations-use-charitable-donations-tilt-regulations-their-favor/> (citing Marianne Bertrand *et al.*, *Hall of Mirrors: Corporate Philanthropy and Strategic Advocacy*, National Bureau of Economic Research (Dec. 2018), <https://www.nber.org/papers/w25329> (patterns in a comprehensive sample of public commentary made by firms and non-profits within U.S. federal rulemaking between 2003 and 2015 suggest that "corporations strategically deploy charitable grants to induce non-profit grantees to make comments that favor their benefactors"))).

⁴ Sierra Club Motion to Deny Party Status to C4BES at 8 fn. 20 (May 14, 2019).

⁵ C4BES Response at 8; Sierra Club Motion to Deny Party Status to C4BES, Attach. D.

⁶ C4BES Response at 14.

a “unique and separate voice in this proceeding.”⁷ It is also unclear whether C4BES’ assertion of the extent of SoCalGas financing includes the cost of third-party consultants, which C4BES does not dispute are paid for by SoCalGas.⁸ Instead, C4BES attempts to excuse its use of SoCalGas communications consultants on the grounds that C4BES needed “professional services, presentation materials, and other documents” to be “considered an authentic and professional organization.”⁹ Even from the limited information Sierra Club was able to obtain notwithstanding C4BES and SoCalGas’ refusal to respond to discovery, it is apparent that SoCalGas’ direct involvement, provision of support services, and financial backing was pivotal to C4BES’ creation and to its continued operation. To Sierra Club’s knowledge, SoCalGas’ significant efforts to create and sustain an entity to intervene and support its positions before the Commission is unprecedented.

While SoCalGas feigns umbrage at the characterization of C4BES as an astroturf or utility front group,¹⁰ these terms refer to exactly what is at issue here: entities who hide their sponsorship to appear independent. C4BES did not even disclose SoCalGas was a member of C4BES in its Motion for Party Status and SoCalGas actively downplayed its significant involvement in the organization by publicly stating that it was merely “invited” to join C4BES.¹¹ It should not take a Public Records Act request to public entities affiliated with C4BES to have a window into the actual depths of SoCalGas involvement. C4BES and SoCalGas’ efforts to mask SoCalGas’ seminal and substantial role in C4BES is extremely troubling and a threat to the integrity of Commission proceedings.

B. The Extent of SoCalGas Involvement in C4BES Distinguishes It From Other Trade Groups that Are Party to Commission Proceedings and Merit the Denial of Party Status.

SoCalGas’ attempt to depict C4BES as a routine trade group that should be free from Commission scrutiny is without merit. Sierra Club agrees that coalitions can be an efficient means of raising shared perspectives. If C4BES were, in fact, solely a “coalition of natural and

⁷ C4BES Response at 7.

⁸ C4BES refused to answer Sierra Club’s data requests seeking a specific answer to SoCalGas’ direct and indirect financing of C4BES. See Sierra Club Motion to Deny Party Status, Exh. 2 to Attach A., Qs 1(d) and 4. The ambiguity in C4BES’ Response on the extent of SoCalGas financial contributions further supports the need to compel discovery.

⁹ C4BES Response at 8.

¹⁰ SoCalGas Response at 7.

¹¹ Sierra Club Motion to Deny Party Status to C4BES, Attach. B.

renewable natural gas users” as asserted in its Motion for Party Status, Sierra Club would not have filed its Motion. But it is not. Because SoCalGas has been instrumental in creating and supporting C4BES, it is materially different than the coalitions that routinely appear before the Commission.

The Commission’s fundamental duty to supervise and regulate California’s investor-owned utilities (“IOUs”) must necessarily extend to its membership and role in an intervening party that purports to represent independent interests in Commission proceedings. The Commission’s ability to determine whether it should allow an entity with utility membership to be a party to Commission proceedings is not nearly as complicated as SoCalGas suggests. Where, as here, the utility is a member of the entity seeking party status, the Commission can look to a number of factors to assess the extent of utility control. These factors include the utility’s role in the entity’s formation, its financial contribution relative to other members, including in-kind contributions such as underwriting costs of third-party consultant services, its role in developing work product, and its influence over other members as expressed through financial contributions to those members. This is not a close case. By all metrics, SoCalGas has substantial control and influence over C4BES. These circumstances warrant the denial of party status to C4BES.¹²

C. At a Minimum, the Commission Should Compel Discovery.

After refusing to respond to Sierra Club data requests, C4BES now faults Sierra Club’s motion for providing “scant evidence” of its relationship with SoCalGas.¹³ To the extent the Commission seeks additional information before it can reach a determination on the Motion to Deny Party Status, it should grant the Motion to Compel Discovery. SoCalGas’ assertion that the Commission should deny Sierra Club’s Motion to Compel because SoCalGas’ involvement in C4BES is not within the scope of this proceeding is unavailing.¹⁴ The Commission has plenary authority to “do all things,” whether specifically designated or not, that may be necessary to “supervise and regulate” the utilities under its jurisdiction.¹⁵ Similarly, Rule 1.2 of the Commission Rules “permit deviations from the rules” and Rule 9.1 allows the ALJ to “take such

¹² Commission Rules of Practice and Procedure, Rule 1.4(c) (“[t]he assigned Administrative Law Judge may, where circumstances warrant, deny party status”).

¹³ C4BES Response at 8.

¹⁴ SoCalGas Response at 10-11 (citing Rule 10.1 of the Commission’s Rules of Practice and Procedure).

¹⁵ Pub. Util. Code § 701.

action as may be necessary and appropriate to the discharge of his duties.”¹⁶ Finally, because Rule 1.4 empowers an ALJ to deny party status “where circumstances warrant,” the Commission may require additional discovery to determine whether the action is, in fact, warranted.¹⁷ Because Sierra Club’s discovery is limited to understanding SoCalGas’ relationship with C4BES, it relates directly to the Commission’s duty to supervise and regulate SoCalGas. In seeking to evade discovery through a narrow reading of the Rules of Commission Practice and Procedure, SoCalGas ask for impunity. Impunity from Commission oversight and a shield from any inquiry into the extent of its control over a party to a Commission proceeding. SoCalGas’ position that its ability to form and finance separate entities to intervene in Commission proceedings is beyond scrutiny is fundamentally inconsistent with the Commission’s oversight responsibilities and must be flatly rejected.

Even if the Commission determines there should be no limits to a utility’s ability to create entities to further its interests in Commission proceedings and denies Sierra Club’s Motion to Deny Party Status with prejudice, the Commission should still compel discovery. Transparency over the extent of SoCalGas’ involvement in C4BES is critical to understanding the purported independence of its positions. Moreover, the costs of SoCalGas’ advocacy before the Commission are already passed through to its customers. All costs SoCalGas is incurring, whether through staff time, payments to third-party consultants, or direct contributions, to an entity to amplify those concerns before the Commission is needlessly duplicative, not in the customer interest, and must be borne by SoCalGas shareholders. Indeed, given SoCalGas’ troubling pattern and practice of imposing the costs of its highly misleading anti-electrification advocacy onto its customers,¹⁸ there is every reason to believe SoCalGas will seek to do the same here absent Commission oversight.

III. CONCLUSION

For the reasons set forth above and in its Motion, Sierra Club respectfully requests that its Motion to Deny Party Status to Californians for Balanced Energy Solutions is granted, or, in the alternative, that the Commission grant Sierra Club’s Motion to Compel Discovery.

¹⁶ Commission Rules of Practice and Procedure, Rules 1.2, 9.1.

¹⁷ Commission Rules of Practice and Procedure, Rule 1.4(c).

¹⁸ See A.17-10-007, *Opening Brief of Sierra Club and Union of Concerned Scientists* (Sept. 21, 2018), <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M236/K009/236009060.PDF>.

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Respectfully submitted,

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