



FILED
09/15/20
KERN COUNTY

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Revise its Electric Marginal Costs, Revenue Allocation and Rate Design. (U39M.)

Application 19-11-019

**ADMINISTRATIVE LAW JUDGE’S RULING
REJECTING KERN COUNTY TAXPAYERS ASSOCIATION’S
NOTICE OF INTENT TO CLAIM COMPENSATION**

Party intending to claim intervenor compensation: Kern County Taxpayers Association	
Assigned Commissioner: Genevieve Shiroma	Administrative Law Judge: Patrick Doherty

PART I: PROCEDURAL ISSUES
(Completed by the party intending to claim intervenor compensation)

A. Status as “customer” (see Pub. Util. Code § 1802(b))¹ The party claims “customer” status because the party is (check one):	Applies (check)
1. A Category 1 customer is an actual customer whose self-interest in the proceeding arises primarily from his/her role as a customer of the utility and, at the same time, the customer must represent the broader interests of at least some other customers. See, for example, D.08-07-019 at 5-10).	<input type="checkbox"/>
2. A Category 2 customer is a representative who has been authorized by actual customers to represent them. Category 2 involves a more formal arrangement where a customer or a group of customers selects a more skilled person to represent the customer’s views in a proceeding. A customer or group of customers may also form or authorize a group to represent them, and the group, in turn, may authorize a representative such as an attorney to represent the group.	<input checked="" type="checkbox"/>
3. A Category 3 customer is a formally organized group authorized, by its articles of incorporation or bylaws to represent the interests of residential customers or small commercial customers receiving bundled electric service from an electrical corporation (§1802(b)(1)(C)). Certain environmental groups that represent residential customers with concerns for the environment may also qualify as Category 3 customers, even if the above requirement is not specifically met in the articles or bylaws. See D.98-04-059, footnote at 30.	<input type="checkbox"/>

¹ All statutory references are to California Public Utilities Code unless indicated otherwise.

<p>A. Status as “customer” (see Pub. Util. Code § 1802(b))¹ The party claims “customer” status because the party is (check one):</p>	<p>Applies (check)</p>
<p>4. The party’s detailed explanation of the selected customer category. <u>The party’s explanation of its status as a Category 2 customer.</u> A party seeking status as a Category 2 customer must identify the residential customer(s) being represented and provide authorization from at least one customer.</p> <p>KernTax is a member-supported, 501(c) 4 non-profit corporation, with the mission to bring about more accountable, effective, efficient, reliable government. Basing its actions on common sense, innovation, and the long-term view, KernTax crafts positions based on adopted values. Founded in 1939, KernTax is the guard dog protecting the interests of Kern County taxpayers.</p> <p>KernTax views any government collection of funds through any financial conduit to be taxation, be it identified as a tax, a fee for government service or a regulated rate structure. If it is excessive or not appropriate, KernTax must, by charter, act to educate and facilitate resolution and ensure fair representation and treatment. We do not seek subsidies; we pursue a reasonable return to our local citizens from all regulatory bodies and their agent for levied taxes, fees, or regulated services.</p> <p>Our members and non-member residents of the southern portion of the Central Valley are again seeking our support in helping them present their concerns and issues as they relate to the CPUC rate-making proceeding. KernTax is genuinely interested in the proceeding as a representative of both the small business owners and the residents of Kern County (both wage earners and the underserved). Kern County is a significant producer of energy, including over 50 percent of the state’s renewable energy. We believe that our participation on behalf of our base will aid the CPUC, in understanding our issues in Kern County, as well as, the southern portion of the Central Valley better to guide the utility resource selection and the subsequent rate-making. Our interest is in helping the CPUC ensure that much-needed utility service is provided to Kern County in a manner reflecting the CPUC’s objectives, sound economic principles, and conformity with legislative intent.</p> <p>Our motion for Party Status was granted on February 6, 2020. In our role to represent the interests of Kern County ratepayers in this proceeding, we will be focusing our efforts on issues that affect E-1 residential ratepayers. To date, KernTax is the only party in this proceeding focusing exclusively on Kern County residents, and for that matter the interests of residents in the Southern San Joaquin Valley, on how to best implement transportation of electrification programs and EV rate design, including issues related to customer participation, education, outreach, potential cost-shifting, and other pertinent subjects.</p> <p>In 2010, in General Rate Case A091202, KernTax filed a Motion for Status, which was granted. After meaningful input and participation in the proceedings, KernTax requested and received Intervenor Compensation. Attached are authorizations of PG&E customers that reside in Kern County and wish KernTax</p>	

A. Status as “customer” (see Pub. Util. Code § 1802(b))¹ The party claims “customer” status because the party is (check one):	Applies (check)
to represent them in this proceeding.	
Do you have any direct economic interest in outcomes of the proceeding? ² If “Yes”, explain:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
B. Conflict of Interest (§ 1802.3)	Check
1. Is the customer a representative of a group representing the interests of small commercial customers who receive bundled electric service from an electrical corporation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. If the answer to the above question is “Yes”, does the customer have a conflict arising from prior representation before the Commission?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
C. Timely Filing of Notice of Intent to Claim Intervenor Compensation (NOI) (§ 1804(a)(1)):	
1. Is the party’s NOI filed within 30 days after a Prehearing Conference? Date of Prehearing Conference: Click here to enter a date.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the party’s NOI filed at another time (for example, because no Prehearing Conference was held, the proceeding will take less than 30 days, the schedule did not reasonably allow parties to identify issues within the timeframe normally permitted, or new issues have emerged)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2a. The party’s description of the reasons for filing its NOI at this other time:	
2b. The party’s information on the proceeding number, date, and decision number for any Commission decision, Commissioner ruling, Administrative Law Judge’s ruling, or other document authorizing the filing of NOI at that other time:	

PART II: SCOPE OF ANTICIPATED PARTICIPATION
(Completed by the party intending to claim intervenor compensation)

A. Planned participation (§ 1804(a)(2)(A)):
The party’s statement of the issues on which it plans to participate:
The party’s explanation of how it plans to avoid duplication of effort with other parties:
KernTax solely represents the interests of an underrepresented class of residential ratepayers, those that live in the Southern San Joaquin Valley, in particular, those in Kern County.
The party’s description of the nature and extent of the party’s planned participation in this proceeding (to the extent that it is possible to describe on the date this NOI is filed).
KernTax proposes to files motions, protests, and responses, make appearances as needed, participate in negotiations, raise issues and proposals, and provide information to the decision-makers.

² See Rule 17.1(e).

B. The party's itemized estimate of the compensation that the party expects to request, based on the anticipated duration of the proceeding (§ 1804(a)(2)(A)):				
Item	Hours	Rate \$	Total \$	#
ATTORNEY, EXPERT, AND ADVOCATE FEES				
Jess Frederick Expert	300	\$250	\$75,000.00	
MaryJane Wilson Expert	40	\$300	\$12,000.00	
Michael Turnipseed Advocate	50	\$200	\$10,000.00	
Subtotal: \$97,000.00				
OTHER FEES				
Michael Turnipseed	100	150	\$15,000.00	
Staff	40	\$90	\$3,600.00	
Jess Frederick Travel	40	\$250	\$10,000.00	
Michael Turnipseed Travel	40	\$100	\$4,000.00	
Subtotal: \$33,600.00				
COSTS				
Travel			\$4,000.00	
Misc. Office			\$250.00	
Subtotal: \$4,250.00				
TOTAL ESTIMATE: \$123,850.00				
Estimated Budget by Issues:				

**PART III: SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP
(Completed by party intending to claim intervenor compensation)**

A. The party claims that participation or intervention in this proceeding without an award of fees or costs imposes a significant financial hardship, on the following basis:	Applies (check)
1. 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. (§ 1802(h))	<input checked="" type="checkbox"/>
2. 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(h))	<input checked="" type="checkbox"/>
3. The eligible local government entities' participation or intervention without an award of fees or costs imposes a significant financial hardship. (§ 1803.1(b).)	<input type="checkbox"/>
4. A § 1802(h) or § 1803.1(b) finding of significant financial hardship in another proceeding, made within one year prior to the commencement of this proceeding, created a rebuttable presumption in this proceeding (§ 1804(b)(1)).	<input type="checkbox"/>
Commission's finding of significant financial hardship made in proceeding number: None	
Date of Administrative Law Judge's Ruling (or CPUC Decision) in which the finding of significant financial hardship was made: n/a	

<p>B. The party’s explanation of the factual basis for its claim of “significant financial hardship” (§ 1802(h) or § 1803.1(b)):</p>
<p>Party has no financial resources currently in hand or readily available to pay for the services of counsel, experts, or persons. Initial counsel, experts, and persons are billing the party with payment contingent upon approval of this NOI and appropriate findings, which in turn make any further participation and contribution contingent upon approval of any subsequent claim by the party.</p> <p>Party advocates on behalf of taxpayers in Kern County, who individually, could not make an appearance, claim, or participation due to the high cost and low reward inherent in ratepayer challenges. Party asserts that without compensation, it would be unable to sustain anything other than token participation when the opposition is in the person of a financial/legal parties such as PG&E, TURN, and other regular intervenors.</p> <p>The speed with which issues are raised and concluded demonstrates that without paid, readily available, compensated advocates, experts, and persons, the CPUC will not benefit from a more diverse, impartial, and locally raised and advocated issues, information, facts, and proposals for solution.</p>

**PART IV: ATTACHMENTS DOCUMENTING
SPECIFIC ASSERTIONS MADE IN THIS NOTICE**

(The party intending to claim intervenor compensation identifies and attaches documents)

Attachment No.	Description
1	Certificate of Service 190724
2	Authorizations to Represent 190724

ADMINISTRATIVE LAW JUDGE RULING

<p>1. The Notice of Intent to Claim Intervenor Compensation (NOI) filed by Kern County Taxpayers Association has not demonstrated the party’s status as a “customer” for the following reasons:</p> <p style="padding-left: 40px;">a. The NOI Does Not Demonstrate the Party’s Eligible Customer Status</p> <p>Kern County Taxpayers Association (KCTA) claims that it is eligible as a Category 2 customer, pursuant to Section 1802(b)(1)(B). Section 1802(b)(1) distinguishes the following categories of eligible customers:</p> <p>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 (Category 1).</p> <p>B. A representative who has been authorized by a customer (Category 2).</p> <p>C. A representative of a group or organization authorized pursuant to its articles of</p>	<input checked="" type="checkbox"/>
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<p>incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation (Category 3).</p> <p>The Commission in D.98-04-059 (at page 30) has provided guidance on how to determine the customer categories described in Section 1802(b)(1):</p> <p>Category 1. A “participant representing consumers” is an actual customer who represents more than his own narrow self-interest; a self-appointed representative.</p> <p>Category 2. A “representative authorized by a 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.</p> <p>Category 3. A “representative of a group or organization” is a formally organized group (with articles of incorporation and/or bylaws) authorized to represent the views of residential customers.</p> <p>The NOI does not show that KCTA fits into any of these categories. Rather than summarily deny the NOI, we will discuss the statutory compensation scheme and assist the intervenor and other parties who may eventually seek compensation as Category 2 customers.</p> <p>Pursuant to D.98-04-059, a Category 2 representative is a “more skilled” individual, acting on behalf of either a customer group or one customer. That the authorized representative is defined as an individual, rather than an entity, is again confirmed in the Decision’s discussion (at page 37) of the requirements for showing significant financial hardship:</p> <p>For a representative authorized by a customer, we expect the representative to provide the financial information of the customer who authorized him to serve in a representative capacity.</p> <p>KCTA is not a person selected by other residential ratepayers. KCTA is a member-funded 501(c)(4) corporation. Thus, KCTA has not demonstrated that it is a Category 2 customer.³</p> <p>KCTA does not seem to fall within a definition of the “Category 3” customer, either.</p>	
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³ All statutory references are to California Public Utilities Code unless indicated otherwise.

³ See Rule 17.1(e).

3, 2010 in C.08-08-008. However, in these cases the reasons for deviating from the Commission’s criteria for Category 2 intervenors were not explained. KCTA was also once found eligible – in the Ruling of August 30, 2010 in A.10-03-014. The ruling summarily granted NOIs of seven intervenors, without discussing the NOIs’ merits.

<p>Pursuant to Section 1802(b)(1)(C), a Category 3 customer is an organization</p> <p>...authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.</p> <p>According to KCTA’s Articles of Incorporation, it is an agency for</p> <p>...securing the highest obtainable degree of efficiency and economy in the transaction of public business, particularly in the County of Kern and its political subdivisions, through investigating, collecting, classifying, studying and interpreting facts concerning its powers, actions, limitations, duties and problems of the several departments of government and making such information available to public officials and citizens; and promotion of a constructive program for the county of Kern and its political subdivisions ... thereby encouraging economy in the conduct of public business, in order that the taxpayers may be assured full return value in services rendered for taxes paid and money spent in governmental cost payments... (Article Second).⁴</p> <p>These provisions do not contain a direct or reasonably inferable authorization to represent any interest before the Commission. Similarly, KCTA cannot be defined as a self-appointed representative under Category 1.</p> <p>b. KCTA May Have Members with Significant Economic Stakes in the Commission Proceedings</p> <p>KCTA’s membership is composed of</p> <p>... taxpayers, which can be an individual, a firm, a corporation, an association, a service club, a civic organization, an improvement club or trade association. Firms, corporations, associations, service clubs, civic organizations, improvement clubs or trade association may nominate an individual and an alternate to act as their representatives or point of contract. Such individuals, serving in the capacity of representative or point of contract may be considered as an eligible candidate to serve on the Board of Directors of this Association. (KCTA’s bylaws Article V, Section 1.)</p> <p>Active membership shall be any real estate taxpayer excepting that affiliated organizations, mentioned hereinafter, through their Committees of three shall be active members. Non-active membership shall be any taxpayer not paying taxes on real estate in Kern County. Either kind of membership can be an individual, a firm, a corporation, an association, a service club, a civic organization, an Improvement Club or trade association. (Articles of Incorporation, Article</p>	
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⁴ Copies of KCTA’s articles of incorporation and bylaws were filed on November 14, 2011 in R.11-10-003.

<p>Fifth.)</p> <p>As an association of all taxpayers in Kern County, KCTA's membership may include large commercial ratepayers. These corporations are also allowed to serve on KCTA's Board of Directors.⁵ Due to the nature of KCTA, its constituents may include entities affiliated with the industries or markets regulated by the Commission or these entities' representatives. As an organization of all Kern County's taxpayers, KCTA may receive funding from the entities participating in the Commission-regulated markets. These members and supporters would have high economic stakes in our proceedings and significant incentives to have these interests represented before the CPUC.</p> <p>The Commission has denied eligibility of organizations with similarly mixed membership. The case of CEERT, a nonprofit association of renewable energy developers and environmental groups, is instructive. We denied CEERT's claim and explained:</p> <p style="padding-left: 40px;">The issue here, in a mixed membership group ... is whether the financial stake of the energy developer members constitutes a sufficient incentive for CEERT to participate ... absent an expectation of compensation. If the answer is yes, it is irrelevant that other CEERT members have a small economic interest relative to the cost of effective participation.⁶</p> <p>The Commission determined that some of CEERT's members "have the potential for large economic gain" as a result of the proceeding, and that their economic interests are large if compared to the costs of CEERT's participation.⁷ We rejected CEERT's attempt to dismiss this issue by requesting only a portion of CEERT's costs. We held that the statute does not permit the Commission</p> <p style="padding-left: 40px;">to sever the economic interests and recommendations made on behalf of CEERT's energy developer members from those made on behalf of its environmental group members in order to determine significant financial hardship... Furthermore, ... we are not persuaded that the "broad based environmental goals" for which CEERT seeks compensation did not overlap and also further the interests of the energy developer members.⁸</p> <p>Here we have no information suggesting that KCTA represents, single-mindedly and free of conflict, solely the interests of residential ratepayers as we require.⁹ As with CEERT, we are not persuaded here that the people's interests represented by KCTA do</p>	
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⁵ See Article II Section 3 of KCTA's bylaws.

⁶ D.93-11-020, 1993 Cal. PUC LEXIS 854, *4-5; 52 CPUC2d 97.

⁷ D.93-11-020, 1993 Cal. PUC LEXIS 854, *5; 52 CPUC2d 97.

⁸ D.93-11-020, 1993 Cal. PUC LEXIS 854, *6; 52 CPUC2d 97.

⁹ See D.00-04-026 Cal. PUC LEXIS 203, *19.

<p>not overlap and also further the interests of the corporations represented by the same organization.</p> <p>The fact that KCTA collected signatures of the residents authorizing it to represent them before the Commission¹⁰ must not subvert the principles of the Intervenor Compensation Program or remove KCTA from the Commission’s scrutiny. We note that the interests of eligible ratepayers are represented in this proceeding by several intervenors¹¹ and by the Public Advocates Office.</p>	
<p>2. The NOI has not adequately described the scope of anticipated participation (Part II, above) for the following reasons:</p> <p>The NOI fails to state the issues on which KCTA plans to participate in this proceeding and does not provide its estimated budget by the issues, in violation of the mandates of Section 1804(a)(2)(A) and Rule 17.1(c) of the Commission Rules of Practice and Procedure.</p>	<input checked="" type="checkbox"/>
<p>3. The NOI has not demonstrated significant financial hardship for the following reason(s):</p> <p>Since the Ruling has determined that KCTA has not demonstrated an eligible customer status as a Category 2 customer, we do not need to analyze KCTA’s claim of significant financial hardship. However, we will summarize our requirements for the significant financial hardship element of eligibility for Category 2 customers.</p> <p>To demonstrate significant financial hardship, a Category 2 customer must provide financial information (such as, for example, copies of the tax returns) for all the individuals he or she has undertaken to represent. To protect people’s privacy, these documents may be submitted under seal, pursuant to Rule 11.4 of the Commission Rules of Practice and Procedure.</p> <p>Our concerns with respect to KCTA have been explained in section 1, above, of this ruling. As discussed, KCTA does not fall within the Category 2 customer definition and represents a wide variety of interests, including those not covered by the Intervenor Compensation Program because of the potential significant economic interest in this proceeding.</p> <p>This ruling does not preclude KCTA from participating, at its own cost, in this proceeding. Should KCTA wish to present new facts supporting its eligibility to claim intervenor compensation and addressing concerns raised in this Ruling, it may do so by filing an amendment to the NOI, within 15 days of the date of the issuance of this</p>	<input checked="" type="checkbox"/>

¹⁰ We note that declarations signed by the residential utility customers are dated months before the initiation of this proceeding on November 22, 2019.

¹¹ The Utility Reform Network, Small Business Utility Advocates, and Agricultural Energy Consumers Association.

Ruling. Questions concerning the Intervenor Compensation Program can be directed to the Intervenor Compensation Program coordinator at compcoordinator@cpuc.ca.gov .	

IT IS RULED that:

1. The Notice of Intent to Claim Intervenor Compensation filed by Kern County Taxpayers Association is rejected, as set forth.	<input checked="" type="checkbox"/>
2. Kern County Taxpayers Association may file an amended notice of intent, as set forth, within 15 days of the date of the issuance of this Ruling.	<input checked="" type="checkbox"/>

Dated September 15, 2020, at San Francisco, California.

/s/ PATRICK DOHERTY

Patrick Doherty
Administrative Law Judge