

ALJ/SJP/RM3 4/24/2024



**FILED**

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

04/24/24

09:20 AM

R2305018

Order Instituting Rulemaking to Update and  
Amend Commission General Order 131-D.

Rulemaking 23-05-018

**ADMINISTRATIVE LAW JUDGE'S RULING ON CENTER FOR  
BIOLOGICAL DIVERSITY'S SHOWING OF SIGNIFICANT  
FINANCIAL HARDSHIP**

<b>Customer (party intending to claim intervenor compensation):</b> Center for Biological Diversity	
<b>Assigned Commissioner:</b> Karen Douglas	<b>Administrative Law Judges:</b> Rajan Mutialu and Sophia Park

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

<b>A. Status as "customer" (see Public Utilities (Pub. Util.) Code § 1802(b))<sup>1</sup> The party claims "customer" status because the party is (check one):</b>	<b>Applies (check)</b>
<b>1.</b> A <b>Category 1</b> 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. <i>See, for example, Decision (D.) 08-07-019 at 5-10).</i>	<input type="checkbox"/>
<b>2.</b> A <b>Category 2</b> 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 type="checkbox"/>
<b>3.</b> A <b>Category 3</b> 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. <i>See D.98-04-059, footnote at 30.</i>	<input checked="" type="checkbox"/>

<sup>1</sup> All statutory references are to California Pub. Util. Code unless indicated otherwise.

**4. The party’s detailed explanation of the selected customer category.**

The Center for Biological Diversity (“Center”) meets the definition of a Category 3 customer under the Public Utilities Code as a “representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers . . .” (Pub. Util. Code § 1802, subd. (b)(1)(C).). The Center is a nonprofit membership organization whose bylaws specifically authorize it to advance conservation of endangered species, and to protect and restore important habitats. This includes protecting species and habitats from the impacts of the climate emergency. As part of its mission, the Center strives to reduce the environmental impacts of energy policy and resultant infrastructure development, such as greenhouse gas emissions, poor air quality, and harm to imperiled plants and wildlife. The Center accomplishes this mission by, among other things, advocating for and educating the public about renewable energy, specifically distributed energy resources. Related, a particular focus of the Center’s Energy Justice Program is to ensure adequate environmental review to responsibly site bulk system transmission infrastructure. The Center’s staff, including the Energy Justice Program staff, includes attorneys, scientists, and policy professionals with significant expertise regarding transmission planning, distributed energy resources, and energy justice issues.

The Center represents its members, who seek to protect the environment, and nearly all of whom are residential ratepayers. The Center has almost 200,000 supporters and over 18,000 dues-paying members who live in California and purchase utility services here. This proceeding will potentially affect many of the Center’s California members and supporters, since the potential transmission projects at issue in this proceeding are implemented by Pacific Gas & Electric, Southern California Edison Company, and San Diego Gas & Electric, who together serve roughly 75% of California’s electricity demand. Moreover, our members and supporters are particularly concerned about the potential and significant impacts to biodiversity presented by inadequate environmental review of transmission projects. The interests of the members/customers represented by the Center are unique and not fully represented by other parties involved in this proceeding. Center members place a high priority on the need to expand distributed energy resources, in particular in disadvantaged, low-income and other “environmental and social justice” communities, while also reducing the environmental consequences of bulk energy system development. This includes advocating for responsibly sited transmission projects. In addition, the Center advocates for greater deployment of distributed energy resources in order to avoid the need for transmission projects that pose the greatest risk to escalating electricity bills. At the same time, the Energy Justice Program aims to ensure that the most vulnerable customers have access to the health and economic benefits that distributed renewable energy offers. The Center’s participation is necessary for these interests to be adequately represented in this proceeding.

<p>The Commission has previously explained that “[w]ith respect to environmental groups, we have concluded they were eligible [for compensation] in the past with the understanding that they represent customers whose environmental interests include the concern that, e.g., regulatory policies encourage the adoption of all cost-effective conservation measures and discourage unnecessary new generating resources that are expensive and environmentally damaging.” D.98-04-059 at 29, footnote 14. The Commission went on to explain that such groups “represent customers who have a concern for the environment which distinguishes their interests from the interests represented by Commission staff, for example.” <i>Id.</i> The Center is such an environmental group because it represents customers who have a concern for the environment that is different from the interests represented by other groups in this proceeding.</p> <p>A copy of the Center’s bylaws is on file with the Commission in Rulemaking (R.) 21-06-017 and was most recently submitted to the Commission in our Notice of Intent to Claim Intervenor Compensation for work in Application (A.) 22-05-022 and consolidated matters.</p> <p>The Center has been granted a showing of significant financial hardship in earlier proceedings and has previously been awarded intervenor compensation. <i>See, e.g., Order Instituting Rulemaking to Consider Distributed Energy Resource Program Cost-Effectiveness Issues, Data Access and Use, and Equipment Performance Standards</i>, R.22-11-013 (Ruling on Showing of Significant Financial Hardship, May 24, 2023); <i>Order Instituting a Rulemaking to Modernize the Electric Grid for a High Distributed Energy Resources Future</i>, R.21-06-017 (Ruling on Showing of Significant Financial Hardship, Nov. 8, 2021); <i>In the Matter of the Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500kV Interconnect Project</i>, A.10-07-001 (Orders of Nov. 23, 2010 and Apr. 18, 2013); <i>In the Matter of the Application of southern California Edison Company (U338E) for a Certificate of Public Convenience and Necessity for the Eldorado-Ivanpah Transmission Project</i>, A.09-05-027 (Ruling on Showing of Significant Financial Hardship, Jan. 27, 2010).</p>	
<p><b>Do you have any direct economic interest in outcomes of the proceeding?</b><sup>2</sup> If “Yes”, explain:</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p><b>B. Conflict of Interest (§ 1802.3)</b></p>	<p><b>Check</b></p>
<p>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?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>2. If the answer to the above question is “Yes”, does the customer have a conflict arising from prior representation before the Commission?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>C. Timely Filing of Notice of Intent to Claim Intervenor Compensation (NOI) (§ 1804(a)(1)):</b></p>	

<sup>2</sup> See Rule 17.1(e).

1. Is the party's NOI filed within 30 days after a prehearing conference (PHC)? Date of PHC: N/A	<input type="checkbox"/> Yes <input checked="" 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>2a. The party's description of the reasons for filing its NOI at this other time:</p> <p>On July 31, 2023, the assigned Commissioner issued a Scoping Memo and Ruling for this proceeding. That Scoping Memo and Ruling notes that "Pursuant to Pub. Util. Code Section 1804(a)(1) and Rule 17.1(a)(2), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation within 30 days after the issuance of this scoping memo." The Center files and serves this notice of intent to claim intervenor compensation on August 15, 2023, within that 30 days.</p>	
<p>2b. The party's information on the proceeding number, date, and decision number for any Commission decision, Commissioner ruling, Administrative Law Judge's (ALJ) ruling, or other document authorizing the filing of NOI at that other time:</p> <p>R.23-05-018 Assigned Commissioner's Scoping Memo and Ruling (July 31, 2023) at 9.</p>	

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

<b>A. Planned Participation (§ 1804(a)(2)(A)):</b>
<p><b>The party's statement of the issues on which it plans to participate:</b></p> <p>The Center intends to participate in all aspects of this proceeding that bear on revisions to the transmission planning process in order to minimize impacts to the environment and maximize benefits to disadvantaged and other environmental and social justice communities.</p> <p>Based on information so far in the proceeding, the Center intends to participate in both phases of this proceeding in the following issue categories:</p> <ol style="list-style-type: none"> <li>1. Phase 1, changes to GO 131-D to conform it to the requirements of SB 529 and to update outdated references: advocate for compliance with SB 529 and relevant provisions of the California Environmental Quality Act (CEQA) to maximize the opportunity for socio-economic benefits and minimize impacts to biodiversity.</li> <li>2. Phase 2, all other changes to GO 131-D, including the changes proposed by Commission staff and other parties. The Center has extensive experience in CEQA-related matters and will advocate for proposals' compliance with relevant CEQA provisions.</li> </ol>

3. Phase 2, process for permitting battery storage projects: The Center will participate to ensure that any permitting process for battery storage projects includes adequate environmental and socio-economic protections.
4. Phase 2, cost transparency: the Center is actively engaged before the Commission in several matters related to the actual socio-economic and environmental costs of transmission projects, and anticipates advocating for the most accurate and transparent cost information to further the Commission's analysis of clean energy solutions.

**The party's explanation of how it plans to avoid duplication of effort with other parties:**

Several of the issues raised by the Center may not be pursued by other parties to this proceeding. However, to the extent other parties do raise overlapping issues, the Center will coordinate its participation with those parties in order to avoid the duplication of effort and conserve the Commission's resources. In other Commission proceedings, the Center has coordinated with other intervenors at various stages, and we will do so here as well where practicable. Overall, the Center will coordinate its participation with other parties raising similar concerns, and attempt to resolve issues with parties raising contrary concerns throughout this proceeding.

**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).**

The Center anticipates coordinating with other parties, participating in workshops (if held), preparing written comments, and commenting on the Proposed Decisions in both Phases. This involvement will require in-house legal counsel.

The Center has been an active participant in other Commission proceedings (e.g., R.22-11-013 R.21-06-017, R.18-07-003, R.15-02-020, R.11-05-005) and intends to remain similarly actively involved in this proceeding in order to ensure that the environmental and energy justice interests of its ratepayer members are protected.

**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 \$	#
<b>ATTORNEY, EXPERT, AND ADVOCATE FEES</b>				
Howard Crystal (Legal Director)	50	\$480	\$24,000	1
Roger Lin (Senior Attorney)	100	\$400	\$40,000	2
<b>Subtotal: \$64,000</b>				
<b>OTHER FEES</b>				
[Person 1]				
<b>Subtotal: \$</b>				
<b>COSTS</b>				
[Item 1]				
<b>Subtotal: \$</b>				
<b>TOTAL ESTIMATE: \$ 64,000</b>				

**Estimated Budget by Issues:** The Center offers the following estimated budget on the issues listed above:

Issue 1 (Phase 1): 20%

Issue 2 (Phase 2): 40%

Issue 3 (Phase 2): 20%

Issue 4 (Phase 2): 20%

**Comments/Elaboration**

The Center expects to be an active participant in this proceeding; however, it is difficult to estimate the magnitude of our expected request at this early stage. The amount of any future claim for compensation will depend on the proposals of other parties and Commission staff, “other changes” (*see* Scoping Memo and Ruling Issue 2.h.) proposed for GO 131-D, and the content of the Commission’s final decision.

The rates the Center is requesting for its attorneys and advocate are reasonable because the staff in the Center’s Energy Justice Program have extensive experience advocating for adequate environmental review of electrical transmission projects, consideration of distributed renewable energy alternatives that provides resilient and reliable energy while simultaneously addressing the climate crisis, minimizing environmental impacts, and addressing systemic energy injustice. The rates the Center is requesting are consistent with D.07-01-009 (which established rate ranges for experts based on years of experience), and with D.08-04-010 (which provides considerations for establishing rates for new representatives).

**Comment 1: Howard Crystal** graduated from Georgetown University Law Center in 1993, and with more than 25 years of practice falls within the range of compensation for attorneys in the bracket of 13+ years of experience. His expertise as an environmental and energy attorney is broad and includes: (a) participation before this Commission in No. 16-09-003 (SCE 2016 Rate Design Window Proposal); (b) participation in both rate case and IRP proceedings before the North Carolina Utilities Commission; (c) litigation over Tennessee Valley Authority (TVA) rate changes targeting distributed energy development (*Center v. TVA*, 491 F. Supp. 3d 1180 (N.D. Ala. 2020)); an article concerning net metering and utility rate-setting for solar customers (*Fairly Compensating Sun Power: Challenges to Rooftop Solar Development*, *available at* <https://gelr.org/2016/09/20/fairly-compensating-sun-power/>; and (d) extensive federal court litigation over Department of Energy programs and projects, including, e.g., (i) the National Ignition Facility at Lawrence Livermore National Laboratory (*see, e.g., NRDC v. Abraham*, 223 F. Supp. 2d 162 (D.D.C. 2002)); (ii) the Bush Administration’s “Energy Task Force” (*NRDC v. Dep’t of Energy*, 310 F. Supp. 2d 271 (D.D.C. 2003)); and (iii) the remediation of nuclear energy testing facilities such as the Santa Susana Laboratory in Simi Valley, California (*NRDC v. DOE*, 2007 WL 1302498 (N.D. Cal. 2007)). Mr. Crystal frequently practices in federal courts and before administrative agencies. For example, he is lead counsel on a Petition pending before the Federal Energy Regulatory Commission (FERC) concerning the Uniform System of Accounts’ treatment of industry association dues recovery from ratepayers (RM21-15); represented the Center in another FERC proceeding concerning the conditions under which TVA power companies have access to TVA transmission assets; and is also currently litigating several lawsuits against the Department of Energy under the Freedom of Information Act. Prior to working at the Center,

Mr. Crystal was in private practice at Meter Glitzenstein & Crystal, and then the Law Office of Howard Crystal. He litigated numerous other cases before courts and agencies in those offices, many concerning energy-related matters, and began his career as an attorney with Crowell & Moring LLP. He has also taught as an Adjunct Professor at Georgetown University Law Center, and at the George Washington University Law School. Mr. Crystal's requested compensation takes into consideration the market rates paid to persons of comparable training and experience who offer similar services, and is within the established range of rates for his level of experience. In D.18-07-006, the Commission approved a rate for Mr. Crystal of \$480 for work in 2018.

**Comment 2: Roger Lin** graduated from Golden Gate University School of Law in 2006. He has practiced public interest law since 2007, and he has represented several parties in Commission proceedings since 2012. In D.16-09-029, the Commission approved a rate for Mr. Lin of \$305 for his work in 2016. In D.22-04-019, the Commission approved a rate for Mr. Lin of \$311 for his work in 2018. And in D.22-02-031, the Commission approved a rate of \$360 for Mr. Lin's work in 2018. That rate reflected the minimum rate for an attorney with his 11 years of experience, plus a 5% step increase as authorized by Resolution ALJ-357. This was the first step increase request for Mr. Lin in his level of experience. As authorized by Resolution ALJ-393, with annual escalation rates and an additional step increase, Mr. Lin requests \$400 for anticipated work in 2023 and 2024.

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

<b>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:</b>	<b>Applies (check)</b>
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 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 checked="" type="checkbox"/>
Commission's finding of significant financial hardship made in proceeding number: Rulemaking 22-11-013	

Date of ALJ's Ruling (or CPUC Decision) in which the finding of significant financial hardship was made: R.22-11-013 ALJ's Ruling on Center for Biological Diversity's Showing of Significant Financial Hardship (May 24, 2023).	
<b>B. The party's explanation of the factual basis for its claim of "significant financial hardship" (§ 1802(h) or § 1803.1(b)) (necessary documentation, if warranted, is attached to the NOI:</b>	
<p>The cost of the Center's involvement in this proceeding will substantially outweigh the financial benefit to the individual members it represents. Typical individual member economic interests are small in comparison to the Center's expected costs of participation. As the Commission has stated in D.85-06-028:</p> <p>"It is obviously impractical for individual residential ratepayers to do much other than to send us letters or make brief statements at our public hearings, and while we appreciate such input it does not develop evidence of record upon which we can make findings of fact as required by law in connection with determining revenue requirement or rate changes. Realistically, then, there must be organized groups which participate on behalf of residential ratepayers on an ongoing basis with a reserve of experience and resources so that they can follow the continuing chain of ratemaking proceedings and participate effectively."</p> <p>The Center respectfully requests that compensation be granted to represent the environmental interests of its members since it would not be cost effective for individual members to incur such expenses to intervene. As a non-profit organization, the Center does not accept fees from its clients and receives no government funding. The Center relies upon awards of attorneys' fees in litigation where the Center represents the prevailing party, as well as donations from private individuals and private foundations, as its sources of income. Eligibility for intervenor compensation is important for the Center to be able to effectively advocate in this proceeding.</p> <p>The Center has been granted a showing of significant financial hardship in earlier proceedings, and has previously been awarded intervenor compensation. <i>See, e.g., Order Instituting Rulemaking to Consider Distributed Energy Resource Program Cost-Effectiveness Issues, Data Access and Use, and Equipment Performance Standards</i>, R.22-11-013 (Ruling on Showing of Significant Financial Hardship, May 24, 2023); <i>Order Instituting a Rulemaking to Modernize the Electric Grid for a High Distributed Energy Resources Future</i>, R.21-06-017 (Ruling on Showing of Significant Financial Hardship, Nov. 8, 2021); <i>In the Matter of the Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500 kV Interconnect Project</i>, A.10-07-001 (Orders of Nov. 23, 2010 and Apr. 18, 2013); <i>In the Matter of the Application of Southern California Edison Company (U338E) for a Certificate of Public Convenience and Necessity for the Eldorado-Ivanpah Transmission Project</i>, A.09-05-027 (Ruling on Showing of Significant Financial Hardship, Jan. 27, 2010).</p> <p>The Center does not anticipate any challenge to its eligibility for compensation in this proceeding. If any party does attempt to challenge the Center's eligibility, the Center requests that it be granted the opportunity to reply to such party's allegations within 10 days after the service of such filing.</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

**ADMINISTRATIVE LAW JUDGE RULING**

<b>1. The Notice of Intent to Claim Intervenor Compensation (NOI) filed by Center for Biological Diversity has demonstrated the party’s status as a “customer” for the reasons stated in Part I (4), above, of this ruling.</b>	<input checked="" type="checkbox"/>
<b>2. The NOI’s showing of significant financial hardship in Part III of the NOI (above) must be supplemented by the following information and documents:</b>  The NOI refers to the Ruling on Center for Biological Diversity’s Showing of Significant Financial Hardship issued on May 24, 2023 in R.22-11-013 (May 24 <sup>th</sup> Ruling). However, the May 24 <sup>th</sup> Ruling finds that the Center for Biological Diversity’s eligibility is conditioned upon receiving certain supplemental information from the filer. <sup>3</sup> The conditions have not been met. Therefore, Center for Biological Diversity is directed to provide information in this proceeding, as follows: <ul style="list-style-type: none"> <li>• If within the last three years Center for Biological Diversity has received contributions or grants, or entered into any contracts related to its mission, the names of the contributors, grantors or contracting party, and specific purposes of the contributions, grants, or contracts.</li> <li>• Center for Biological Diversity’s annual income and expense statements, (audited, if readily available) for the three most recent fiscal years.</li> <li>• If Center for Biological Diversity’s officers, directors, or voting members/constituents have held leadership positions at entities (including commercial, non-profit, or governmental entities) participating in an industry or market regulated by the Commission or have been affiliated with such industry or market participants, list the name of each entity and the individual’s role at each entity.</li> </ul> <p>This is a routine request to help ensure that the Commission renders informed decisions on intervenors’ eligibility.<sup>4</sup> Materials the filer considers confidential may be filed under</p>	<input checked="" type="checkbox"/>

<sup>3</sup> ALJ’s Ruling on Center for Biological Diversity’s Showing of Significant Financial Hardship issued on May 24, 2023, in R.22-11-013, at 10-11.

<sup>4</sup> *Id.*, fn. 1 at 10.

seal, pursuant to Rules 11.1 and 11.4 of the Commission’s Rules of Practice and Procedure. <sup>5</sup>  Center for Biological Diversity may respond to this ruling by formally filing a Supplement to the NOI to Claim Intervenor Compensation, within 45 days of the issuance of this ruling. A determination of Center for Biological Diversity’s eligibility to claim intervenor compensation will be made upon receiving the requested information.	
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**IT IS RULED** that:

1. Center for Biological Diversity has satisfied the eligibility requirements of Pub. Util. Code § 1804(a)(1) and (a)(2)(A).	<input checked="" type="checkbox"/>
2. To complete its showing of eligibility to claim intervenor compensation, Center for Biological Diversity is directed to provide additional information, as set forth in Section 2 of the Administrative Law Judge Ruling, above.	<input checked="" type="checkbox"/>

Dated April 24, 2024, at San Francisco, California.

\_\_\_\_\_  
/s/ SOPHIA J PARK  
Sophia J. Park  
Administrative Law Judge

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/s/ RAJAN MUTIALU  
Rajan Mutialu  
Administrative Law Judge

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<sup>5</sup> The Rules of Practice and Procedure can be downloaded from the Commission’s website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov) at [Proceedings and Rulemaking, Rules of Practice and Procedure](#). Instructions on submitting confidential and redacted documents can be found [Proceedings and Rulemaking, Practitioner’s Page, Filing Confidential Documents Under Seal \(Motion to File Under Seal\)](#).