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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Update and Amend Commission General Order 131-D.	Rulemaking 23-05-018

ADMINISTRATIVE LAW JUDGE'S THIRD RULING ON THE CENTER FOR BIOLOGICAL DIVERSITY'S NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION

Summary

This ruling determines the Notice of Intent (NOI) to claim Intervenor Compensation (IComp) by the Center for Biological Diversity (CBD) is insufficient. This ruling directs CBD to provide additional information to support its NOI. The Commission requires such information to make an informed assessment of CBD's eligibility to claim intervenor compensation.

1. Background

CBD filed its NOI in this proceeding claiming intervenor compensation eligibility as a Category 3 customer and significant financial hardship. It cites its bylaws as reflecting broad environmental interest that the Commission typically finds to be aligned with ratepayers.[1] CBD's NOI also states it advocates "for educating the public about renewable energy, including distributed energy resources (DERs) like rooftop solar and storage and community solar," its members "place a high priority on the need to expand distributed energy resources," and this includes "appropriately funding distributed energy

[1] See Articles of Incorporation (Attachment 2 to the NOI filed on July 20, 2009 (A.08-12-023)) and Bylaws dated December 24, 2019, filed on September 10, 2021 (R.21-06-017).

expansion, more progressively allocating grid costs among customers, and other measures to ensure that the most vulnerable customers have access to the health and economic benefits that distributed renewable energy offers."[2]

On April 24, 2024, an Administrative Law Judge (ALJ) ruling determined preliminarily that CBD was a Category 3 customer, contingent upon CBD providing additional information to support its showing of significant financial hardship. CBD was directed to provide financial documents and information pertaining to its annual income and expenses and sources of funding.[3] On May 31, 2024, CBD filed a Supplement to the NOI (First Supplement), accompanied by a motion to file confidential information under seal (Motion).[4] On January 17, 2025, an ALJ ruling found CBD's First Supplement incomplete, directed CBD to file a Second Supplement with the required information, and granted the Motion. On February 11, 2025, CBD filed a Second Supplement to its NOI.[5] The Commission again finds the response in the Second Supplement incomplete.

a. CBD's Supplemental Responses

The Commission directed CBD to provide financial statements, a description of its programs and activities, a list of contributors, and information on the contracts entered by CBD for its purpose-related activities. Further direction clarified that CBD may disclose only those donors who made a single donation of $10,000 or more, and exclude information on contracts for scientific research, or studies on biological species and their habitats.

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[2] CBD's NOI at 2-4.

[3] ALJ's Ruling on CBD's Showing of Significant Financial Hardship dated Apri. 24, 2024, at 9-10.

[4] CBD Supplement to NOI and Motion for Leave to File Confidential Corporate Financial Records Under Seal with Extension of Time and Proposed Order, dated May 31, 2024.

[5] ALJ's Ruling on CBD's Supplement to NOI and Motion to File Confidential Information Under Seal, dated January 17, 2025.

CBD's Second Supplement did not provide complete responses. CBD provided financial statements and listed its programs and activities within each program but declined to provide information on one of its two largest corporate donors, all major individual donors, and all purpose-related contracts. Instead, CBD offered a declaration from its Chief Development Officer that she is not aware of any donors participating in a California energy industry or market or affiliated with such participants, and that CBD does not have contracts with market participants or affiliated entities subject to the Commission's jurisdiction.

CBD's Second Supplement argues that requiring such information is unprecedented, overly broad, outside IComp program scope, burdensome, and in violation of CBD's and its donors' First Amendment right of association. This ruling directs CBD to provide the necessary information to support its NOI and discusses CBD's arguments below.

2. IComp Eligibility Rules and Background

Intervention in Commission proceedings is widely accepted, with or without intervenor compensation.[6] Public Utilities Code Sections 1801-1812[7] govern the Commission's IComp program which is funded by ratepayers as a

[6] The Commission's Rules of Practice and Procedure, particularly Rule 1.4, explain how an intervenor may assume party status – which is not limited to those eligible for intervenor compensation.

[7] Unless otherwise stated, all statutory references herein shall be to the California Public Utilities Code.

utility expense.[8] To qualify for intervenor compensation, an intervenor must[9] show that it is an eligible customer[10] and demonstrate significant financial hardship.[11]

a. Category 3 Customer Eligibility

"Category 3" customer eligibility is established by a "representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent" ratepayer interests.[12] Even when an intervenor's articles of incorporation or bylaws state that it represents ratepayers, the intervenor may not necessarily be found eligible if its funding or structure reveal the presence of

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[8] Section 1807(a):

> An award made under this article shall be paid by the public utility that is the subject of the hearing, investigation, or proceeding, as determined by the commission, within 30 days. Notwithstanding any other law, an award paid by a public utility pursuant to this article shall be allowed by the commission as an expense for the purpose of establishing rates of the public utility by way of a dollar-for-dollar adjustment to rates imposed by the commission immediately on the determination of the amount of the award, so that the amount of the award shall be fully recovered within one year from the date of the award.

[9] The "customer" and "significant financial hardship" requirements are contained in Section 1803:

> The commission shall award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding to any customer who complies with Section 1804 and satisfies both of the following requirements:
>
> (a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.
>
> (b) Participation or intervention without an award of fees or costs imposes a significant financial hardship.

[10] *Supra,* Section 1802(b)(1)(C): A representative of a group or organization 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.

[11] Section 1802(h):

> "Significant financial hardship" means either that 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, 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.

[12] Section 1802(b)(1)(C).

conflicting interests.[13] For example, groups representing renewable energy markets have been denied intervenor compensation eligibility even though they claimed to represent environmental concerns.[14] The intervenor's structure, funding, and activities demonstrate whether the intervenor is eligible. Providing renewable energy is typically a for-profit enterprise and thus a group that advances renewable energy markets is not necessarily eligible.

To administer the IComp program, Section 1804(d) empowers the Commission to audit customer records/books under cover of confidentiality to the extent necessary to verify IComp awards.[15] In its audit of the Commission's IComp program, the California State Auditor underscored the importance of actively verifying that intervenors do not have conflicts of interest.[16] The Commission's examination of contracts, donations and other activities is consistent with such authority and expectations.

b. Category 3 Customer Significant Financial Hardship Determined by Comparing Individual Members' Economic Interest

Category 3 customer eligibility allows an intervenor to show a "significant financial hardship" under Section 1802(h) without having to show that it cannot afford to pay the costs of effective participation. Section 1802(h) dictates a Category 3 customer need only meet the "comparison test" (as opposed to the

[13] D.00-04-026 at 19. (Utility line design company denied Category 3 customer status, notwithstanding bylaws stating it represents ratepayers, because it is in the business of utility design.)

[14] See D.20-09-040 at 6-7; D.18-11-010 at 20-21; R.19-09-009 Ruling dated December 28, 2020 at 5-7.

[15] Section 1804(d):

> The commission may audit the records and books of the customer or eligible local government entity to the extent necessary to verify the basis for the award. The commission shall preserve the confidentiality of the customer's or eligible local government entity's records in making its audit. Within 20 days after completion of the audit, if any, the commission shall direct that an audit report shall be prepared and filed. Any other party may file a response to the audit report within 20 days thereafter.

[16] CSA Audit Report 2012-118 at 26-27 (https://information.auditor.ca.gov/pdfs/reports/2012-118.pdf).

"cannot afford test") by showing that the economic interest of its individual members is small in comparison to the costs of effective participation in the proceeding.

The Commission has previously denied intervenor compensation eligibility where the intervenor does not meet the comparison test because of its individual member connections with the renewable energy industry.[17] The mere possibility of financial benefits by a renewable energy supporter upsets the comparison test, and underscores the importance of identifying an intervenor's individual members (including financial backers, clients, and other supporters).

c. Application of the IComp Statute

This section's discussion highlights a relationship between the two components of Category 3 IComp eligibility whereby evidence informing the financial hardship determination might also inform the preliminary determination about Category 3 customer eligibility. The Commission interprets the statute as a whole and does not view the components in isolation. Therefore, the preliminary ruling finding Category 3 customer status was a prerequisite for evaluating CBD's individual member economic information and not a final determination of CBD's eligibility. Engagements with the competitive markets may negate the CBD's significant financial hardship determination via the comparison test.

[17] In D.93-11-020, the Commission determined that members of the Center for Energy Efficiency and Renewable Technologies stood potentially to financially benefit from its intervention in Commission proceedings and thus did not meet the comparison test despite its broad environmental goals. In a ruling dated April 29, 2019 within Rulemaking 13-02-008, the Commission denied Climate Resolve's IComp eligibility for failing to meet the comparison test (notwithstanding its bylaws stating it represented environmentalism) because it received substantial funding from investor-owned utilities and some of its board members were involved in Commission-regulated markets. In D.22-09-020, the Commission found that Solar Consumer Advisor's president could profit from his participation in energy markets, negating its showing of significant financial hardship.

3. Response to CBD's Second Supplement

a. CBD's Contractual Information is Required for the Comparison Test

We turn to CBD's arguments presented in its Second Supplement. CBD first argues the Commission's Ruling dated January 17, 2025 improperly requests all contracts related to its mission, "even those contracts unrelated to markets regulated by the Commission" that bear "no reasonable relationship to [CBD's] entitlement to intervenor compensation" and would present "an enormous and unnecessary burden" on CBD to produce.[18] Instead, CBD produced a declaration attesting that there are no contracts with market participants or those affiliated with market participants.

The Commission does not accept a declaration in lieu of compliance with the IComp statute. CBD's contracts are relevant to show whether its individual members satisfy the comparison test by showing it has no contract generating disqualifying profits. In light of CBD's stated renewable energy focus and the associated risk such focus could render CBD ineligible, the Commission requires more information about CBD's purported environmental contracts. To the extent CBD has such contracts, there must be more information about those contracts to verify that CBD's supporters, including its clients and contractors receiving and paying for CBD's services, have no significant economic interest in Commission proceedings.

This ruling provides guidance to CBD to disclose the contractual information detailed below, including copies of any CBD contracts pertaining to renewable energy or DERs.

b. CBD's Donor Information is Required to Qualify as a Category 3 Customer.

[18] CBD Second Supplement at 10.

CBD takes issue with the requirement of information about donations CBD received exceeding $10,000, arguing such request is unprecedented, overbroad, and outside the purposes of the IComp program.

The discussion above highlights the Commission's authority to inquire about such donations and how the Commission has disqualified those groups with easy access to deep pockets (as CBD correctly points out).[19] $10,000 is an appropriate threshold given that CBD is a larger non-profit. Depending on the donation's source, such donations may point to a significant material interest in Commission proceedings. Information about donors and donations is critical to show whether the intervenor satisfies the significant financial hardship as evidenced by the comparison test (considering an intervenor's donor members).

The Commission will not rely on CBD's self-determinations and declarations. It makes no difference whether CBD characterizes a donation as being purely environmental when environmental interests might necessarily include ineligible renewable energy interests.

c. The First Amendment Does Not Guarantee Financial Compensation to a Group that Voluntarily Participates in a Government Process

Lastly, CBD argues the Commission's request for donor names is an unconstitutional infringement on CBD's rights under the First Amendment to the United States Constitution,[20] even if submitted under cover of confidentiality. In support of its arguments, CBD cites *Americans for Prosperity Foundation v. Bonta*,

[19] CBD Second Supplement at 8; D.18-11-010 at 10; R.97-01-010 (the IComp Rulemaking) at 69.

[20] The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

594 U.S. 595 (2021) (*APF*) and *Southern California Gas Co. v. Public Utilities Comm'n*, 87 Cal.App.5th 324 (2023) (*SoCalGas*).

Neither of CBD's cited cases are applicable because neither involves qualified compensation for participating in a voluntary government process like the IComp program at issue. In *APF*, the United States Supreme Court determined that California's tax forms violated tax-exempt charities' First Amendment association rights by requiring donor names and addresses.[21] The form was required for charitable organizations soliciting funds in California,[22] not for a voluntary participatory process funded by ratepayers contingent upon compliance with statute. In *SoCalGas* the Commission's data request violated the First Amendment by unlawfully requesting information about the utility's donors to its political activities.[23] The data request was invoked pursuant to the Commission's general regulatory authority,[24] not a specific statutory mandate for a voluntary participatory process funded by ratepayers as in the instant case.

The government has no obligation to subsidize the exercise of constitutional rights.[25] A refusal to fund or subsidize a group's attempts to influence a government process does not amount to an unconstitutional infringement on their First Amendment rights.[26] Furthermore, the government

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[21] *APF* at 596.

[22] *Id.* at 595.

[23] *SoCalGas* at 503.

[24] *Id.* at 515.

[25] *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 549-550 (1983). ("Although TWR does not have as much money as it wants, and thus cannot exercise its freedom of speech as much as it would like, the Constitution 'does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom.'" [Citing *Harris v. McRae*, 448 U.S. 297, 316 (1980).])

[26] *See Cammarano v. United States*, 358 U.S. 498 (1959).

may choose to fund one activity over another without violating the First Amendment.[27]

The Commission does not violate CBD's First Amendment right of association by conditioning Category 3 customer eligibility, or satisfaction of its comparison test, on the identification of CBD's large donors or contracts. This is especially true considering such information may be submitted under cover of confidentiality so it is not publicly disclosed and considering the Commission has statutory authority to audit customer records/books. The Commission has no First Amendment obligation to determine CBD is eligible for IComp via Category 3. CBD may still be IComp eligible as a Category 1 or 2 customer by meeting the "cannot afford" test but CBD sought no such eligibility. CBD may still intervene in Commission proceedings at its own costs.

4. Additional Information

The limited materials CBD submitted in response to the two ALJ rulings do not provide sufficient information for this evaluation. To complete the Commission's review of this NOI, CBD is ordered to submit the information listed below. This information is requested pursuant to the Commission's specific statutory authority to implement the IComp program which includes the authority to audit records. If CBD does not provide the requested information, the Commission will be unable to make an informed eligibility determination, the NOI will be denied along with the intervenor compensation claims.

CBD shall file a Third Supplement to the NOI by December 8, 2026, with the following information:

1. Identify all CBD's contracts within the last three years involving amounts of $10,000 or more, listing party

[27] *Rust v. Sullivan*, 500 U.S. 173, 174-175 (1991).

name(s) and associated contract purpose (for example, to support environmental interests that might include but are not limited to renewable energy and/or DERs), excluding any contracts for internal operations (for example, employment or business technology contracts).

2. Identify all CBD's donations within the last three years in the amount of $10,000 or more, listing donor name(s) and any associated donor purpose (for example, to support environmental interests including but not limited to renewable energy and/or DERs).
3. If CBD has (or had within the last three years) a donation and contribution policy, provide a copy of that policy.
4. Please describe CBD Action Fund's specific purpose-related activities, programs, or projects, financial supporters, donors (including names), grants, contracts for services provided by the Action Fund, names and affiliations of its leaders and decision-makers.
5. When referring to internet materials, attach electronic copies of the materials, unless they are already on file with the Commission, in which case a reference to the proceeding and date of the filing shall be provided.
6. Provide a copy of CBD's current membership list, and one for each of the three preceding years, maintained by its Membership Director as indicated in Section 5.1 of CBD's bylaws.

Information deemed confidential can be filed under seal and must be accompanied by the motion to file under seal.

IT IS SO RULED that:

1. The February 11, 2025 Second Supplement to CBD's NOI is incomplete.

2. By December 8, 2026, CBD shall respond with the required information discussed in this Ruling.

Dated November 18, 2026, at San Francisco, California.

/s/ ZHEN ZHANG
Zhen Zhang
Administrative Law Judge