

[REDACTED]

Respondents assert that controlling authority holds that subpoenaed third parties, such as Great-West Healthcare, with a potential interest in the administrative litigation are, at most

entitled to reimbursement of financing costs.

pay.

III.

Pursuant to Rule 3.31(d), the “Administrative Law Judge may deny discovery or make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding.” 16 C.F.R. 3.31(d). Great-West Healthcare does not argue that the requested discovery is objectionable under Rule 3.31(d), but rather argues that the Federal Rules of Civil Procedure “requires the court to protect non-part[ies] by requiring the party seeking discovery to bear enough of the expense of complying with a subpoena so that compliance with the subpoena

Linder, 251 F.3d at 182 (emphasis in original). The D.C. Circuit thus affirmed the district court's decision which was based on the fact that the subpoenaed party had an interest in the outcome of the litigation.

Neither the D.C. Circuit decision in *Linder*, nor the district court decisions in that case, alter the traditional factors that may be considered before costs are shifted to the party issuing the subpoena. *Linder*, 251 F.3d at 182-83; *Linder*, 180 F.R.D. at 177; *Linder*, 183 F.R.D. at 322. Specifically, whether the non-party has an interest in the outcome of the litigation.