



**NOTICE OF INTENT TO CLAIM  
INTERVENOR COMPENSATION**

**FILED**

11-03-16

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

Application of Pacific Gas and Electric Company for Approval of the Retirement of Diablo Canyon Power Plant, Implementation of the Joint Proposal, and Recovery of Associated Costs Through Proposed Ratemaking Mechanisms (U39E).	A. 16-08-006 Filed August 11, 2016
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**NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION  
AND, IF REQUESTED (and [ X ]<sup>1</sup> checked), ADMINISTRATIVE LAW JUDGE'S  
RULING ON [Environmental Defense Fund]'S SHOWING OF SIGNIFICANT  
FINANCIAL HARDSHIP**

**NOTE:** After electronically filing a PDF copy of this Notice of Intent (NOI), please email the document in an MS WORD format to the Intervenor Compensation Program Coordinator at [icompcordinator@cpuc.ca.gov](mailto:icompcordinator@cpuc.ca.gov).

<b>Customer (party intending to claim intervenor compensation):</b> Environmental Defense Fund	
<b>Assigned Commissioner:</b> Michael Picker	<b>Administrative Law Judge:</b> Peter V. Allen
I hereby certify that the information I have set forth in Parts I, II, III and IV of this Notice of Intent (NOI) is true to my best knowledge, information and belief.	
Signature:	/s/ Larissa Koehler
Date: November 3, 2016	Printed Name: Larissa Koehler

**PART I: PROCEDURAL ISSUES  
(To be completed by the party (“customer”) intending to claim intervenor compensation)**

<b>A. Status as “customer” (see Pub. Util. Code § 1802(b)):</b> The party claims “customer” status because the party is (check one):	<b>Applies (check)</b>
1. 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.  In addition to describing your own interest in the proceeding you must show how your participation goes beyond just your own self-interest and will benefit other customers.	<input type="checkbox"/>
2. A <b>Category 2</b> customer is a representative who has been authorized by actual	

<sup>1</sup> DO NOT CHECK THIS BOX if a finding of significant financial hardship is not needed (in cases where there is a valid rebuttable presumption of eligibility (Part III(A)(3)) or significant financial hardship showing has been deferred to the intervenor compensation claim).

<p>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.</p> <p>A representative authorized by a customer must identify the residential customer(s) being represented and provide authorization from at least one customer. <i>See</i> D.98-04-059 at 30.</p>	<input type="checkbox"/>
<p>3. 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.<sup>2</sup> 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</i> D.98-04-059, footnote at 3.</p>	<input checked="" type="checkbox"/>
<p>The party's explanation of its customer status must include the percentage of the intervenors members who are residential ratepayers or the percentage of the intervenors members who are customers receiving bundled electric service from an electrical corporation, and must include supporting documentation: (i.e., articles of incorporation or bylaws).</p> <p>EDF is a non-profit membership organization engaged in linking science, economics and law to create innovative, equitable and cost-effective solutions to society's most urgent environmental problems. As an organization, EDF has been active in California on environmental issues since the 1970s, and has participated in proceedings on energy related topics at the California Public Utility Commission since 1976. During these proceedings EDF had provided extensive analysis on the development and use of market based instruments and principles for achieving combined environmental and economic success.</p> <p>EDF is a non-profit organization organized under the laws and jurisdiction of New York. The Third Amended and Restated Bylaws of EDF, as amended through May 11, 2011 (the "EDF Bylaws"), state in Article I that a purpose and objective of EDF is to encourage and support the wise use of natural resources, and the maintenance and enhancement of environmental quality; and also to effect a joining of the best scientific findings with the most appropriate social action discovered by the social sciences and legal theory in order that practical decisions shall be made which shall best promote a quality environment. Please see Article 1 of the EDF Bylaws, attached hereto as Attachment 2.</p> <p>EDF has nearly 360,000 dues-paying members nationwide and nearly 60,000 in California. EDF's members in California are dispersed throughout the state and the majority of these are residential customers of Pacific Gas and Electric Company, Southern California Edison Company, or San Diego Gas and Electric</p>	

<sup>2</sup> Intervenors representing either a group of residential customers or small commercial customers who receive bundled electric service from an electrical corporation, must indicate in Part I, Section A, Item #4 of this form, the percentage of their members who are residential customers or the percentage of their members who receive bundled electric service from an electrical corporation. The NOI may be rejected if this information is omitted.

Company, though we do not have an exact percentage. EDF participates in this rulemaking as a representative of these members and their interests in reducing the environmental footprint of the electric grid. Thus, EDF participates in this proceeding to achieve these results and to promote outcomes aided by social science and legal analysis. Accordingly, this qualifies EDF as a Category C customer pursuant to Section 1802(b)(C) of the Public Utilities Code.

In 2010, EDF was found to be a customer as defined in PUC Section 1802(b)(C) and was awarded intervenor compensation for substantial contributions made to D.10-06- 047. See R. 08-12-009, Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission's own Motion to Actively Guide Policy in California's Development of a Smart Grid System, D. 10-12- 014, December 2, 2010 at 2.

Further, on Feb. 25, 2013, EDF was found to be a customer as defined in Public Utilities Code (PUC) Section 1802(b)(C). See R. 12-06-013, Order Instituting Rulemaking on the Commission's Own Motion to Conduct a Comprehensive Examination of Investor Owned Electric Utilities' Residential Rate Structures, the Transition to Time Varying and Dynamic Rates, and Other Statutory Obligations, Administrative Law Judges' Ruling on Notices of Intent to Claim Intervenor Compensation and Determinations of Eligibility to Claim Compensation, Feb. 25, 2013 (2013 Rates OIR Intervenor Compensation Decision) at 13-14.

Most recently, on April 1, 2015, in consolidated A. 14-11-003 and A. 14-11-004, EDF was found to have satisfied the eligibility requirements of Public Utilities Code (PUC) Section 1802 and to have shown significant financial hardship. See A. 14-11-003/A. 14-11-004, Administrative Law Judge's Ruling on Environmental Defense Fund's Showing of Significant Financial Hardship at 7.

Identify all attached documents in Part IV.  
 Certificate of Service and Bylaws of EDF.

Do you have any direct economic interest in outcomes of the proceeding?<sup>3</sup>  
 Yes:  No:   
 If "Yes", explain:

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

<sup>3</sup> See Rule 17.1(e).

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 type="checkbox"/> No

<b>C. Timely Filing of Notice of Intent (NOI) (§ 1804(a)(1)):</b>	<b>Check</b>
1. Is the party’s NOI filed within 30 days after a Prehearing Conference? Date of Prehearing Conference: 10/7/2016	<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**  
**(To be completed by the party (“customer”) intending to claim intervenor compensation)**

<b>A. Planned Participation (§ 1804(a)(2)(A)(i)):</b>
<p>The party’s statement of the issues on which it plans to participate:</p> <p>EDF is supportive of the proposal presented through this application by Pacific Gas &amp; Electric and the other signatories to the joint proposal – we find it to be a well-intentioned plan to replace an aging nuclear power plant with renewable and clean energy resources. That being said, we plan to seek clarification on a few imperative points. More detail needs to be given as to how the proposed plan will meet and/or exceed targets currently outlined in key state clean energy policies, such as the Renewable Portfolio Standard embedded into Senate Bill 350. In addition, PG&amp;E’s proposal should ensure that demand response and storage are part of the suite of replacement procurement solutions contemplated, and that the analysis effectively considers the numerous changes occurring at the distribution edge (i.e. adjustments to load resulting from shift to time of use pricing). Finally, EDF plans to ensure through its participation that PG&amp;E follows through on the commitments contained in the application/joint proposal.</p> <p>The party’s explanation of how it plans to avoid duplication of effort with other parties:</p> <p>The interests of the customers represented by EDF are unique, in that EDF’s approach is to focus on market-based approaches and social science principles to achieve positive environmental outcomes. EDF intends to coordinate its participation with other intervenors to ensure that EDF’s efforts complement or supplement but do not duplicate the efforts of others.</p> <p>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).</p> <p>EDF anticipates fully participating, including submitting comments, briefs, and testimony as needed that speak to the most effective way to develop and implement the joint proposal</p>

outlined in Pacific Gas & Electric's application, focusing on the issues described above.

**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)(ii)):**

Item	Hours	Rate \$	Total \$	#
<b>ATTORNEY, EXPERT, AND ADVOCATE FEES</b>				
Larissa Koehler	200	\$220	\$44,000	1
Legal Consultant	50	\$165	\$8,250	2
James Fine	50	\$365	\$18,250	3
Jayant Kairam	50	\$140	\$7,000	4
Steven Moss	25	\$215	\$5,375	5
				<b>Subtotal: \$82,875</b>
<b>OTHER FEES</b>				
[Person 1]				
[Person 2]				
<b>Subtotal: \$</b>				
<b>COSTS</b>				
[Item 1]				
[Item 2]				
<b>Subtotal: \$</b>				
<b>TOTAL ESTIMATE: \$ 77,500</b>				

**Estimated Budget by Issues:**

EDF anticipates 100% of the budget to focus on the development and implementation of PG&E's proposal, as described above.

Note: It is difficult to estimate potential compensation with certainty and EDF plans to work judiciously and efficiently, tracking and reporting actual hours worked. Larissa Koehler and James Fine were previously awarded rates of \$220 and \$365, respectively, in 2016 in D. 16-05-020. Rates for EDF's Legal Consultant and Mr. Kairam are based on the intervenor compensation rates by years of experience for 2016 (Resolution ALJ-329), the most recent rates currently available:

#1 Larissa Koehler has been a staff attorney on EDF's US Climate and Energy Program for over four years.

#2 EDF's legal consultant has yet to be determined, but will be a recent law school graduate under the close supervision of Ms. Koehler.

#3 James Fine has over 20 years of experience working as an environmental economist, policy scientist and advocate

#4 Jayant Kairam has 2 years of experience working on clean energy policy.

#5 Steven Moss has over twenty years of experience in utility regulation.

The amount of any future claim to compensation is dependent upon the final decision in this proceeding. EDF will address the reasonableness of the hourly rates requested for its representatives in our request for compensation, if a request for compensation is filed.

**PART III: SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP  
(To be completed by party (“customer”) intending to claim intervenor compensation; see Instructions for options for providing this information)**

<b>A. The party claims “significant financial hardship” for its Intervenor Compensation Claim in this proceeding on the following basis:</b>	<b>Applies (check)</b>
1. “[T]he 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(g)); or	<input type="checkbox"/>
2. “[I]n 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(g)).	<input checked="" type="checkbox"/>
3. A § 1802(g) 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)).  Commission’s finding of significant financial hardship made in proceeding number:   Date of Administrative Law Judge’s Ruling (or CPUC Decision) in which the finding of significant financial hardship was made:	<input type="checkbox"/>

<b>B. The party’s explanation of the factual basis for its claim of “significant financial hardship” (§ 1802(g)) (necessary documentation, if warranted, is attached to the NOI:</b>
EDF represents the interests of its members in California who are customers of PG&E. However, savings achieved in this proceeding at EDF’s San Francisco and Sacramento offices, or by EDF members on a customer-by-customer basis, would be substantially less than the estimated cost of EDF participation (\$77,500). On April 1, 2015, EDF was found to have shown significant financial hardship in A. 14-11-003/A. 14-11-004. See, Administrative Law Judge’s Ruling on Environmental Defense Fund’s Showing of Significant Financial Hardship at 7.

**PART IV: ATTACHMENTS DOCUMENTING SPECIFIC  
ASSERTIONS MADE IN THIS NOTICE  
(The party (“customer”) intending to claim intervenor compensation identifies and attaches documents; add rows as necessary)**

<b>Attachment No.</b>	<b>Description</b>
1	Certificate of Service
2	Bylaws of EDF

**ADMINISTRATIVE LAW JUDGE RULING<sup>4</sup>**  
**(Administrative Law Judge completes)**

	<b>Check all that apply</b>
<b>1. The Notice of Intent (NOI) is rejected for the following reasons:</b>	<input type="checkbox"/>
a. The NOI has not demonstrated the party's status as a "customer" for the following reason(s):	<input type="checkbox"/>
b. The NOI has not demonstrated that the NOI was timely filed (Part I(B)) for the following reason(s):	<input type="checkbox"/>
c. The NOI has not adequately described the scope of anticipated participation (Part II, above) for the following reason(s):	<input type="checkbox"/>
2. The NOI has demonstrated significant financial hardship for the reasons set forth in Part III of the NOI (above).	<input type="checkbox"/>
3. The NOI has not demonstrated significant financial hardship for the following reason(s):	<input type="checkbox"/>
<b>4. The Administrative Law Judge provides the following additional guidance (see § 1804(b)(2)):</b>	<input type="checkbox"/>

**IT IS RULED that:**

1. The Notice of Intent is rejected.	<input type="checkbox"/>
2. The customer has satisfied the eligibility requirements of Pub. Util. Code § 1804(a).	<input type="checkbox"/>
3. The customer has shown significant financial hardship.	<input type="checkbox"/>
4. The customer is preliminarily determined to be eligible for intervenor compensation in this proceeding. However, a finding of significant financial hardship in no way ensures compensation.	<input type="checkbox"/>
5. Additional guidance is provided to the customer as set forth above.	<input type="checkbox"/>

Dated \_\_\_\_\_, at San Francisco, California.

\_\_\_\_\_  
Administrative Law Judge

<sup>4</sup> A Ruling needs not be issued unless: (a) the NOI is deficient; (b) the Administrative Law Judge desires to address specific issues raised by the NOI (to point out similar positions, areas of potential duplication in showings, unrealistic expectations for compensation, or other matters that may affect the customer's Intervenor Compensation Claim); or (c) the NOI has included a claim of "significant financial hardship" that requires a finding under § 1802(g).

**Attachment 1:  
Certificate of Service by Customer**

I hereby certify that I have this day served a copy of the foregoing **NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION** by (check as appropriate):

- hand delivery;
- first-class mail; and/or
- electronic mail

to the following persons appearing on the official Service List:

***Parties***

---

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**Attachment 2:**

**BYLAWS OF ENVIRONMENTAL DEFENSE FUND, INCORPORATED**

**THIRD AMENDED AND RESTATED  
BYLAWS OF  
ENVIRONMENTAL DEFENSE FUND, INCORPORATED**

**as amended through May 11, 2011**

Adopted  
May 11, 2011

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**FOURTH AMENDED AND RESTATED**

**BYLAWS OF  
ENVIRONMENTAL DEFENSE FUND, INCORPORATED**

**as amended through May 11, 2011**

**FOURTH AMENDED AND RESTATED  
BYLAWS OF  
ENVIRONMENTAL DEFENSE FUND, INCORPORATED**

**ARTICLE I  
NAME AND OBJECTIVE**

1. The name of the corporation shall be Environmental Defense Fund, Incorporated, hereinafter referred to as "Corporation."

2. The Corporation's mission is to preserve the natural systems on which all life depends. Guided by science, the Corporation designs and transforms markets to bring lasting solutions to the most serious environmental problems. Objectives that fulfill the Corporation's mission shall include the following:

(a) to encourage and support the wise use of natural resources, and the maintenance and enhancement of environmental quality;

(b) to pursue and to encourage others to pursue research relevant to the wise use of natural resources, and the maintenance and enhancement of environmental quality;

(c) to promote collaboration among scientific, economic and legal disciplines toward the advancement of environmental quality;

(d) to effect a joining of the best scientific findings with the most appropriate social action discovered by the social sciences and legal theory in order that practical decisions shall be made and solutions implemented which shall best promote a quality environment.

(e) to encourage public education on the problems of the wise use of natural resources and the maintenance and enhancement of environmental quality;

(f) to prevent, or to prevent the continuance of, environmental degradation by taking whatever legal measures are necessary to provide scientists fair and impartial forums in which their scientific findings may be presented objectively to their fellow citizens and tested through cross examination.

(g) to receive and administer funds for scientific, educational, and charitable purposes;

(h) to conduct and disseminate the results of research in furtherance of the wise use of natural resources and the maintenance and enhancement of environmental quality by all means not in violation of the laws of the United States or the State of New York or otherwise inconsistent with the provisions of the Corporation's Certificate of Incorporation;

(i) to the ends proposed above and contained within ARTICLE I, paragraph 2, to take and hold by bequest, devise, gift, grant, purchase, lease or otherwise, absolutely or jointly with any other person, persons, corporation or corporations, any property, real, personal or mixed, tangible or intangible, or any divided interest therein, without limitation to invest, reinvest or deal with the principal or the income thereof in such manner as, in the judgment of the trustees, will best promote the purposes of the Corporation without limitation, except such limitations, if any, as may be contained in the Certificate of Incorporation, the Bylaws, or any laws applicable thereto, and any limitations which might be contained in the instrument under which such property is received by the Corporation.

3. The Corporation shall be conducted as an “Exempt Organization” within the meaning of the provisions of Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any subsequent tax laws from time to time in effect, sometimes herein referred to as the “Internal Revenue Code”), and the regulations promulgated thereunder, and no part of the activities of the Corporation shall be:

(a) carrying on propaganda, or otherwise attempting to influence legislation, so as to subject the Corporation to any tax imposed by Section 4911 of the Internal Revenue Code;

(b) directly or indirectly participating in or intervening in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office;

(c) objecting to or engaging in any activities which characterize it as an “action organization” as defined in Regulation 1.501 (c) (3)-1(c)(3) of the Regulations promulgated under the Internal Revenue Code; or

(d) operating any institution named in Article 14 of the New York Not-for-Profit Corporation Law or engaging in any activities which under said section would require the approval of any State or Local Board.

4. The property of this Corporation is irrevocably dedicated to scientific, educational and charitable purposes. The Corporation is not organized for pecuniary profit and no part of the income or assets of the Corporation shall be distributable to, or inure to the benefit of, its members, Trustees, officers or any other private persons, except that the Corporation shall be authorized to make reimbursements for expenditures and to pay reasonable compensation for services actually rendered to the Corporation.

5. The Corporation shall not have or exercise any power or authority, nor shall it directly or indirectly engage in any activity, which would prevent it from qualifying as an organization described in Section 501 (c) (3) of the Internal Revenue Code.

6. In the event of the dissolution of the Corporation and subject to the approval of a Justice of the Supreme Court of the State of New York, the Board of Trustees shall, after paying or making provision for the payment of all of the liabilities of the Corporation, distribute all assets of the Corporation to one or more organizations which are then organized and operated exclusively for scientific, educational and charitable purposes and are then qualified as organizations described in Section 501 (c) (3) of the Internal Revenue Code. If any assets so distributed on dissolution of the Corporation shall consist of real or personal property owned or used by the Corporation and having a situs in states other than New York, the use or disposition of any such assets shall be limited to the scientific, educational and charitable purposes set forth herein and in a manner as shall satisfy the requirements of the laws of any such other states for exemption of such assets from property taxation in such other states.

## **ARTICLE II BOARD OF TRUSTEES**

1. There shall be a Board of Trustees of the Corporation. The number of trustees shall be set by a majority vote of the entire Board and shall not be less than five.

2. A quorum shall exist when a majority of the entire Board is present at a meeting. Unless otherwise provided in these Bylaws, a majority vote of those present is necessary to approve any action of the Trustees.

3. Meetings of the Board shall be held at a time and place fixed by the Board of Trustees . All meetings shall be conducted in accordance with Robert's Rules of Order.

4. Special meetings may be called by any trustee upon written demand of not less than one-fifth of the entire Board. The Chairman of the Board shall call special meetings for extraordinary reasons when so authorized by one-fifth of the entire Board at such times and places as are specified by such members. For the purpose of obtaining such authorization, the Chairman of the Board may take a telephone poll of the trustees. A special meeting may take the place of an Annual Meeting if so authorized by a majority of the entire Board.

5. The process for recommendation, nomination, and election of trustees shall follow the schedule, sequence and procedure for election of Officers of the Board of Trustees set forth in Article III, subparagraphs 5(a)-(e). A person may be elected or re-elected to the Board of Trustees by a majority vote of trustees present at a meeting at which a quorum exists. The term of office of each trustee shall be three years, provided, however, that the Board may provide for election of trustees to terms of less than three years in order to have the Board of Trustees divided into three classes with terms expiring in staggered years. Each trustee shall hold office until the earlier of (i) the termination of such term due to removal, resignation, incapacity or death or (ii) the expiration of the term for which he is elected, and until his successor has been elected and duly qualified. A trustee may be elected to consecutive terms. Notwithstanding anything to the contrary contained herein and in addition to the foregoing procedures for the election of trustees, the Chair of the Nominating and Governance Committee, with the concurrence of the Chairman of the Board of Trustees, may from time to time

present to the Board of Trustees for its consideration, a candidate or candidates for nomination to the Board and, upon such recommendation, the Board may on no less than five (5) days prior notice to trustees, elect such candidate or candidates at a regularly scheduled meeting of the Board or by unanimous written consent.

6. The Board of Trustees shall meet at least two times per year and one of those meetings as designated by the Chairman shall constitute the annual meeting of the Board. The Board of Trustees shall have the following powers and duties:

- (a) to determine the broad objectives and policies of the Corporation and the means of implementing them;
- (b) to oversee the financial affairs of the Corporation, including the budget and the fundraising efforts of the Corporation;
- (c) to select new members of the Board;
- (d) to elect the officers described in Article III of the bylaws;
- (e) to create and appoint such standing and special committees as it may determine;
- (f) to hire and fire the President of the Corporation, who shall report to the Board; and the Treasurer of the Corporation based upon the recommendation of the President;
- (g) to approve litigation by or on behalf of the Corporation, or to delegate such function as it sees fit including to a Committee of the Corporation established by resolution of the Board;
- (h) to take such action as set forth in Article VIII.

7. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or the committee then serving consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consent thereto by members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

8. Trustees shall avoid any personal conflict of interest with the policies, objectives, or activities of the Corporation. If such a conflict develops, it should be reported promptly to the Chairman of the Board of Trustees or to the Chairman of the Audit Committee. If necessary, the Chairman of the Board of Trustees or the Chairman of the Audit Committee, as the case may be, shall seek the advice of counsel. A trustee shall not vote on, or attend any Board discussion of, a matter as to which he or she has a conflict of interest.

9. Removal of a trustee from the Board shall become effective only after

- (a) due notice of reasons for removal is served; and

(b) a hearing is held which must be attended by at least a majority of the entire Board, during which the trustee is given due opportunity (as defined by a majority of the trustees present) to appear and answer charges against him; and

(c) a majority of the trustees present at the hearing recommends removal for reasons stated in a report to all trustees; and

(d) the Board by a three-fourth majority vote of the entire Board confirms the motion of his removal from the Board as a trustee.

(e) the trustee who is the subject of the proceeding shall not participate in the voting referred to in this paragraph.

10. Resignation of a trustee shall become effective upon receipt of written notice to that effect signed by hand and mailed to the Chairman of the Board of Trustees.

11. A person may be designated an Honorary trustee or an Advisory trustee by a majority vote of trustees present at a meeting at which a quorum exists. Honorary and Advisory trustees may attend meetings of the Board of Trustees but shall have no vote. The Board of Trustees shall determine a term of office for an Honorary or Advisory trustee at the time of designation. An Honorary or Advisory trustee shall serve until the earlier of (i) termination of such term due to removal, resignation, incapacity, or death, or (ii) the expiration of the term for which he or she was designated. An Honorary or Advisory trustee may be designated for consecutive terms.

12. Any one or more members of the Board of Trustees or any duly constituted committee thereof may participate in a meeting of the Board or any such committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such meeting.

13. Trustees shall receive no compensation for serving as members of the Board or any committee thereof, but may be reimbursed for expenditures reasonably incurred in the execution of their duties. Non-Board members serving on Board committees may be compensated for their services to the Corporation, but such members shall have no vote.

### **ARTICLE III OFFICERS OF THE BOARD OF TRUSTEES**

1. There shall be a Chairman of the Board of Trustees elected from among the trustees in accordance with and pursuant to paragraph 5 of this Article III. The Chairman of the Board shall:

(a) preside over meetings of the Board or designate a trustee to preside; and

(b) exercise whatever other functions shall be decided upon by a majority vote of the trustees present at a meeting.

2. There shall be a Vice Chairman of the Board of Trustees elected from among the trustees in accordance with and pursuant to paragraph 5 of this Article III who shall assume the functions and powers of the Chairman when the Chairman is absent from a meeting. If the Chairman and Vice Chairman are unable to attend a meeting of the Board, the Chairman shall designate a trustee to perform the function and powers of the Chairman. The Board may elect more than one Vice Chairman from time to time with such duties as the Board may determine.

3. There shall be a Secretary of the Board of Trustees elected from among the trustees in accordance with and pursuant to paragraph 5 of this Article III. The Secretary of the Board, with the assistance of the Corporation staff, shall:

(a) record or supervise the recording of the minutes of each meeting;

(b) provide each trustee and the President with a copy of the minutes within one month of the meeting. Each trustee present at the meeting may recommend approval of, or amendments to, the minutes by notice mailed to the Secretary. Such recommendations shall be considered at the next meeting; and

(c) designate a trustee to act as Secretary in his absence.

4. Removal of an officer from the Board of Trustees shall be accomplished by a vote and process as provided in Article II, paragraph 9.

5. The Officers of the Board of Trustees defined in this Article III shall be elected as follows:

(a) Prior to the February meeting of the Board of Trustees occurring during a year in which one or more new or renominated Officers of the Board of Trustees are to be elected pursuant to this Article III, the Chair of the Nominating and Governance Committee will solicit, from the Board of Trustees, recommendations for nominees to be considered for election as Officers of the Board of Trustees. The members of the Board of Trustees may then submit their recommendations for nominees to the Chair of the Nominating and Governance Committee no later than the end of such February meeting except as such time period may be extended from time to time in the discretion of the Chair of such Committee

(b) Following the February meeting of the Board of Trustees and prior to the Annual Meeting of the Board of Trustees, the Chair of the Nominating and Governance Committee and the other members of the Nominating and Governance Committee will review and analyze, either individually or collectively, the qualifications of the individuals recommended pursuant to paragraph 5(a) above and any other individuals recommended to or by the Nominating and Governance Committee.

(c) Based on the process described in this paragraph 5(a) and (b), the Chair of the Nominating and Governance Committee will confer with the President of the Corporation and the Chair of the Board of Trustees to draft a proposed slate of Officer nominees.

(d) Upon satisfaction of the requirements set forth in paragraphs 5(b) and 5(c), individual officer nominees will be consulted by the Chair of the Nominating and Governance Committee as to their willingness to serve. Any problems or issues that arise from these consultations can be reported to the Nominating and Governance Committee for discussion and revision of the proposed slate, as appropriate or necessary.

(e) Upon satisfaction of the requirements set forth in paragraphs 5(b), 5(c) and 5(d), but in no event later than five (5) days prior to the Annual Meeting of the Board of Trustees, a final slate of nominees shall be recommended to the Board of Trustees, and such slate shall be voted upon by the Board of Trustees at the Annual Meeting.

(f) Each Officer of the Board of Trustees shall serve a term which is the lesser of (i) such Officer's remaining term as a member of the Board of Trustees, or (ii) three years and until his successor has been elected and duly qualified, unless such Officer's service either as an Officer of the Board of Trustees or as a member of the Board of Trustees is terminated earlier by death, incapacity, resignation or by the Board of Trustees.

(g) At the end of each Officer's term, such Officer may be re-nominated and re-elected for one or more additional three-year terms pursuant to and in accordance with this Article III.

6. The Board of Trustees may choose also such additional officers or assistant officers as it may deem advisable, and may assign to such additional officers or assistant officers whatever duties it may deem advisable. Such additional officers or assistant officers shall be nominated and elected pursuant to and in accordance with this Article III.

#### **ARTICLE IV COMMITTEES OF THE BOARD OF TRUSTEES**

1. The Board may appoint an Executive Committee of the Board from time to time. When appointed, the Executive Committee of the Board of Trustees shall be composed of at least three officers identified in Article III and at least two other trustees nominated by the Chairman and approved by the Board. The Executive Committee shall meet between meetings of the Board, as required to conduct the business of the Corporation. It shall have the authority to take all action which may be taken by the Board as a whole, except that the powers given to the Board in Article II, Paragraphs 6(c), 6(d), 6(e), 6(f), and 9, and Article VIII and those powers which the Board as a whole normally would assume under New York State law shall be

exercisable only by the Board. The Committee shall keep minutes of its meetings, and provide a copy of such minutes, promptly after each meeting, to members of the Board. Other trustees may attend Executive Committee meetings and participate fully therein in a non-voting capacity. Presence at an Executive Committee meeting of a simple majority of the officially designated members of the Executive Committee shall be a quorum empowered to exercise Executive Committee functions. Due notice of each Executive Committee meeting must be given to all trustees. In the event of the appointment of an Executive Committee pursuant to this Article IV, Paragraph 1, these Bylaws shall be amended and restated to implement any changes required to facilitate the operation of the Executive Committee.

2. There shall be a Finance and Administration Committee ("Finance Committee") of the Board of Trustees. The Finance Committee shall be appointed by the Chairman of the Board of Trustees and approved by the Board of Trustees. Duties of the Finance Committee will include, but will not be limited to, determining the annual budget and spending authorizations, banking and credit arrangements, real estate matters, discussions with the President, Treasurer and other members of management involving the quality of the Corporation's financial and administrative management, personnel and management systems, as well as other administration and general management matters. The Committee will have the authority to conduct any investigations appropriate to fulfilling its responsibilities and will have direct access to members of management and their staff. The Finance Committee will also have the authority to retain, at the expense of the Corporation, special legal, accounting, or other consultants or experts it deems necessary in the performance of its duties. The Finance Committee shall be comprised of at least three members, at least one of whom should have suitable financial experience or credentials. All members of the Committee shall be non-staff Trustees, free from any relationship that would interfere with the exercise of his or her independent judgment and will meet at least three times per year.

3. There shall be an Audit Committee of the Board of Trustees. The Audit Committee shall be appointed by the Chairman of the Board of Trustees and approved by the Board of Trustees. Duties of the Audit Committee will include, but will not be limited to, oversight of the financial accounting process and system of internal controls regarding finance, accounting and use of assets, selection and oversight of outside auditors, oversight of the policy on conflicts of interest, and providing an avenue of communication between and among the Corporation's outside auditors, management, staff, and the Board of Trustees. The Audit Committee shall have the authority to conduct any investigations appropriate to fulfilling its responsibilities, and will have direct access to the outside auditors as well as to anyone in the Corporation. The Audit Committee shall have the authority to retain, at the expense of the Corporation, special legal, accounting, or other consultants or experts it deems necessary in the performance of its duties. The Audit Committee shall be comprised of at least three members, at least one of whom should have suitable financial experience or credentials. The majority of the members of the Audit Committee shall not also be members of the Finance Committee. In addition, the Chairman of the Audit Committee shall not be a member of the Finance Committee. All members of the Audit Committee shall be non-staff Trustees, free from any relationship that would interfere with the exercise of his or her independent judgment. The Audit Committee is expected to meet at least two times per year.

4. The Chairman of the Board of Trustees or the Board of Trustees itself may create such other Standing and Special Committees as he or she or it shall determine, as the case may be. The members of each such committee shall be nominated by the Chairman of the Board with the approval of the Board or appointed by the Board of Trustees itself, as the case may be. Such Committees shall have only the powers specifically delegated to them by the Board.

5. The term of office of a member of any Committee of the Board of Trustees shall be one year or until a successor is elected and has duly qualified. Members may be elected to consecutive terms.

6. Upon the recommendation of the Chairman of any Committee of the Board, the Board of Trustees may appoint one or more persons who are not members of the Board of Trustees to serve as non-voting members of such Committee on such terms and conditions as the Board may approve.

7. All Committees shall adopt appropriate operating procedures or charters and will keep a record of the essentials of its deliberations.

## **ARTICLE V OFFICERS OF THE CORPORATION**

1. There shall be a President of the Corporation. The President shall be appointed and removed by the Board of Trustees. The President of the Corporation shall:

(a) serve as the chief executive officer of the Corporation. The President shall report to the Board regarding the affairs of the Corporation and, subject to the supervision of the Board, shall perform all duties customary to that office and shall supervise and control all of the affairs of the Corporation in accordance with policies and directives approved by the Board of Trustees.

2. There shall be a Treasurer of the Corporation who may also be designated as the Vice-President of Finance and Administration or the Chief Financial Officer. The Board of Trustees shall elect or remove the Treasurer based on the recommendation of the President. The Treasurer shall:

(a) have the custody, and be responsible for, all funds and securities of the Corporation. He or she shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation, and shall deposit all monies and other valuable property of the Corporation in the name and to the credit of the Corporation in such banks or depositories as the Board of Trustees may designate. Whenever required by the Board of Trustees, the Treasurer shall render a statement of accounts. He or she shall at all reasonable times exhibit the books and accounts to any officer or director of the Corporation, and shall perform all duties incident to the office of the Treasurer, subject to the supervision of the Board, and such other duties as shall from time to time be assigned by the Board. The Treasurer shall, if required by the Board, give such

bond or security for the faithful performance of his or her duties as the Board may require for which he or she shall be reimbursed.

(b) work with the President and other members of management in developing the annual budget and related financial plans. He/she will also be responsible for the Corporation's financial reporting to management, the Board and the public, the latter in the form of audited financial statements. He/she will also work with the Corporation's outside auditor to assist in the development of the annual audited financial statements; manage the banking and investment matters of the corporation; as well as work with the President on the system of internal control at the Corporation to ensure appropriate safeguards are in place in regard to assets, commitments and disbursements.

3. There may be an Executive Director and/or one or more Vice Presidents of the Corporation, including Senior and Executive Vice-Presidents. The Executive Director and Vice-Presidents shall be appointed and removed by the President. The Executive Director and Vice Presidents shall perform such duties and have such powers as the Board of Trustees may from time to time prescribe by standing or special resolution, or as the President may from time to time provide, subject to the powers and the supervision of the Board.

4. There may be Assistant Treasurers and Assistant Secretaries of the Corporation. The Assistant Treasurers and Assistant Secretaries shall be appointed and removed by the Personnel Committee of the Board of Trustees. Assistant Treasurers and Assistant Secretaries shall have such authority and perform such duties as may be prescribed by the Personnel Committee. The Personnel Committee may remove any agent or employee at any time with or without cause. Removal without cause shall be without prejudice to such person's contract rights, if any, and the appointment of such person shall not itself create contract rights.

## **ARTICLE VI MEMBERSHIP IN THE CORPORATION**

1. There shall be no voting membership in the Corporation other than as a trustee.

2. There may be a non-voting membership in the Corporation designed to permit the public to identify with and support the Corporation. Subject to the approval of the Board of Trustees, the President may develop a non-voting membership program as appropriate to further the Corporation's objectives.

3. Employees of the Corporation shall not by virtue of their employment be considered voting members of the Corporation.

## **ARTICLE VII INDEMNITY**

Any person made, or threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person or such

person's testator or intestate, is or was a trustee, officer or member of the professional or administrative staff of the Corporation or serves or served any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity at the request of the Corporation, shall be indemnified by the Corporation, and the Corporation may advance such person's related expenses (including legal fees), to the full extent permitted by law. The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation and its trustees, officers and members of its professional and administrative staff to the full extent such indemnification is permitted by law.

**ARTICLE VIII AMENDMENTS TO  
THE CERTIFICATE  
OF INCORPORATION AND BYLAWS OF THE  
CORPORATION**

1. The Certificate of Incorporation shall be amended in accordance with the laws of the State of New York, subject to the provisions of Section 501 (c) (3) of the U.S. Internal Revenue Code as amended.

2. The Bylaws may be amended by the affirmative vote of a majority of the entire Board. Notwithstanding any provision of Article II, such action may only be taken at a meeting for which written notice has been given, 30 days in advance, of the purpose of the meeting and the nature of the proposed changes; provided, however, that ARTICLE II, Paragraphs 4, 6, and 9 and that part of ARTICLE IV, Para. 1 enumerating the powers of the Executive Committee, if appointed pursuant to Article IV, Paragraph 1, may only be amended by the affirmative vote of two-thirds of the entire Board.