



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

**FILED**

Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8.	Rulemaking 11-10-003 11-28-11 04:59 PM (Filed October 6, 2011)
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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 CENTER FOR BIOLOGICAL DIVERSITY'S SHOWING OF  
SIGNIFICANT FINANCIAL HARDSHIP**

Customer (party intending to claim intervenor compensation):			
CENTER FOR BIOLOGICAL DIVERSITY			
Assigned Commissioner: Michael R. Peevey		Assigned ALJ: David M. Gamson	
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. I further certify that, in conformance with the Rules of Practice and Procedure, this NOI and has been served this day upon all required persons (as set forth in the Certificate of Service attached as Attachment 1).			
		Signature:	/s/
Date:	11/28/2011	Printed Name:	Kevin P. Bundy

**PART I: PROCEDURAL ISSUES**

(To be completed by the party ("customer") intending to claim intervenor compensation)

A. Status as "customer" (see Pub. Util. Code § 1802(b)): The party claims "customer" status because the party (check one):	Applies (check)
1. Category 1: Represents consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the Commission (§ 1802(b)(1)(A)).	
2. Category 2: Is a representative who has been authorized by a "customer" (§ 1802(b)(1)(B)).	
3. Category 3: Represents a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, to represent "small commercial customers" (§ 1802(h)) who receive bundled electric service from an electrical corporation (§ 1802(b)(1)(C)), or to represent another eligible group.	X

<sup>1</sup> DO NOT CHECK THIS BOX if no finding of significant financial hardship is 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).

4. The party's explanation of its customer status, with any documentation (such as articles of incorporation or bylaws) that supports the party's "customer" status. Any attached documents should be identified in Part IV.

The Center for Biological Diversity ("Center") meets the definition in Category 3: a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers. The Commission has acknowledged the Center's "customer" status most recently in a ruling on a Notice of Intention to Claim Intervenor Compensation ("NOI") (A.09-05-027; Jan. 27, 2010) and a subsequent Decision awarding compensation in the same proceeding (D.11-10-041; Oct. 20, 2011).

The Center is a non-profit membership organization whose Articles of Incorporation specifically authorize it "to advance conservation efforts." See Attachment No. 2 (Articles of Incorporation). As part of that mission, the Center strives to reduce the environmental impacts of energy development, including contributions to climate change and adverse effects on imperiled plants and wildlife and their habitats. In particular, the Center advocates for and educates the public about energy efficiency, alternative generation technologies, and siting of power plants and transmission lines, in order to reduce impacts to imperiled species and habitats, improve air quality, and reduce greenhouse gas emissions. In this capacity the Center represents its members, many of whom are residential ratepayers, who seek to protect the environment. The Center's staff includes attorneys, scientists, and policy experts who have considerable experience and knowledge regarding the environmental impacts of energy development.

Approximately 8,300 Center members live and purchase utility services in California. Many of these members live within the service territories of the three major investor-owned utilities. The interests of the members/customers represented by the Center are unique and are not fully represented by other parties involved with this case. Center members highly prioritize the need to reduce the environmental footprint and climate consequences of energy development. If not for the Center's participation in this proceeding, these concerns would not be adequately represented.

In Decision (D.) 98-04-059, page 49, footnote 14, the Commission stated its "previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers." The Commission explained that "With respect to environmental groups, we have concluded they were eligible 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.88-04-066, mimeo, at 3.) They represent customers who have a concern for the environment which distinguishes their interest from the interests represented by Commission staff, for example." *Id.* The Center is such an environmental group because it represents customers with a concern for the environment that is different from the interests represented by Commission staff and other parties to this proceeding.

- Describe if you have any direct economic interest in outcomes of the proceeding.

The Center has no direct economic interest in the outcomes of this proceeding.

<b>B. 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: <u>October 27, 2011</u> (see Rule 1.15)	Yes <u>X</u> No <u>  </u>
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)?	Yes <u>  </u> No <u>X</u>
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, ALJ 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>
<ul style="list-style-type: none"> <li>The party's statement of the issues on which it plans to participate.</li> </ul> <p>Particular issues on which the Center plans to participate may include, but are not necessarily limited to, the following: (1) whether funding for existing solid biomass facilities should continue; (2) whether funding for other biomass/biofuels facilities is in the public interest; (3) whether and how to continue funding for emerging renewables; and (4) how to structure RD&amp;D funding in order to provide the greatest public benefit.</p> <ul style="list-style-type: none"> <li>The party's explanation as to how it plans to avoid duplication of effort with other parties and intervenors.</li> </ul> <p>The Center's interests are distinct from those of other environmental and ratepayer organizations already party to this proceeding. In particular, the Center has advocated against policy and financial incentives grounded in the assumption that biomass combustion and energy generation are "carbon neutral" and have no net effect on atmospheric greenhouse gas concentrations or climate change. Rather, the Center seeks to ensure that decisions regarding regulatory or financial support for biomass energy generation reflect a true, science-based accounting of associated greenhouse gas, land use, and habitat impacts. This policy position is distinct from the positions often</p>

advanced by other environmental organizations. The Center will nonetheless attempt to coordinate with other parties to the fullest possible extent.

- The party's description of the nature and extent of the party's planned participation in this proceeding (as far as it is possible to describe on the date this NOI is filed).

The Center's motion for party status in this proceeding (#154055, filed Nov. 23, 2011) is currently pending. Should that motion be granted, the Center intends to participate in all further phases of this proceeding, to the extent necessary to protect our members' interests.

Although the Center anticipates filing at least brief comments on the Proposed Decision, the Center's primary interest is in the issues that will be considered in Phase 2 of this proceeding if the Proposed Decision is adopted. Given that the precise scope of Phase 2 has not yet been established, the Center cannot fully predict the level of participation that will be necessary. At a minimum, the Center would anticipate filing comments on the proposed forthcoming Staff Report, participating in any workshops that may be scheduled, and providing comments on any Phase 2 decision.

<b>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)):</b>				
<b>Item</b>	<b>Hours</b>	<b>Rate \$</b>	<b>Total \$</b>	<b>#</b>
<b>ATTORNEY, EXPERT, AND ADVOCATE FEES</b>				
Kevin P. Bundy (attorney)	100	280	\$28,000	1
Brian Nowicki (expert)	25	155	\$ 3,875	2
		<b>Subtotal:</b>	\$31,875	
<b>OTHER FEES</b>				
N/A				
		<b>Subtotal:</b>		
<b>COSTS</b>				
Estimated Miscellaneous Expenses (e.g., telecommunications, photocopying)			\$ 1,000	
		<b>Subtotal:</b>	\$ 1,000	
<b>TOTAL ESTIMATE \$:</b>			\$32,875	
Comments/Elaboration (use reference # from above):				
<p>The reasonableness of the hourly rates requested for the Center's representatives will be addressed in our Request for Compensation (#s 1 and 2). The Center has not included in this estimate claim preparation time (#1). The amount of any future request for compensation will depend upon the Commission's ultimate decision and the resources that the Center has available to devote to the case.</p>				
<p>When entering items, type over bracketed text; add additional rows to table as necessary. Estimate may (but does not need to) include estimated Claim preparation time. Claim preparation (as well as travel time) is typically compensated at ½ of preparer's normal hourly rate.</p>				

### **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	
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)).	X
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 of eligibility for	

compensation in this proceeding (§ 1804(b)(1)).	
ALJ ruling (or CPUC decision) issued in proceeding number:	
Date of ALJ ruling (or CPUC decision):	

**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):**

The cost of the Center’s participation in this proceeding will substantially exceed the economic interest of the individual members it represents. Typical member electric bills are small in comparison to the Center’s expected costs of participation, and any financial benefit that might accrue to members as a result of the Center’s participation likely would be even smaller. As the Commission stated in D.85-06-028,

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 to that they can follow the continuing chain of ratemaking proceedings and participate effectively. We agree with TURN that it would simply not be cost effective for individual and residential ratepayers...to mount these expenditures [TURN’s estimated budget for participation] separately on their own behalf.

The Center respectfully requests that its staff be compensated for representing the environmental interests of its members because it would not be cost-effective for individual members to incur the expense of participation on an individual basis. According to the WhiteFence Index ([www.whitefenceindex.com](http://www.whitefenceindex.com)), natural gas and electricity bills in San Francisco, Los Angeles, and San Diego average \$153.90, \$61.95, and \$96.41 respectively. An individual residential gas and electric bill of \$2,000 per year would be less than the Center’s estimated cost of participation in this proceeding of approximately \$33,000. Any financial benefit accruing to member ratepayers would, of course, be much smaller. Accordingly, the economic interest of individual Center members is small in comparison to the costs of effective participation in this proceeding.

As a non-profit organization, the Center does not accept fees from 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, private foundations and corporate contributions as its sources of income. Absent eligibility for intervenor compensation, the Center would not have adequate resources to advocate on behalf of its members before the Commission.

**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)

Attachment No.	Description
1	Certificate of Service
2	Articles of Incorporation

**ADMINISTRATIVE LAW JUDGE RULING<sup>2</sup>**  
(ALJ completes)

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

**IT IS RULED that:**

	Check all that apply
1. The Notice of Intent is rejected.	
2. Additional guidance is provided to the customer as set forth above.	
3. The customer has satisfied the eligibility requirements of Pub. Util. Code	

<sup>2</sup> An ALJ Ruling needs not be issued unless: (a) the NOI is deficient; (b) the ALJ 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).

§ 1804(a).	
4. The customer has shown significant financial hardship.	
5. 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.	

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

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ADMINISTRATIVE LAW JUDGE