

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

|   |   |
|---|---|
| Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program. | Rulemaking 11-05-005<br>Filed May 5, 2011 |
|---|---|

**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):<br>CENTER FOR BIOLOGICAL DIVERSITY  |              |   |                |
| Assigned Commissioner: Mark J. Ferron  |              | Assigned ALJs: Regina DeAngelis<br>Anne E. Simon<br>Maryam Ebke |                |
| 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:  | May 15, 2013 | 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 recognized the Center's "customer" status most recently in a Decision on Request for Intervenor Compensation (D.13-04-028; issued April 25, 2013) and in ruling on a Notice of Intent to Claim Intervenor Compensation (R.11-10-003; ALJ Gammon, Ruling on Center for Biological Diversity's Showing of Significant Financial Hardship; Jan. 18, 2012).

The Center is a non-profit membership organization whose Articles of Incorporation specifically authorize it to "advance the conservation of endangered species and biological diversity, protect and restore important plant and animal habitats, and ensure global warming does not undermine the conditions of life." See Attachment No. 3 (Agreement of Merger and Amendment to 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 energy 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 9,750 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. The Center’s members are especially interested in fully elucidating and understanding the environmental and economic costs of energy generation, including the costs of “alternative” and “renewable” energy generation, and in seeing that regulators take into account and avoid those costs where necessary. Again, this interest differs considerably from that of other parties to this proceeding.

ffi 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. Timely Filing of Notice of Intent (NOI) (§ 1804(a)(1)):  | Check           |
|---|-----------------|
| 1. Is the party’s NOI filed within 30 days after a Prehearing Conference?<br>Date of Prehearing Conference: _____   | Yes ___<br>No X |
| 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 X<br>No ___ |
| 2a. The party’s description of the reasons for filing its NOI at this other time:<br>This NOI is timely filed pursuant to the ALJ ruling referenced in 2b, below.   |                 |
| 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:<br><br>On April 16, 2013, ALJ DeAngelis issued a Ruling authorizing parties to file Notices of Intent to Claim Intervenor Compensation within 30 days of that ruling. R.11-05-005; Administrative Law Judge’s Ruling Establishing a Procedure to Accept New Notices of Intent to Claim Intervenor Compensation and Granting Motion for Party Status (April 16, 2013). |                 |

**PART II: SCOPE OF ANTICIPATED PARTICIPATION**

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

| A. Planned Participation (§ 1804(a)(2)(A)(i)):  |
|---|
| <p>ffi The party’s statement of the issues on which it plans to participate.</p> <p>Particular issues on which the Center plans to participate include, but are not necessarily limited to, the following: (1) implementation of SB 1122, especially with respect to bioenergy using forest-sourced fuels, and particularly concerning the definition of “sustainable” forest management and “strategic” location of generating</p> |



facilities; (2) any discussion of the purported environmental, social, and economic benefits of forest-sourced bioenergy that may occur in the context of SB 1122 implementation or otherwise, with particular attention to quantification and timing of greenhouse gas emissions and potential forest habitat and watershed impacts; (3) development of 2013 renewable procurement plans, particularly as they implicate acquisition of bioenergy using forest-sourced fuels; and (4) issues related to expenditure limitations, particularly with respect to the cost of bioenergy using forest-sourced fuels.

ffi The party's explanation as to how it plans to avoid duplication of effort with other parties and intervenors.

The Center's interests are distinct from those of other environmental, ratepayer, and bioenergy industry 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 broadly beneficial; of specific concern is the assumption—not grounded in sound science—that bioenergy is “carbon neutral” and has no net effect on atmospheric greenhouse gas concentrations or climate change. The Center seeks to ensure that decisions regarding biomass energy generation reflect a true, science-based accounting of associated greenhouse gas, forest, habitat, and other environmental impacts. This policy position is distinct from the positions often advanced by environmental, ratepayer, and bioenergy industry organizations. Nonetheless, the Center will attempt to coordinate with other parties to the fullest possible extent, and stands willing to engage in both formal and informal discussions with all parties.

ffi 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 (filed April 29, 2013) 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.

At a minimum, the Center anticipates filing informal comments in response to staff reports and workshops on SB 1122 implementation as well as formal comments on the Staff Proposal and Proposed Decision(s) anticipated in that phase of the proceeding. Commission staff have indicated that this proceeding may also include a broader discussion of the “benefits” of bioenergy generation; should that discussion occur, the Center would participate fully in any workshops and comment opportunities. The Center also anticipates reviewing each utility's proposed RPS Procurement Plan and filing formal comments to the extent any of those plans affect our members' interests.

| <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)  | 125          | 305                       | \$38,125.00     | 1        |
| Brian Nowicki (expert)   | 25           | 175                       | \$4,375.00      | 2        |
|  |              | <i>Subtotal:</i>          | \$42,500.00     |          |
| <b>OTHER FEES</b>  |              |                           |                 |          |
| N/A  |              |                           |                 |          |
|  |              | <i>Subtotal:</i>          |                 |          |
| <b>COSTS</b>   |              |                           |                 |          |
| Estimated Miscellaneous Expenses (e.g., telecommunications, photocopying)  |              |                           | \$1,000.00      | 3        |
|  |              | <i>Subtotal:</i>          | \$1,000.00      |          |
|  |              | <b>TOTAL ESTIMATE \$:</b> | \$43,500.00     |          |
| <p>Estimated Budget by Issues:</p> <p>Although it is difficult to anticipate exactly how much time will be required for each of the issues on which the Center plans to participate in this proceeding, the Center estimates that roughly three-quarters of the hours and expenses listed for Mr. Bundy and Mr. Nowicki will involve SB 1122 implementation and issues related to the purported benefits of bioenergy generation (\$32,625.00), and roughly one-quarter of the hours and expenses will be devoted to reviewing and commenting on RPS Procurement Plans (\$10,875.00).</p> <p>Comments/Elaboration (use reference # from above):</p> <p>The hourly rates requested for #1 and #2 above are at the low end of the 2012 range for attorneys and experts with commensurate experience.</p> <p>Although the Center has received some grant funding for its work on California renewable energy issues in general, including issues related to forest-sourced bioenergy, it has not received any grant funding that is specifically earmarked to support participation in this or any other proceeding.</p> <p>When entering items, type over bracketed text; add additional rows to table as necessary.<br/>           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 |                        |

|  |   |
|--|---|
| 2. fees, and other reasonable costs of participation” (§ 1802(g)); or  |   |
| 3. “[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 |
| 4. 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)), electricity bills in San Francisco, Los Angeles, and San Diego average \$87.98, \$36.82, and \$48.43 respectively (April 2013 data). An individual electric bill of just over \$1,000 per year in San Francisco would be less than the Center’s estimated cost of participation in this proceeding of approximately \$43,500. 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 |
| 3              | Agreement of Merger       |

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

|  | Check all<br>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>   |                         |

<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).

|  |  |
|--|--|
|  |  |
|--|--|

**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 § 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



3331202

ENDORSED - FILED  
in the office of the Secretary of State  
of the State of California

NOV 03 2010

ARTICLES OF INCORPORATION

OF

**CBD HOLDING COMPANY, INC.**

A California Nonprofit Public Benefit Corporation

ARTICLE I

The name of the Corporation is

**CBD HOLDING COMPANY, INC.**

ARTICLE II

A. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes.

B. The purpose of this Corporation is to promote, foster, and support religious, charitable and educational activities and organizations, all within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States internal revenue law (the "Code"), and this Corporation is organized exclusively for such purposes.

C. Notwithstanding any other provision of these Articles, this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this Corporation, and the Corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (2) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

ARTICLE III

The name and address in California of the Corporation's initial agent for service of process are:

Leslie S. Klinger  
10866 Wilshire Blvd., Suite 1500  
Los Angeles, CA 90024

ATTACHMENT 2

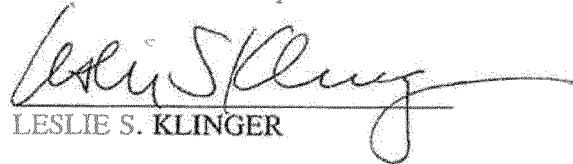
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ARTICLE IV

No substantial part of the activities of this Corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

ARTICLE V

The property of this Corporation is irrevocably dedicated to charitable and educational purposes, and no part of the net income or assets of this Corporation shall ever inure to the benefit of any director, officer, or member thereof or to the benefit of any private person. Upon the dissolution or winding up of the Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this Corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable or educational purposes and which has established its tax-exempt status under Section 501(c)(3) of the Code.

  
LESLIE S. KLINGER

I declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

  
LESLIE S. KLINGER

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

MAY 10 2012

## AGREEMENT OF MERGER

This Agreement of Merger is entered into between CBD HOLDING COMPANY, INC., a California Nonprofit Public Benefit Corporation (herein "Surviving Corporation") and CENTER FOR BIOLOGICAL DIVERSITY, INC., a New Mexico Domestic Nonprofit Corporation (herein "Merging Corporation").

### 1. MERGER

Merging Corporation shall be merged with and into Surviving Corporation.

### 2. MEMBERSHIP

Each membership of Merging Corporation shall be converted into one membership of Surviving Corporation.

### 3. ACTIONS OF MERGING CORPORATION

Merging Corporation shall from time to time, as and when requested by Surviving Corporation, execute and deliver all such documents and instruments and take all such action necessary or desirable to evidence or carry out this merger.

### 4. EFFECTIVE DATE

The effect of the merger and the effective date of the merger are as prescribed by law.

### 5. AMENDMENT OF ARTICLES OF INCORPORATION OF SURVIVING CORPORATION

- a. As of the Effective Date, Article I of the Articles of Incorporation of Surviving Corporation shall be amended to read as follows:

The name of the Corporation is

**CENTER FOR BIOLOGICAL  
DIVERSITY, INC.**

- b. As of the Effective Date, Article II B. of the Articles of Incorporation of Surviving Corporation shall be amended to read as follows:

The purpose or purposes for which the Corporation is organized are:

To advance the conservation of endangered species and biological diversity, protect and restore important plant and animal habitats, and ensure global warming does not undermine the conditions of life.

This Corporation is organized exclusively for charitable, religious, educational, and scientific purposes and for the prevention of cruelty to animals, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or corresponding section of any future federal tax code.

IN WITNESS WHEREOF the parties have executed this Agreement.

CBD HOLDING COMPANY, INC.  
a California Non-profit Public Benefit Corporation

By:   
KIERAN SUCKLING, Executive Director/President

By:   
SARAH BERGMAN, Secretary

CENTER FOR BIOLOGICAL DIVERSITY, INC.  
a New Mexico Domestic Nonprofit Corporation

By:   
KIERAN SUCKLING, Director/President

By:   
SARAH BERGMAN, Secretary