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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 SOLUTIONS FOR UTILITIES,)
12 INC., a California Corporation;)
13 CALIFORNIANS FOR)
RENEWABLE ENERGY, INC., a)
14 California Non-Profit Corporation;)
and MICHAEL E. BOYD and)
ROBERT SARVEY,)

15 Plaintiffs,)

16 v.)

17 CALIFORNIA PUBLIC UTILITIES)
18 COMMISSION, an Independent)
California State Agency;)
19 SOUTHERN CALIFORNIA)
EDISON CO., a California)
20 Corporation; MICHAEL R.)
PEEVEY, TIMOTHY ALAN)
21 SIMON, MICHAEL PETER)
FLORIO, CATHERINE J. K.)
22 SANDOVAL and MARK J.)
FERRON, in their official and)
23 individual capacities as current)
Public Utilities Commission of)
24 California Members; and RACHEL)
CHONG, JOHN A. BOHN, DIAN)
25 M. GRUENICH and NANCY E.)
RYAN, in their individual capacities)
26 as former Public Utilities)
Commission of California Members)

27 Defendants.)
28

Case No. CV 11-04975 SJO (JCGx)
FIFTH AMENDED AND FIRST
SUPPLEMENTAL COMPLAINT
FOR EQUITABLE RELIEF
JURY DEMANDED
[16 U.S.C. §824, et seq.]

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FIFTH AMENDED AND SUPPLEMENTAL COMPLAINT

Leave of Court having been granted following remand, Plaintiffs hereby file their Fifth Amended and Supplemental Complaint, per Fed.R.Civ.P. 15.

INTRODUCTION

This is a federal question action in which Plaintiffs, CALifornians for Renewable Energy, Inc. [“CARE”], California based small scale energy companies, and two qualified facility [“QF”] members of CARE, are seeking equitable relief from Defendants, California Public Utilities Commission [“CPUC”] a California state agency charged with inter alia California energy policymaking and delegated federal regulation enforcement, and named members of CPUC sued in their official capacities, to effectively undermine the federal policy of promoting the viability and integration of small energy generating companies and protecting them from monopolistic practices, to the great injury to Plaintiffs and the public interest.

Plaintiffs seek injunctive, equitable and/or declaratory relief compelling and/or commanding Defendant CPUC and its members to perform its/their federal-mandated regulatory duties, including federally mandated standards in connection with the Public Utility Regulatory Policies Act [“PURPA”], as prescribed by the Federal Energy Regulatory Commission [“FERC”].

Accordingly, Plaintiffs allege for their Fourth Amended and Supplemental Complaint [each of the Paragraphs enumerated under a heading of “Common Allegations” are incorporated by this reference into each of the numbered claims; and any cross-referenced allegation is deemed to be thereby incorporated]:

COMMON ALLEGATIONS
JURISDICTIONAL AND PARTY ALLEGATIONS

1. This is a federal question action under the Public Utility Regulatory Polices Act [“PURPA”], to redress violations of federal laws committed by Defendants, i.e. to inter alia compel the enforcement of federal laws, for Plaintiffs’ and the public’s interests, and to secure remedial relief for Plaintiffs for those violations.

1 2. The jurisdiction of this Court is invoked under 28 U.S.C. §1331, this being
2 an action arising under, and for the violations of, federal laws.

3 3. Venue is properly located in the Central District of California pursuant to
4 28 U.S.C. §1391(b)(1) & (b)(2) based on the original filings; and the acts complained
5 of herein were consummated in substantial part in this district.

6 4. Plaintiffs are CALifornians for Renewable Energy, Inc., a California Non-
7 Profit Corporation [“CARE”] formed in 1999; and Michael E. Boyd and Robert
8 Sarvey, qualified facility [“QF”] members of CARE, and certified by the Internal
9 Revenue Service as a tax exempt non-profit entity, meeting the legal requirements
10 therefor. References herein to CARE Plaintiffs include Plaintiffs Boyd and Sarvey,
11 officers of CARE.

12 5. California Defendants are: (a) Public Utilities Commission of California
13 [“CPUC”], a California state agency, established under the California State
14 Constitution as an independent agency, charged with inter alia California energy
15 policymaking and, by express terms of federal laws on which this action is based,
16 express delegated federal regulatory enforcement; (b) current CPUC Commissioner
17 and President in his official capacity [dates of appointment in parenthetical]: Michael
18 Picker [December 23, 2014 - present]; and (c) current CPUC Commissioners in their
19 official capacities [dates of appointment in parentheticals]; Michael Peter Florio
20 [January 25, 2011 - present], Catherine J. K. Sandoval [January 25, 2011 - present];
21 Carla J. Peterman December __2012 - present]; and Liane M. Randolph [January __,
22 2015 - present]. These Defendants are hereinafter collectively referred to as “CPUC
23 Defendants” or “Defendant CPUC” and said references also include commissioners
24 who served in earlier times, when earlier acts and/or omissions are alleged herein to
25 have occurred. All of the acts and omissions as alleged herein concerning the CPUC
26 and CPUC Defendants occur through the named commissioners in office at the time
27 of each act or omission, and are sued in their official capacities; and any relief which
28

1 might be obtained against CPUC can only be effected by enforcement against the
2 CPUC commissioners currently holding office and the power to act.

3 6. The Federal Power Act ["FPA"], 16 U.S.C. §791, et seq., and its followup
4 act, the Public Utility Regulatory Policies Act ["PURPA"], 16 U.S.C. §824, et seq.,
5 were each adopted by Congress under the Commerce Clause of the United States
6 Constitution in light of the inter-state nature of the subject matter of the statutory
7 scheme, and expressly preempted state authority in that field to the extent (a)
8 provided therein or (b) state law conflicts therewith, under the Supremacy Clause of
9 the United States Constitution.

10 7. PURPA was adopted by Congress to encourage the development of
11 nontraditional cogeneration and small power production facilities, to: (a) reduce the
12 demand for traditional fossil fuels; and (b) rectify the problems that impeded
13 development of nontraditional electricity generating facilities: (1) reluctance of
14 traditional electricity utilities to purchase power from, or sell power to,
15 nontraditional electricity generating facilities; and (2) state utility regulations of
16 alternative energy sources which impose financial burdens on nontraditional facilities
17 and thus discourage their development.

18 8. PURPA authorizes the Federal Energy Regulatory Commission ["FERC"]
19 to enforce the requirements of PURPA by adoption of implementing regulations and
20 resolution of disputes about the meaning, implementation and application of the
21 federal laws and regulations.

22 9. In accordance with its aforesaid regulatory authority, FERC has duly
23 adopted federal regulations to implement PURPA mandates for protections for small
24 power production facilities and nontraditional electricity generating facilities,
25 including, inter alia, (a) mandatory requirements and standards therefor, (b) provision
26 for certification of qualifying facilities as defined therein ["Qualifying Facility" or
27 "QF"] which are thereby rendered eligible for PURPA compliant contracts and/or
28 interconnection and payment for power production to be supplied to regulated

1 utilities, and (c) enforcement obligations, powers and procedures. In so doing, FERC
2 has issued interpretive rulings of PURPA provisions and its aforementioned
3 regulations.

4 10. PURPA is an amendment to FPA, and, by definition, a “Qualifying
5 Facility” as referenced in PURPA and FERC implementing regulations mean one
6 with a production capacity of less than 80 megawatts [“MW”]. Under FERC orders,
7 “Qualifying Facilities” are divided into (a) those with a production capacity of 20MW
8 or less, per FERC Order No. 2006 [“Standardization of Small Generator
9 Interconnection Agreements and Procedures” [“Small Facilities”]; and (b) those with
10 production capacity in excess of 20MW, but less than 80MW, per FERC Order No.
11 2003 [“Standardization of Generator Interconnection Agreements and Procedures”].
12 All of the Plaintiffs’ facilities at issue in this case are under the 20MW threshold.

13 11. PURPA is based in material part on the assumptions and/or findings that
14 the utilities were reluctant to purchase power from Small Facilities; and that state
15 regulatory authorities were reluctant to control the utilities’ conduct in this regard, but
16 rather imposed financial burdens that discouraged Small Facility development.

17 12. As an integral part of the regulatory scheme of PURPA, the individual
18 states and their respective energy regulatory agencies are required under Section 210
19 of PURPA, see 16 U.S.C. §824a-3, to enforce energy production and ratemaking
20 standards promulgated by FERC; and the regulatory scheme presupposes the creation
21 by the several states of respective state agencies to implement within their respective
22 jurisdictions the statutory policies and mandates of PURPA and federal regulations
23 adopted in connection therewith. These include inter alia requirements for respective
24 utility’s avoided cost pricing, calculated in connection with the alternative options,
25 under FERC regulations, for Small Facilities to be paid, at their choice, for “available
26 capacity” or “energy” delivered.

27 13. PURPA also expressly authorizes FERC to enforce the requirements of
28 PURPA and related federal regulations against (a) any state regulatory agency, or (b)

1 any nonregulated electric utility, by action in federal district court, which has
2 exclusive jurisdiction over such enforcement actions; or, alternatively, to interpose
3 its own judgment on ratemaking and interconnection standards.

4 14. PURPA also expressly authorizes “any electric utility, qualifying
5 cogenerator, or qualifying small power producer” to enforce the requirements of
6 PURPA and related federal regulations against (a) any state regulatory agency, or (b)
7 any nonregulated electric utility, also by action in federal district court, which has
8 exclusive jurisdiction over such enforcement actions, provided only that said
9 company first petitions FERC to seek the specified enforcement, and within the
10 following sixty (60) days FERC fails or declines to do so.

11 15. PURPA and its FERC implementing regulations intend full compliance
12 therewith by all utilities – nonregulated and regulated – with the federal
13 interconnectivity and pricing mandates, and other mandated contract terms, without
14 distinction except that: (a) nonregulated utilities are subject directly to legal
15 enforcement actions by FERC or private facilities, and (b) regulated facilities are
16 subject indirectly to enforcement by the state regulating agency, which are then
17 subject to legal enforcement actions by FERC or “any electric utility, qualifying
18 cogenerator, or qualifying small power producer.”

19 16. Defendant CPUC is the California state agency which is empowered to
20 provide the regulatory authority and responsibility contemplated by FPA and PURPA,
21 and their FERC adopted implementing regulations, and hence is subject to their
22 respective regulatory authority.

23 17. Defendant CPUC has adopted regulations, orders and programs for
24 ratemaking and interconnection standards for FERC certified QFs who produce small
25 quantities of power for wholesale sales to utilities [“QFs”]. However, in regards to
26 interconnectivity and pricing, and other mandated contract terms, these regulations,
27 orders and programs for QFs do not comply with PURPA or its FERC implementing
28 regulations for such facilities.

1 18. Furthermore, Defendant CPUC has adopted other regulations, orders and
2 programs for the utilities which enable and assist utilities in avoidance of PURPA
3 compliant contracts and agreements.

4 19. For instance, CPUC has adopted the QF Program which mandates a price
5 formula which, instead of the FERC mandated “avoided cost” requirement, mandates
6 Short-Run Avoided Cost [“SRAC”] adjusted by the Market Index Formula [“MIF”]
7 which is a de facto means of permitting payment to QFs at variable unpredictable
8 rates less than avoided cost, while maintaining for the benefit of utilities the PURPA
9 ceiling of avoided cost. This Program also provides for contract terms – i.e.
10 interconnectivity mandate – of maximum five (5) or (10) years. These provisions
11 separately and collectively render completely unprofitable the vast majority of small
12 and/or non-fossil fuel power production facilities, which is to say that lent and
13 investment capital is deterred and/or they would operate at a loss.

14 20. Another CPUC approved program, the Solar Photovoltaic Program
15 [“SPVP”] for small power production facilities [less than 10MW], sets payment rates
16 based on competitive least cost bids – i.e. below avoided cost – and further reducing
17 that rate by mandating transfer from the small power facility to the utility of the
18 former’s Renewable Energy Credits [“REC’s”] as hereinafter discussed; and this
19 program was available for only a ninety (90) day period in 2010, so does not comply
20 with the interconnectivity mandate.

21 21. CPUC has purported to assess “avoided cost” for utilities in terms of
22 “available capacity” with a formula denominated as “as available capacity” based on
23 gas [fossil fuel] prices, which does not comply with PURPA / FERC mandates for
24 avoided cost and/or alternative energy sources.

25 22. Concomitantly, Defendant CPUC has established a program involving
26 ratemaking and interconnection standards for private energy generating individuals
27 or companies who do so solely for their own use and hence are not governed by FPA
28 or PURPA. Concomitant with this “own use” program, CPUC has adopted

1 regulations which ostensibly seeks to address minor quantities of surplus energy
2 incidentally generated by “own use” facilities, permitting the sale of that minimal
3 amount of surplus energy while nevertheless still treating the facility as an “own use”
4 facility not governed by PURPA’s regulatory authority [“Rule 21 Facilities”].

5 23. However, CPUC Defendants have misused Rule 21 to apply to small
6 power production facilities and nontraditional electricity generating facilities who
7 incidentally and typically use a small portion of their generated energy for their own
8 operations / use, despite the fact that they are substantively indistinguishable from the
9 facilities expressly subject to PURPA and its FERC promulgated regulations, thereby
10 circumventing the entire PURPA legislative and regulatory scheme.

11 24. The CPUC price mandate for Rule 21 Facilities is denominated as “Market
12 Price Referent” [“MPR”], and any interconnectivity “mandates” are nonexistent or
13 illusory – e.g. unilateral utility or CPUC rights to terminate. This enables utilities
14 seeking to circumvent PURPA avoided cost pricing and interconnectivity mandates
15 to offer otherwise qualifying facilities more than the CPUC QF Program rates –
16 SRAC as adjusted by MIF – but still below PURPA / FERC mandated avoided cost,
17 while inserting CPUC approved provisions for unilateral utility rights to terminate “at
18 will” the contract. These provisions separately and collectively render completely
19 unprofitable the vast majority of small and/or non-fossil fuel power production
20 facilities, which is to say that lent and investment capital is deterred and/or they
21 would operate at a loss.

22 25. By failing and refusing to set avoided costs rates for the regulated utilities
23 in their respective regions of operation, in accordance with PURPA / FERC
24 mandates, and/or mandating a standard offer contract based thereon, QFs are forced
25 into competitive market pricing with larger and/or fossil fuel facilities that is
26 necessarily lower than what the legally mandated avoided cost would be. This market
27 based pricing is expressly rejected and unlawful under PURPA / FERC, whether as
28 approved by CPUC or utilized by the utilities.

1 26. Acceptance of less than avoided cost pricing or less than the fully
2 mandated interconnection, whether by bilateral contracts or otherwise, is not
3 voluntary or even bilateral if there is no PURPA / FERC compliant alternative. Thus,
4 the absence of PURPA / FERC compliant, CPUC enforced avoided cost pricing and
5 truly mandatory interconnection renders illusory any so-called “voluntary” pricing
6 and/or bi-lateral contracts for small and/or alternative [non-fossil fuel] power
7 producing facilities.

8 27. The Investor Owned Utility [“IOU”] in the region where CARE intended
9 and sought to interconnect and supply energy, at rates and otherwise in accordance
10 with the requirements and standards established by PURPA and FERC in its
11 implementing regulations, Pacific Gas and Electric Company [“PG&E”], is not named
12 in this action.

13 28. PURPA also expressly authorizes FERC to enforce the requirements of
14 PURPA and related federal regulations against (a) any state regulatory agency, or (b)
15 any nonregulated electric utility, by action in federal district court, which has
16 exclusive jurisdiction over such enforcement actions; or, alternatively, to interpose
17 its own judgment on ratemaking and interconnection standards.

18 29. PURPA also expressly authorizes private utility companies and qualified
19 facilities to enforce the requirements of PURPA and related federal regulations
20 against (a) any state regulatory agency, or (b) any nonregulated electric utility, also
21 by action in federal district court, which has exclusive jurisdiction over such
22 enforcement actions, provided only that said company first petitions FERC to seek
23 the specified enforcement, and within the following sixty (60) days FERC fails or
24 declines to do so.

25 30. Plaintiffs are informed and believe, and based thereon allege, that CPUC
26 Defendants have effectively surrendered its regulatory authority, if any, over IOU’s
27 by affording the IOU’s undue influence and control over CPUC deliberations,
28 decisions and actions; and by politically incestuous relationships between regulator

1 [CPUC] and regulated IOU officials, which effectively preclude any independent
2 judgment and exercise of discretion in the implementation and application of
3 governing and controlling federal and state laws and regulations.

4 31. Plaintiffs are informed and believe, and based thereon allege, that CPUC
5 and the IOU's, and their respective members, managers and/or staff, routinely engage
6 in joint and collaborative tasks, functions and decisionmaking, with mobility between
7 respective staffs, that render them generally indistinguishable, and further render the
8 actions of one the actions of the other.

9 32. Plaintiffs are informed and believe, and based thereon allege, that the
10 IUO's routinely and by arrangement and/or implicit understanding files and pursues
11 before various agencies, including CPUC and FERC, positions under
12 implementations of PURPA and FERC regulations which clearly are at variance with
13 both of them, but which are intended to enable CPUC to take actions and issue
14 decisions which are also at variance with both of them while appearing to take
15 compromise positions and appearing to reflect a false adversarial posture, and have
16 the net effect of producing CPUC actions and decisions which fail in their duty to
17 implement and enforce PURPA, and in fact violate PURPA.

18 33. CPUC Defendants have at all relevant times herein acted by affirmative
19 conduct as well as its omissions to act despite having a duty to do so.

20 34. At all times pertinent to this Amended Complaint, Defendants were each
21 an agent of the other Defendant.

22 35. The Defendants herein, and each of them, have conspired to do the acts
23 and wrongs mentioned herein; and an act in furtherance thereof has been committed.

24 36. At all times pertinent to this Amended Complaint, the Defendants and each
25 of them were acting in concert with each other and others not named as parties herein.

26 37. At all times pertinent to this Amended Complaint, each of the Defendants
27 authorized and/or ratified the acts, omissions, representations and agreements of the
28 other Defendant.

1 38. All of the conduct alleged against each and all of the Defendants
2 mentioned herein was intentional, and intended to accomplish each and all of the
3 unlawful purposes described herein.

4 CLAIM NO. 1
5 CLAIM FOR ENFORCEMENT OF PURPA
6 [16 U.S.C. §824a-3]

7 39. PUC has sanctioned use of Rule 21, for purposes that violate PURPA.

8 40. The use by CPUC of Rule 21 Facilities standards for small power
9 production facilities and/or nontraditional electricity generating facilities that
10 incidentally use their own generated energy for their own operations is a transparent
11 device for circumventing PURPA and its FERC promulgated regulations governing
12 ratemaking and interconnection standards, and is in fact used and exploited for that
13 purpose.

14 41. Plaintiff CARE has at all relevant times been an organization representing
15 electric utilities which are Qualified Facilities [“QF”] and within the class of small
16 power production facilities and nontraditional electricity generating facilities subject
17 to and contemplated by FPA and PURPA, and the latter’s FERC promulgated
18 regulations. Plaintiff CARE has 358 members, two of which are Plaintiffs Boyd and
19 Sarvey. Plaintiff Boyd founded CARE in 1999, and Sarvey joined in 2003. Plaintiffs
20 Boyd and Sarvey were certified with FERC as QF’s on March 19 & 28, 2003
21 [Certificate Nos. QF03-76 & QF03-80], respectively. [Two (2) other members of
22 CARE (Mary Hoffman and David Hoffman) are also jointly certified as a QF.]

23 42. CARE Plaintiffs Boyd and Sarvey made repeated and long-standing efforts
24 to obtain standard offer [“SO”] contracts or bilateral contracts from P.G. & E, by
25 seeking contracts and/or payment for surplus energy from P.G. & E., respectively;
26 and by participating in relevant CPUC proceedings, and filing complaints with
27 PG&E, the CPUC and FERC, in accordance with PURPA and its FERC
28 implementing regulations, and the economic restitution, capitalization and/or viability
afforded thereby. CARE Plaintiffs have been unable to obtain any contracts or obtain

1 payment in connection therewith, or otherwise, because of refusal of the local power
2 grid providers [P.G & E.] to comply with PURPA and FERC its implementing
3 regulations, and the refusal of CPUC to enforce PURPA and its FERC implementing
4 regulations, despite repeated efforts by CARE Plaintiffs to secure same.

5 a. PURPA non-compliant SO Contracts from IOU's [utilities like P.G.
6 & E] typically pay at less than "avoided cost" as hereinafter discussed, despite
7 payment of such "avoided cost" having been mandated by PURPA and FERC
8 implementing regulations. There are also PURPA non-compliant bilateral contracts
9 [e.g. from P.G. & E.] paying substantially less than avoided cost for the energy, and
10 even less than SO Contracts.

11 b. CARE Plaintiffs have been refused either form of PURPA non-
12 compliant contract, much less a PURPA compliant contract, and get paid nothing for
13 their surplus energy production, or their capital and other costs of surplus energy
14 production, in violation of PURPA and its FERC implementing regulations. Hence,
15 not only have CARE Plaintiffs not been paid, but they have operated at a loss.

16 c. CARE Plaintiffs appeared at hearings, and/or submitted filings, in
17 various FERC and CPUC proceedings, commencing in 2003 and continuing to the
18 present, complaining about the inability for smaller QF's to obtain SO Contracts or
19 bilateral contracts, and concomitant failure to pay anything for CARE Plaintiffs'
20 surplus energy, in violation of PURPA and FERC implementing rules; and failure of
21 CPUC – acting through its commissioners – to enforce PURPA and implementing
22 FERC regulations to provide avoided cost contracts and payment to CARE Plaintiffs
23 and similar small surplus producers of energy¹. CARE Plaintiffs were then accused
24

25 ¹ For instance, FERC Case Nos: EL01-2-000, EL00-95-000, EL01-65-000,
26 EL02-71-000, EL04-11-001, EL07-49-000, EL06-89-000, EL07-50-000, EL07-37-
27 000, EL07-40-000, EL07-49-000, EL07-50-000, EL09-65-000, EL13-30-000 &
28 EL13-32-000; and CPUC Case Nos: A1407009, R.14-07-002, A1203026, A1106029,
A1009012, A0904001, A.08-11-001, R.06-02-013, R.04-04-003, R.04-04-025 &

1 of excessive filings and threatened with sanctions, some then imposed. CARE
2 Plaintiffs have continued their administrative enforcement efforts.

3 43. On January 28, 2011, Plaintiff CARE, acting on behalf of itself and its
4 members including Plaintiffs Boyd and Sarvey, petitioned FERC to enforce PURPA
5 and its implementing regulations, and enforce compliance therewith, by CPUC and
6 local power grid providers. On March 17, 2011, FERC declined to do so. On or
7 about July 9, 2011, Plaintiffs CARE, Boyd and Sarvey further petitioned FERC to
8 enforce PURPA and its implementing regulations, and enforce compliance therewith,
9 by CPUC and local power grid providers. On September 12, 2011, FERC declined to
10 do so [136 FERC ¶ 61,170].

11 44. As a result of the failure and refusal of CPUC Defendants and other
12 relevant local power grid providers to comply with and/or enforce compliance with
13 PURPA and its implementing regulations, Plaintiffs have been frustrated in their
14 efforts to enter the energy market, and prevented from doing so in a manner and in
15 accordance with the public policies set forth in PURPA and its FERC implementing
16 regulations.

17 45. PURPA and its FERC adopted implementing regulations mandate the
18 following:

19 a. Small power production facilities and nontraditional electricity
20 generating facilities must be afforded means to rapidly and expeditiously interconnect
21 with existing power grids of the major utilities.

22 b. Major utilities / power grid owners must purchase energy from
23 available small power production facilities and nontraditional electricity generating
24 facilities [“Must Take Mandate”], which de facto means permitting reasonable and
25 expeditious interconnection with their grids and not imposing artificial barriers to
26 doing so or entering into contracts with larger power facilities as a means of blocking

27 _____
28 R.99-11-022.

1 interconnection and contracts with small power production facilities and
2 nontraditional electricity generating facilities.

3 c. Wholesale power rates-of-payment are mandated by FERC that the
4 rate to be paid by major utilities / power grid owners to small power production
5 facilities and nontraditional electricity generating facilities must be: (1) just and
6 reasonable to electric consumers and in the public interest; (2) not discriminatory
7 against small power production facilities and nontraditional electricity generating
8 facilities; and (3) reflective of the avoided cost to the major utility / power grid
9 owners of alternative electric energy. It also means that the major utilities / power
10 grid owners may not favor contracts with larger power production facilities as a
11 means of manipulating the energy market to ensure a lack of economic viability of
12 small power production facilities and nontraditional electricity generating facilities.

13 d. "Avoided costs" is defined as the incremental costs to an electric
14 utility of electric energy or capacity or both which, but for the purchase from the
15 qualifying facility, such utility would generate itself or purchase from another source.
16 The factors to be considered in determining avoided costs include: (1) the utility's
17 system cost data; (2) the terms of any contract including the duration of the
18 obligation; (3) the availability of capacity or energy from available small power
19 production facilities or nontraditional electricity generating facilities during the
20 system daily and seasonal peak periods; (4) the relationship of the availability of
21 energy or capacity from a small power production facility or nontraditional electricity
22 generating facility to the ability of the electric utility to avoid costs; and (5) the costs
23 or savings resulting from variations in line losses from those that would have existed
24 in the absence of purchases from the small power production facility or nontraditional
25 electricity generating facility.

26 e. Calculation of avoided cost includes that cost which the major utility
27 / power grid owner would generate itself or would have purchased from another
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1 developer, at a technology specific and tiered sizing comparison; and, when
2 appropriate, including the cost of creating new generating facilities.

3 f. Purchase power agreements between the major utility / power grid
4 owners and small power production facilities and nontraditional electricity generating
5 facilities must contain non-price terms which are fair and just under the totality of the
6 circumstances, in light of the intent of PURPA and its FERC adopted implementing
7 regulations to facilitate and promote small power production facilities and
8 nontraditional electricity generating facilities. This also means that the major utilities
9 / power grid owners may not impose non-price terms that effectively prevents the
10 economic viability of small power production facilities and nontraditional electricity
11 generating facilities.

12 g. Under a PURPA grant of state authority, state utility commissions are
13 required, as a condition of such grant of authority, to implement a trading market with
14 rates to be paid to renewable energy developers – i.e. small power production
15 facilities and nontraditional electricity generating facilities – for renewable energy
16 credits [“RECs”]. This means that such commissions may not bundle the RECs
17 and/or assign them, without compensation therefor, to major utilities / power grid
18 owners.

19 46. Plaintiffs are informed and believe, and based thereon allege, that PURPA
20 and its implementing regulations, as set forth in Paragraphs 6-11, 15-16 & 25-46,
21 have been repeatedly violated by CPUC and/or other local power grid providers, as
22 follows:

23 a. CARE Plaintiffs, as well as other small power production facilities
24 and nontraditional electricity generating facilities, have not been afforded means to
25 rapidly and expeditiously interconnect with existing power grids of the IOU’s,
26 because of the use of devices – such as Rule 21 enabled by CPUC – which enable
27 circumvention of PURPA and its FERC adopted implementing regulations.

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1 b. IOU’s have repeatedly and generally avoided purchasing energy from
2 available small power production facilities and nontraditional electricity generating
3 facilities, and failed to permit reasonable and expeditious interconnection with their
4 grids, by imposing artificial barriers to doing so and entering into contracts with
5 larger power facilities as a means of blocking interconnection and contracts with
6 small power production facilities and nontraditional electricity generating facilities.

7 c. Wholesale power rates of payment for small power production
8 facilities and nontraditional electricity generating facilities, set by FERC as mandated
9 by PURPA and its implementing regulations – i.e. avoided cost – have been ignored
10 by CPUC, which instead set a much lower rate for use by IOU’s and other major
11 energy sellers greater in capacity than 1 MW and 20 MW, denominated as the
12 “Market Price Referent.” This unlawful rate renders economically unfeasible the
13 operation of Plaintiffs and other small power production facilities and nontraditional
14 electricity generating facilities. It also enables the major energy sellers greater in
15 capacity than 1 MW and 20 MW to favor contracts with larger power production
16 facilities as a means of manipulating the energy market to ensure a lack of economic
17 viability of small power production facilities and nontraditional electricity generating
18 facilities.

19 d. Purchase power agreements and tariffs [see CPUC Decision D-16-01-
20 044] offered by the IOU’s to Plaintiffs and other small power production facilities and
21 nontraditional electricity generating facilities, with CPUC approval, contain non-price
22 terms which are not fair and just under the totality of the circumstances, in light of the
23 intent of PURPA and its FERC adopted implementing regulations to facilitate and
24 promote small power production facilities and nontraditional electricity generating
25 facilities, that effectively prevents the economic viability of Plaintiffs and other
26 small power production facilities and nontraditional electricity generating facilities.

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1 f. CPUC approved the IOU's schemes to bundle RECs and assign them,
2 without just and fair compensation therefor to CARE'S QF Members in contravention
3 to PURPA and FERC approved implementing regulations.

4 47. Plaintiffs are informed and believe, and based thereon allege, that CPUC
5 Defendants have generally failed to perform regulatory functions as mandated by
6 PURPA and its FERC adopted implementing regulations; to the contrary, CPUC
7 Defendants have repeatedly approved contracts, tariffs, activities and proposals of
8 the IOU's which do not comply nor conform with PURPA and its FERC adopted
9 implementing regulations.

10 48. At all relevant times herein, CPUC has failed to adopt or implement any
11 regulations, orders or programs which seek to or in fact enforce PURPA compliance
12 by regulated utilities in respect to interconnectivity, pricing and contract terms as
13 mandated by PURPA and its FERC implementing regulations. Plaintiffs are informed
14 and believe that CPUC has yet to even determine avoided cost for any utility; and has
15 failed to implement any meaningful or effective utility interconnectivity rules for
16 small power producers.

17 49. Plaintiff is informed and believes that regulated utilities in California
18 [IOU's], in turn, do not comply with interconnectivity, pricing and contract terms as
19 mandated by PURPA and its FERC implementing regulations; and utilities seek to
20 justify same on the basis that they are not obliged to comply with PURPA and its
21 FERC implementing regulations (a) when CPUC, by its actions or inactions,
22 authorizes noncompliance, and/or (b) unless and until compelled to do so by CPUC.

23 50. Plaintiff is informed and believes that the net effect is that there is no
24 available PURPA compliant option within California for small power producing
25 facilities to freely interconnect [and remain interconnected] with utilities at avoided
26 cost pricing, as mandated by PURPA and its FERC implementing regulations.

27 51. Plaintiffs have repeatedly and concurrently complained informally and
28 formally about the above-described unlawful acts and omissions of CPUC

1 Defendants, and each of them, including without limitation the failure to properly and
2 sufficiently regulate the field and the major utility / power grid owners, as required
3 under PURPA and its FERC adopted implementing regulations, often with detailed
4 cross-references to statutes, regulations and other actions. In each case, CPUC
5 Defendants failed and/or refused to take corrective action, sometimes simply failing
6 to act at all after protracted delays. [See e.g. CPUC Decision D-16-01-044].

7 52. Plaintiffs are informed and believe, and based thereon allege, that the
8 actions of CPUC Defendants have harmed the public interest by undermining the
9 public policy purposes of PURPA, including but not limited to making available
10 additional energy supplies, utilization of alternative and renewable energy sources,
11 holding down energy costs by increased and broader market competition, and
12 enabling small power production facilities and nontraditional electricity generating
13 facilities.

14 53. In enacting PURPA, Congress made express findings that the federal
15 regulatory scheme was necessary to respond to the existing, persistent and widespread
16 recalcitrance of state regulatory agencies and major utilities / power grid owners to
17 permit small power production facilities and nontraditional electricity generating
18 facilities; or worse, to affirmatively undermine the latter. The combined efforts of
19 CPUC and other major utilities / power grid owners, as above described, have
20 effectively perpetuated the very conduct of state regulatory agencies and major
21 utilities / power grid owners which Congress found to exist and wished to remedy;
22 and these entities have conspired and colluded to do so.

23 CLAIM NO. 2
24 EQUITABLE RELIEF;
25 INJUNCTIVE RELIEF; DECLARATORY RELIEF

26 54. Plaintiffs, and each of them, are entitled to orders declaring the conduct,
27 whether by acts or omissions, of CPUC Defendants, its commissioners and agents,
28 and each of them, are each and all unlawful, in each and all of the particulars
described in Paragraphs 6-11, 15-16 & 25-43.

1 2. For such further relief as the Court may deem necessary and proper.

2 Dated: April 14, 2016

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s/ Meir J. Westreich

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Meir J. Westreich
Attorney for Plaintiffs

5

6 Plaintiffs demand trial by jury.

7 Dated: April 14, 2016

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s/ Meir J. Westreich

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Meir J. Westreich
Attorney for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2016 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Frank R. Lindh
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Honorable S. James Otero
United States District Court
312 North Spring Street
Los Angeles, Ca. 90012
Judge of the United States District Court

I hereby certify that I served the attached document by mail on the following, who are not registered participants of the CM/ECF System: NONE.

Dated: April 14, 2016

s/ Meir J. Westreich

By: Meir J. Westreich
Attorney for Plaintiffs