BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision 16-01-044, and to Address Other Issues Related to Net Energy Metering.	Rulemaking 20-08-020 (Filed August 27, 2020)

CAlifornians for Renewable Energy, Inc. (CARE) and Michael E. Boyd Application for Rehearing

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January 16, 2023

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Application for Rehearing

1. Pursuant to the Commission's Rules of Practice and Procedure CAlifornians for Renewable Energy, Inc. (CARE) and Michael E. Boyd ("we") respectfully request rehearing of Decision (D.) 22-12-056 the Decision Revising Net Energy Metering Tariff and Subtariffs.

I. Introduction

2. Pursuant to Rule 16.1 (c) "Applications for rehearing shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous and must make specific references to the record or law. The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.

II. Grounds for Rehearing

3. The grounds for Rehearing are:

- The Decision violates PURPA,
- The Decision is part of a conspiracy to violate antitrust laws, California's Cartwright Act and the federal Sherman Act.

III. PURPA violations in the Decision are currently before the U.S. District Court for the Central District of California

4. "[T]his decision notes that the avoided costs determined in the Avoided Cost Calculator are the utilities' marginal costs of providing electric service to customers. Those costs can be avoided when the demand for energy decreases because of distributed energy resources, and are, thus, the benefits of using distributed energy resources. The avoided costs determined in the Avoided Cost Calculator should not be confused with the term "avoided cost" used in federal law, where avoided cost is the cost of energy or capacity to a purchasing utility of the next increment of that wholesale energy or capacity.[102][1] Because this decision does not make any changes to net surplus compensation, the Commission declines to consider the creation of a new tariff or power purchase agreement for facilities up to three megawatts as recommended by Californians for Renewable Energy.[103][2] [Decision pages 59-60]

5. On October 25, 2022, the Federal Energy Regulatory Commission (FERC) declined to act on a petition for enforcement against California's rules for solar installations implemented pursuant to the Public Utility Regulatory Policies Act ("PURPA").

6. We have an ongoing legal challenge CARE et al. v. CPUC et al. (Case No. 2:11-cv-04975-JWH) The litigation, dates back to 2011 in the U.S. District Court for the Central District of California It centers on the avoided-cost rates that small renewable power generators, including residential solar systems, can receive under PURPA. We maintain that, among other things, the CPUC's net

[1] See 18 CFR § 292.101 defining "avoided cost" as used in PURPA.
[2] See also discussion at Section 8.3.3, Section 8.4.9, and Section 8.5.3.

metering rules permit retail customers to use utility-provided meters to net their retail usage against a solar facility's generation, thereby reducing compensation to rooftop solar generators by investor-owned utilities because the solar generation should be measured at the solar inverter AC output instead.

7. We sought to amend our federal complaint but were required to first petition FERC for enforcement relief under PURPA. We did so on August 26, 2022. We argued that the CPUC and California investor-owned utilities violated the avoided-cost mandate under PURPA through the CPUC's implementation of its net metering rules. In its Notice of Intent Not to Act, FERC explained that the "decision not to initiate an enforcement action means that petitioners may themselves bring an enforcement action against the California Commission in the appropriate court."[3] Accordingly, the Notice will enable us, and the other members may[4] further amend our complaint and continue with the ongoing federal litigation.

IV. The Decision is part of a conspiracy to violate antitrust laws like California's Cartwright Act and the federal Sherman Act

8. We allege the Decision and the record in this proceeding provides evidence of a conspiracy by California's three largest investor-owned utilities (IOUs) to violate antitrust laws like California's Cartwright Act and the federal Sherman Act.

[3] A copy of FERC's Notice can be found here https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20221025-3058&optimized=false

[4] These matters including the Decision's reliance on the ACC are currently under submission before the federal Court in Case No. 2:11-cv-04975-JWH.

9. The Conspirators are Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), officers, employees, and agents (the "IOUs" herein.)

10. The Co-conspirators are Governor Gavin Newsom, California Public Utilities Commission including individual Commissioners, CPUC Staff including Cal Advocates, Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN).

11. The IOUs conspiracy's objectives are wholesale and retail price fixing, group boycotting, price discrimination, and a conspiracy tying small renewable power generators, including those IOU customers residential solar systems: tying their wholesale sales and compensation to their participation in CPUC's net energy metering (NEM) program.

12. The pretext for the conspiracy is an alleged cost-shift between small renewable power generators, including customers with residential solar systems, to IOU customers without residential solar systems. We contend this proffered reason is pretextual and the proximate cause of the antitrust injuries.

13. According to the Conspirators "the IOUs current estimate is that our nonparticipating customers today are burdened by approximately $2.5 billion (individually as much as $200) more on their utility bills on an annual basis. If nothing changes, by 2030, that amount grows to more than $4.4 billion, or as much as $310 per customer. As the Commission knows, the customers receiving this subsidy disproportionately represent more economically privileged customers, primarily single-family homeowners." [5] "As previously mentioned, the

[5]October 05, 2020 - Joint Opening Comments on Order Instituting Rulemaking - Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company page 2.

massive subsidy paid by non-participating customers is currently $2.5 billion annually and is projected to grow as electricity rates increase to $4.4 billion per year by 2030.13 60% of the cost shift -- lower income and middle income customers absorbing costs for more affluent customers -- is the result of legacy treatment for NEM 1.0 and NEM 2.0 customers who may have already recouped their investments."[6]

14. [Co-conspirator] CPUC shares the cost shift pretext with the IOUs finding "Affordability is front and center in this proceeding, given the finding that a significant and growing cost shift exists in the previous tariff and, to a lesser extent, remains in the adopted successor tariff. This cost shift is created by the ability of distributed generation customers to avoid fixed costs, including grid costs and public purpose program costs, which then become the responsibility of non-participating ratepayers, including low-income customers. The successor tariff adopted in this decision is designed to compensate customers for the value of their exports to the grid based on the Avoided Cost Calculator. This improved valuation will significantly reduce the cost shift and improve affordability for nonparticipating ratepayers, particularly low-income ratepayers."
[Decision page 4]

15. [Co-conspirator] "TURN also agrees with the finding of the Lookback Study that there is a cost shift associated with NEM 2.0, as well as NEM 1.0. However, TURN contends the Lookback Study underestimates the cost shift because the study used 2020 Avoided Cost Calculator values.[56][7] TURN estimates the cost shift at $1.093 billion (in $2012) or $1,600 per NEM 1.0 customer as of

[6] *Id* page 8.
[7] TURN Opening Brief at 15 citing TRN-01 at 9.

2020 and $13 billion (over 20 years) or $31,402 per NEM 2.0 customer as of 2020.[57][8]" [Decision pages 44-45]

16. [Conspirators] "Joint Utilities dispute PCF's claims of no cost shift and that the cost shift is shown solely in the bill savings from energy consumption.[62][9] Joint Utilities state that the cost shift from participating to non-participating customers is the result of non-participating customers overcompensating net energy metering customers for exports and non-participants paying for the infrastructure and public policy costs that net energy metering customers avoid. Joint Utilities explain that residential net energy metering customers can bypass payment of infrastructure and other costs incurred to serve them because such costs are embedded in volumetric rates and, thus, avoided by net energy metering customers; this results in other customers paying the difference.[63][10] [Co-conspirator] Cal Advocates further explains that "under the volumetric rate structure and NEM 2.0 policies, average residential NEM 2.0 customers pay only 18 percent of their total annual cost of service for PG&E, 9 percent for SCE and 9 percent for SDG&E."[64][11]" [Decision pages 45 -46]

17. [Co-conspirator] "NRDC highlights the Lookback Study finding is corroborated by a Lawrence Berkeley National Laboratory study, which indicates that only about 13 percent of net energy metering customers come from the lowest 40 percent of income, while customers in the top 20 percent of income

[8] TURN Opening Brief at 15 citing TRN-01 at 9 and Lookback Study at 125 and Table 5-1.
[9] Joint Utilities Reply Brief at 4 citing PCF Opening Brief at 8.
[10] Joint Utilities Reply Brief at 5 citing IOU-01 at 66:3-6, 66:12-67:5, 66:7-11, and 67:6-68:4.
[11] Cal Advocates Opening Brief at 7, citing the Lookback Study at 12.

make up 43 percent of net energy metering adopters.[81][12]" [Decision pages 52-53]

18. [Co-conspirator] Governor Gavin Newsom is reported by the media to be cozy with the IOUs,[13] micromanaging the CPUC Decision-making process,[14] and dodging the California Public Records Act.[15] [16] We allege Newsom as a Co-conspirator with the IOUs and the CPUC and is jointly and severally liable for the entire amount of the resulting harm.

[12] NRD-01 at 5 citing the LBNL Solar Demographic Tool which can be found at: https://emp.lbl.gov/solar-demographics-tool (accessed by NRDC on 6/12/2021).

[13] "[O]ver the past two decades, Newsom (D) and his wife have accepted more than $700,000 from the Pacific Gas & Electric Co., its foundation and its employees as the utility has supported his political campaigns, his ballot initiatives, his inauguration festivities and his wife's foundation, including her film projects, according to records reviewed by The Washington Post.

The contributions illustrate Newsom's ties to the company responsible for wildfires that have killed at least 85 people and caused billions of dollars in damage over the past three years. The governor has slammed PG&E for paying bonuses to executives and cash dividends to its investors instead of spending more on infrastructure upgrades that could have prevented the fires."

https://www.washingtonpost.com/business/2019/11/11/pge-helped-fund-careers-calif-governor-his-wife-now-he-accuses-utility-corporate-greed/

[14] "SACRAMENTO, Calif. — Gov. Gavin Newsom's office exerted control over a powerful state agency that is supposed to operate independently, "micromanaging" decisions big and small at the California Public Utilities Commission according to its former executive director.

"We do whatever the governor tells us to do, period," former CPUC executive director Alice Stebbins said. "You don't do anything without [Gov. Newsom's] staff reviewing it or talking to you or approving it. And that's the way it was."

Internal CPUC documents obtained by ABC10 reveal the agency took direction from Gov. Gavin Newsom's office and even submitted its work to the governor's staff for multiple levels of "approval."

The records show that on at least one occasion, the need to secure approval from Newsom's office delayed CPUC business for a matter of days, frustrating the agency's employees."

https://www.abc10.com/article/news/local/abc10-originals/newsom-pge-cpuc/103-24f1c7ba-fd61-4015-9ee7-bc184ad405bc

[15] California Government Code section 6250-6276.48

[16] "SACRAMENTO, Calif. — California transparency laws call the ability to review records of government business "a fundamental and necessary right of every person in this state," but a powerful state agency seems to have found a simple way around that: dragging its feet. It started in November 2020 when ABC10 asked the California Public Utilities Commission to hand over messages between its top official and high-ranking staffers in Gov. Gavin Newsom's office." https://www.abc10.com/article/news/local/abc10-originals/abc10-sues-release-messages-between-newsom-staff-pge-regulators/103-2623b613-3cba-4903-9080-1b7c80e3d777

V. Antitrust violations under the federal Sherman Act and California's Cartwright Act

19. We allege, that the CPUC has effectively surrendered its regulatory authority, if any, over the IOUs by affording the IOUs undue influence and control over the CPUC deliberations, decisions and actions to the extent that they affect or impact an IOU under a broadly expansive view of the IOU's portion of the energy market; and by politically incestuous relationships between regulator [CPUC] and regulated [IOU] officials, which effectively preclude any independent judgment and exercise of discretion in the implementation and application of governing and controlling federal and state laws and regulations.

20. Based thereon we allege, that the CPUC, PG&E, SCE, and SDG&E, and their respective managers and staff, routinely engage in joint and collaborative tasks, functions and decision making, with mobility between respective staffs, which render them generally indistinguishable, and further render the actions of one the actions of the other.

21. In our August 31, 2021, Opening Brief [page 7] we raised the appearance of anti-competitive behavior by the IOUs as follows. "We note that former CPUC Commissioner Carla Peterman provided Mr. Boyd support for this claim under cross examination.

10 Q My first question is, I heard you
11 mention that you were an officer for Edison,
12 Southern California Edison, but you are now
13 an officer for Pacific Gas and Electric. I'm
14 curious: Are you in this case working for
15 all three utilities, including San Diego Gas

16 and Electric as a witness?

17 A Yes, I am.

[July 26, 2021, Evidentiary Hearing page 62]

22. The Sherman Antitrust Act (15 U.S.C. § 1) prohibits all contracts, combinations, and conspiracy that unreasonably restrain interstate trade (Section 1 violations). The Sherman Act (15 U.S.C. § 2) also prohibits any efforts to monopolize any part of interstate commerce (Section 2 violations). The Cartwright Act prohibits combinations of two or more persons' capital, skill, or acts to restrict trade or commerce. The Cartwright Act is California's version of the federal Sherman Act and sets forth California's antitrust laws, including price fixing prohibitions. The Cartwright Act is found at Business and Professions Code section 16700 et seq. Consequences of violations are severe. The Cartwright Act, like the Sherman Act, recognizes a private right of action for treble damages, and reasonable attorneys' fees and costs are mandatory.

23. Where the Sherman Act prohibits only "restraints of trade," the Cartwright Act is more detailed in its list of prohibited actions. California's basic antitrust statute is the Cartwright Act, Business & Professions Code §16720 and the following.

24. Where the Sherman Act (15 U.S.C. §§1 and 2) prohibits "contracts, combinations and conspiracies" in restraint of trade, as well as monopolization and attempts and conspiracies to monopolize, the Cartwright Act prohibits "trusts."

25. The Cartwright Act prohibits "trusts." §16720 defines "trust" to include "a combination of capital, skill or acts by two or more persons" for any of five proscribed purposes. Though textually quite different from its federal

counterpart, the Cartwright Act has for many, perhaps most purposes, been construed congruently with §1 of the Sherman Act.

26. §16727 is a narrower provision, outlawing anticompetitive tying and certain exclusive dealing arrangements, and is essentially identical to §3 of the Clayton Act.

27. Importantly, the Cartwright Act contains no provision prohibiting unilateral monopolistic conduct as is contained in §2 of the Sherman Act -- the Cartwright Act appears to prohibit only conspiratorial or collusive conduct involving at least two concerns.

28. Following federal law, the Cartwright Act recognizes two distinct categories of offenses: "per se" violations, and other potentially harmful conduct that is treated under the so-called "rule of reason."

29. Certain types of conduct are regarded as so inherently anticompetitive that they are treated as per se offenses. These include certain horizontal agreements (i.e., between competitors): price fixing, agreements to allocate customers or markets and group boycotts against customers or suppliers.

30. Price fixing and market or customer allocations are the two offenses most likely to result in criminal prosecution. Group boycotts, sometimes called concerted refusals to deal, are generally in the nature of agreements not to deal with specified customers or suppliers. For example, a group of retailers might refuse to deal with a particular supplier unless that supplier cuts off a price-cutting retailer. *Gianelli Distributing Co. v. Beck & Co.*, 172 Cal.App.3d 1020, 219 Cal.Rptr. 203 (1985).

31. Tying is the sale of one ("tying") product on the condition that the purchaser also takes a second ("tied") product that is either unwanted or that the buyer might prefer from another source. Tying may violate both §§16720 and 16727, and it is per se illegal only when the products are truly separate, and where either the seller has a dominant position in the market for the tying product or a not insubstantial amount of commerce in the tied product is affected. *People v. National Association of Realtors*, 155 Cal.App.3d 578, 583, 202 Cal.Rptr. 243 (1984).

VI. The objective of the conspiracy and the Decision here is both wholesale and retail price fixing.

32. **Price Fixing**: agreement between competitors to buy or sell products, services, or commodities at a fixed price or rate. Price fixing involves an agreement between producers, sellers, or purchasers of the same product or service to set prices at a certain level. The purpose of a price fixing agreement is to coordinate pricing for the conspirators' mutual benefit. A price fixing ring, often referred to as a "cartel," can push the price of a good or service as high as possible, forcing customers to pay inflated prices for these products. In other cases, price-fixing is used to drive a competitor out of business by substantially lowering prices so that the competitor cannot match the reduced price. Anticompetitive price fixing agreements are illegal under both state and federal antitrust laws.

VII. The objective of the conspiracy and the Decision here is for the IOUs to boycott the avoided-cost rates that small renewable power generators, including residential solar systems, can receive under PURPA.

33. **Group Boycotting**: competitors agreeing to boycott a certain entity. A group boycott occurs when two or more competitors in a relevant market refuse to conduct business with a specific individual or company. On its own, an individual company can legally decide to stop doing business with another company. But agreements between two or more competing companies to boycott another business, often an upstream supplier or downstream distributor, are usually illegal under antitrust laws. Group boycotts can be used to prevent new competitors from entering the market, or to disadvantage existing competitors. They can also be used to implement price fixing agreements, where competitors may collectively attempt to raise prices or reimbursement rates and agree to boycott any conspirator who refuses to participate in the price fixing scheme.

VIII. The objective of the conspiracy and the Decision here is for the IOUs to charge small renewable power generators, including customers with residential solar systems, different than customers without residential solar systems.

34. **Price Discrimination**: similar goods to buyers at different prices. Price discrimination occurs when a seller charges competing buyers different prices for the same product. Price discrimination is common and generally legal, particularly when the costs associated with selling to downstream companies differ. However, price discriminations can violate antitrust law when they provide an advantage for businesses that does not relate to their efficiency. Price

discrimination can come in several forms. Sellers may offer lower prices to some competitors and not others, offer rebates or promotions to some customers and not others, or reduce prices in certain geographic areas.

IX. The objective of the conspiracy and the Decision here is for the IOUs tying small renewable power generators, including those IOU customers residential solar systems, tying their wholesale sales compensation to their participation in CPUC's net energy metering (NEM) program.

35. **Tying**: selling a product or service on the condition that the buyer agrees to also buy a different product or service. Tying or bundling occurs when a company makes the purchase of one product or service (the tying good or service) conditional on the purchase of a second good or service (the tied good or service). In cases where the seller offering the tied goods or services has sufficient market power, these arrangements can be anticompetitive. The arrangements harm competitors who sell the second (tied) good or service, and consumers, who are forced to purchase a good or service they do not necessarily want (or at least from that seller). This is especially true when the good is tied to a product that many consumers consider critical.

36. Private plaintiffs who have been injured in their business or property by a Cartwright Act violation may maintain a civil action for treble damages and seek injunctive relief. Under section 16750(a) of the Act:

> Any person who is injured in his or her business or property by reason of anything forbidden or declared unlawful by this chapter, may sue therefore … without respect to the amount in controversy, and to recover three times the damages sustained by him or her, interest on his or her actual damages … and preliminary or permanent injunctive

relief … and shall be awarded a reasonable attorneys' fee together with the costs of the suit.[17]

X. Cartwright Act - Joint and Several Liability

37. The joint and several liability rule of conspiracy law has been applied to Cartwright Act claims.[18] Under this rule, co-conspirators are jointly and severally liable for the entire amount of the resulting harm.[19] The rule aligns with the common-law principle that tortfeasors who act in concert to commit a wrong are jointly and severally liable for all damage caused by their unlawful combination.[20]

38. Under federal antitrust law, co-conspirators have no right of contribution from each other.[21] Under California law (Code of Civil Procedure section 877), a "good faith" settlement and release of one joint tortfeasor, rather than completely releasing other joint tortfeasors, merely reduces, by the settlement amount, the damages the plaintiff may recover from the non-settling

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[17] Cal. Bus. & Prof. Code § 16750(a) (enacted 1907).

[18] *See, e.g.*, *Roth v. Rhodes*, 25 Cal. App. 4th 530, 544 (1994) (citing federal cases, the court did not require that all antitrust co-conspirators be joined in one action, reasoning that each would be jointly and severally liable for all damage caused by the conspiracy); *see also De Vries v. Brumback*, 53 Cal. 2d 643, 648 (1960) ("It is the settled rule that 'to render a person civilly liable for injuries resulting from a conspiracy of which he was a member, it is not necessary that he should have joined the conspiracy at the time of its inception; everyone who enters into such a common design is in law a party to every act previously or subsequently done by any of the others in pursuance of it.' ") (Citation omitted).

[19] *See, e.g.*, *In re Cement & Concrete Antitrust Litig.* 817 F.2d 1435, 1439 (9th Cir. 1987), *rev'd on other grounds sub nom. California v. ARC Am. Corp.*, 490 U.S. 93 (1989); *In re Uranium Antitrust Litig.*, 552 F. Supp. 518, 521–22 (N.D. Ill. 1982).

[20] *Burlington Indus., Inc. v. Milliken & Co.*, 690 F.2d 380, 391 (4th Cir. 1982).

[21] *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 634–39 (1981) (common law did not recognize a right of contribution among tortfeasors; nothing in the Sherman or Clayton Acts provides for such a right; and the policy interests involved in recognizing such a right would inject unwarranted complexities into damage award determinations). The right-of-contribution question has yet to be addressed specifically under the Cartwright Act or the Unfair Competition Law. Nothing in the text of either law provides for a right of contribution, and Code of Civil Procedure section 875(d) forecloses a right of contribution for intentional tortfeasors. The doctrine of comparative equitable indemnification, however, allows a less culpable tortfeasor to seek reimbursement from a more culpable tortfeasor. *See Baird v. Jones*, 21 Cal. App. 4th 684, 689–90 (1993) (applying doctrine of comparative equitable indemnity to allow a less culpable joint tortfeasor to seek reimbursement for part of a settlement payment from a more culpable joint tortfeasor); *Res-Care, Inc., v. Roto-Rooter Servs. Co.* 753 F. Supp. 2d 970, 978 (N.D. Cal. 2010) ("An intentional tortfeasor is entitled to seek indemnity from a concurrent intentional tortfeasor") (citation omitted).

joint tortfeasors, and such a good faith settlement and release also relieves the settling tortfeasor of all liability to others.[22] In *Mailand v. Burckle*, a vertical price-fixing action, the parties recognized the applicability of section 877.[23]

XI. Superior Court has jurisdiction over antitrust violations.

39. In the state courts, CPUC Decisions are subject to administrative and judicial review upon a party's written request for a rehearing based on legal error. If the CPUC denies a request, the party may appeal to the California Supreme Court, and a Decision may be appealed to the Court of Appeals.

40. In *Cellular Plus, Inc. v. Superior Court* (1993) 14 Cal.App.4th 1224 [18 Cal.Rptr.2d 308] (*Cellular Plus*), consumers and corporate sales agents, including Cellular Plus, brought suit against two cellular telephone service companies, claiming price fixing under the Cartwright Act (Bus. & Prof. Code, § 16700 et seq.). (*Cellular Plus,* at p. 1229.) The trial court sustained demurrers to those claims, apparently finding they were barred by section 1759. (14 Cal.App.4th at p. 1231.) The companies asserted the demurrer properly had been granted because the trial court proceedings would interfere with the commission's overall primary jurisdiction over rates charged by public utilities. (*Id.* at p. 1246.) The appellate court disagreed. "We cannot conceive how a price fixing claim under the Cartwright Act could "hinder or frustrate" the CPUC's supervisory or regulatory policies. The only apparent policy of the CPUC that could be affected is its regulation of rates charged by cellular telephone service providers. However, Cellular Plus does not dispute that the CPUC has jurisdiction over rates, nor does

[22] Cal. Code Civ. P. § 877; *see* 5 WITKIN, SUMMARY OF CAL. LAW, TORTS §§ 178–212 (11th ed. 2018); *Leung v. Verdugo Hills Hosp.*, 55 Cal. 4th 291 (2012) (abrogating the common-law release rule for joint tortfeasors and analyzing methods "for apportioning liability among a plaintiff, a settling tortfeasor, and a nonsettling tortfeasor" where a partial settlement of a negligence case was not made in good faith) (citation omitted).
[23] *Mailand v. Burckle*, 20 Cal. 3d 367, 372 n.3 (1978).

it seek any relief requiring the CPUC to change any rates it has approved. Cellular Plus is merely seeking treble damages and injunctive relief for alleged price fixing under the Cartwright Act." (*Ibid.;* and see *Covalt, supra,* at p. 919.) In addition, although not directly applicable to the companies' arguments about section 1759, the Court of Appeal recognized the PUC does not have jurisdiction over antitrust violations. (*Cellular Plus, supra,* at p. 1247.)

41. In *Cellular Plus, supra,* 14 Cal.App.4th 1224, the commission had no legitimate regulatory interest in the claims underlying the plaintiffs' complaints. It had no authority to respond to antitrust claims and no authority to respond to claims a transaction would be unfair to minority shareholders. That the claims were brought against public utilities did not, in and of itself, invest the commission with regulatory authority over them, nor did it matter that the plaintiffs might have been entitled to relief for action that had been approved by the commission.

XII. Amount of Damages

42. In antitrust cases, common-law damages rules are not controlling.[24] Pattern Cartwright Act jury instructions remove foreseeability of harm from the analysis: "[t]he amount of damages must include an award for all harm that was caused by [name of defendant], even if the particular harm could not have been anticipated."[25] Furthermore, state antitrust laws do not require precision or certainty in damage calculations or distributions. Once liability has been

[24] *Suburban Mobile Homes, Inc. v. AMFAC Communities, Inc.*, 101 Cal. App. 3d 532, 545 (1980).
[25] Judicial Council of Calif., Civ. Jury Instr. (CACI) No. 3440 (2018).

established, neither complexity nor uncertainty of damage calculations will preclude recovery.[26]

XIII. Lost Sales or Profits as Damages

43. To recover lost sales or lost profits damages under the Cartwright Act, the plaintiff need "establish only with reasonable probability the existence of some causal connection between defendant's wrongful act and some loss of the anticipated revenue."[27] The fact finder may "act upon probable and inferential proof" and "make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly."[28] Where an antitrust violation interrupted the operation of an established business, the loss of its prospective profits may be proven by the past volume of business and other data relevant to probable future sales.[29] But "sheer guesswork or speculation" about lost profits or revenues is insufficient.[30]

XIV. A Just and Reasonable Estimate of the Damage Based on Relevant Data

44. During the November 16, 2022, Oral Arguments Mr. Boyd provided a reasonable estimate of the volume of solar energy that accounted for lost sales or profits.

> CAlifornians for Renewable Energy has a business account with WREGIS and my 5.2kW PV solar system is a Generating Unit. My solar power inverter's AC output is connected to a revenue grade meter

[26] *Id.*; *Diesel Elec. Sales & Serv., Inc. v. Marco Marine San Diego, Inc.*, 16 Cal. App. 4th 202, 218–20 (1993) (explaining and applying relaxed antitrust damages rule in claim for violation of section 17045, which forbids secret rebates).
[27] *Suburban Mobile Homes, Inc. v. AMFAC Communities, Inc.*, 101 Cal. App. 3d 532, 545 (1980) (citing *Flintkote Co. v. Lysfjord*, 246 F.2d 368, 392 (9th Cir. 1957)).
[28] *Id.* (citing *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 264 (1946)).
[29] *Id.* at 545–46 (defendant introduced evidence of reduced market share and evidence of loss of individual sales plus amount of net profit on each sale); *see also Clayworth v. Pfizer, Inc.,* 49 Cal. 4th 758, 786 (2010) (reasoning that "tertiary consequences"—lost sales and profits—from an antitrust violation are valid damages under the Cartwright Act).
[30] *Suburban Mobile Homes*, 101 Cal. App. 3d at 545.

> approved by WREGIS. The meter was interconnected on July 1st and after November first it recorded 1 MWh of solar power was produced. WREGIS issued me a certificate for 1 renewable energy credit or REC. This REC is tradeable to PG&E.
>
> I produced 1 MWh in a 4 monthly period. If we normalize that 1 MWh to the roughly 13,000 MW [13GW] of rooftop solar that is interconnected statewide, then there was 2.5 trillion Watts of solar power produced in 4 months that wasn't counted towards the state's RPS. That's 7.5 Terawatts annually not being counted in the RPS and that is a free uncompensated benefit to the utilities.

[Oral Argument November 16, 2022, Transcript page 2255 line 13 to page 2256 line 7. [Excerpted]]

45. The 2021 Padilla Report[31] shows PG&E's utility owned generation [UOG] price for their PG&E owned solar in the 0 to 3 MW nameplate capacity is charged to its own ratepayers at $0.356/kWh. [pages 23 & 24] Therefore it would be reasonable to infer that the lost sales or profits to small renewable power generators, including those IOU customers residential solar systems is:

7,500,000,000kWh [7.5 billion kWh] x $0.356/kWh = $2,760,000,000 annually

XV. California Tort Claims Act

46. Before you may sue a public entity, you must first file a claim meeting the requirements of the California Tort Claims Act (Cal. Government Code §§ 810-996.6). The agency has 45 days after receiving your claim to take action. The agency will typically conduct an investigation of your claim. If their findings support your allegations, the agency will attempt to settle with you. If the agency rejects your claim, they will notify you in writing that you can pursue

[31] https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/office-of-governmental-affairs-division/reports/2021/2021-padilla-report_final.pdf

the matter in court. This written notification is often called your "right to sue letter." If the agency takes no action within 45 days, the claim is deemed denied and you may sue the agency in court. Under California Government Code § 945.6, you must sue within 6 months from the date of the postmark or personal delivery of your right to sue letter. If the agency does not provide any written notice rejecting your claim, you have two years from the date of injury or damage.

46. We sent the following State of California Government Claim form including a check for $25 to:

Office of Risk and Insurance Management
Government Claims Program
P.O. Box 989052, MS 414
West Sacramento, CA 95798-9052

STATE OF CALIFORNIA
GOVERNMENT CLAIM
DGS ORIM 006 (Rev. 10/2018)

DEPARTMENT OF GENERAL SERVICES
OFFICE OF RISK AND INSURANCE MANAGEMENT

CLAIMANT INFORMATION

LAST NAME	FIRST NAME		MIDDLE INITIAL
Boyd	Michael		E
INMATE OR PATIENT IDENTIFICATION NUMBER (if applicable)	BUSINESS NAME (if applicable) CAlifornians for Renewable Energy, Inc. (CARE)		
TELEPHONE NUMBER 408-891-9677	EMAIL ADDRESS boyd.michaele@gmail.com		
MAILING ADDRESS 5439 Soquel Drive	CITY Soquel	STATE CA	ZIP 95073
IS THE CLAIMANT UNDER 18 YEARS OF AGE? ☐ Yes ☑ No	INSURED NAME (Insurance Company Subrogation)		
IS THIS AN AMENDMENT TO A PREVIOUSLY EXISTING CLAIM? ☐ Yes ☑ No	EXISTING CLAIM NUMBER (if applicable)	EXISTING CLAIMANT NAME (if applicable)	

ATTORNEY OR REPRESENTATIVE INFORMATION

LAST NAME	FIRST NAME		MIDDLE INITIAL
TELEPHONE NUMBER	EMAIL ADDRESS		
MAILING ADDRESS	CITY	STATE	ZIP

CLAIM INFORMATION

STATE AGENCIES OR EMPLOYEES AGAINST WHOM THE CLAIM IS FILED	DATE OF INCIDENT
Governor Gavin Newsom, California Public Utilities Commission, Commissioners and staff	December 19, 2022

LATE CLAIM EXPLANATION (Required, if incident was more than six months ago)

DOLLAR AMOUNT OF CLAIM	CIVIL CASE TYPE (Required, if amount is more than $10, 000)
$1,000,000.00	☐ Limited ($25,000 or less) ☑ Non-Limited (over $25,000)

DOLLAR AMOUNT EXPLANATION
Conspired through CPUC Decision to violate antitrust laws, the Cartwright Act & Sherman Act causing lost sales or lost profits damages

INCIDENT LOCATION
CPUC Offices in San Francisco

SPECIFIC DAMAGE OR INJURY DESCRIPTION
lost sales or lost profits damages

CIRCUMSTANCES THAT LED TO DAMAGE OR INJURY
Their action is part of a conspiracy to violate antitrust laws, California's Cartwright Act and the federal Sherman Act. Governor Gavin Newsom, California Public Utilities Commission, Commissioners and staff conspired with Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and with Co-conspirators, Cal Advocates, Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN), to violate the acts.

EXPLAIN WHY YOU BELIEVE THE STATE IS RESPONSIBLE FOR THE DAMAGE OR INJURY
Respondents have engaged in a pattern and practice of willful misconduct in the ongoing legal challenge CARE et al. v. CPUC et al. (Case No. 2:11-cv-04975-JWH) to dodge the federal court's jurisdiction over the matter. The litigation, dates back to 2011 in the U.S. District Court for the Central District of California. CLASS CLAIM for like situated small renewable power generators, including residential solar systems, 13,711 Megawatts (MW) Installed. https://www.californiadgstats.ca.gov

STATE OF CALIFORNIA
GOVERNMENT CLAIM
DGS ORIM 006 (Rev. 10/2018)

DEPARTMENT OF GENERAL SERVICES
OFFICE OF RISK AND INSURANCE MANAGEMENT

AUTOMOBILE CLAIM INFORMATION		
DOES THE CLAIM INVOLVE A STATE VEHICLE? ☐ Yes ☑ No	VEHICLE LICENSE NUMBER (if known)	STATE DRIVER NAME (if known)
HAS A CLAIM BEEN FILED WITH YOUR INSURANCE CARRIER? ☐ Yes ☑ No	INSURANCE CARRIER NAME	INSURANCE CLAIM NUMBER
HAVE YOU RECEIVED AN INSURANCE PAYMENT FOR THIS DAMAGE OR INJURY? ☐ Yes ☑ No	AMOUNT RECEIVED (if any)	AMOUNT OF DEDUCTIBLE (if any) 0

NOTICE AND SIGNATURE

I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to $10,000 (Penal Code section 72).

SIGNATURE	PRINTED NAME	DATE
Michael E. Boyd	Michael E. Boyd	1/16/2023

INSTRUCTIONS

- Include a check or money order for $25, payable to the State of California.
  - $25 filing fee is not required for amendments to existing claims.
- Confirm all sections relating to this claim are complete and the form is signed.
- Attach copies of any documentation that supports your claim. Do not submit originals.

Mail the claim form and all attachments to:
Office of Risk and Insurance Management
Government Claims Program
P.O. Box 989052, MS 414
West Sacramento, CA 95798-9052

Claim forms can also be delivered to:
Office of Risk and Insurance Management
Government Claims Program
707 3rd Street, 1st Floor
West Sacramento, CA 95605
1-800-955-0045

Department of General Services Privacy Notice on Information Collection

This notice is provided pursuant to the Information Practices Act of 1977, California Civil Code Sections 1798.17 & 1798.24 and the Federal Privacy Act (Public Law 93-579).

The Department of General Services (DGS), Office of Risk and Insurance Management (ORIM), is requesting the information specified on this form pursuant to Government Code Section 905.2 (c).

The principal purpose for requesting this data is to process claims against the state. The information provided will/may be disclosed to a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with California Civil Code Section 1798.25.

Individuals should not provide personal information that is not requested.

The submission of all information requested is mandatory unless otherwise noted. If you fail to provide the information requested to DGS, or if the information provided is deemed incomplete or unreadable, this may result in a delay in processing.

Department Privacy Policy
The information collected by DGS is subject to the limitations in the Information Practices Act of 1977 and state policy (see State Administrative Manual 5310-5310.7). For more information on how we care for your personal information, please read the DGS Privacy Policy.

Access to Your Information
ORIM is responsible for maintaining collected records and retaining them for 5 years. You have a right to access records containing personal information maintained by the state entity. To request access, contact:

DGS ORIM
Public Records Officer
707 3rd St., West Sacramento, CA 95605
(916) 376-5300

Respectfully submitted,
/s/ Michael E. Boyd
Michael E. Boyd President (CARE)
CAlifornians for Renewable Energy, Inc.
5439 Soquel Drive, Soquel, CA 95073

January 16, 2023