

1 Michael J. Aguirre, Esq., SBN 060402
2 Maria C. Severson, Esq., SBN 173967
3 AGUIRRE & SEVERSON LLP
4 501 West Broadway, Suite 1050
5 San Diego, CA 92101
6 Telephone: (619) 876-5364
7 Facsimile: (619) 876-5368

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 RUTH HENRICKS, an
12 Individual,

13 Plaintiff,

14 v.

15 CALIFORNIA PUBLIC UTILITIES
16 COMMISSION, a California state
17 agency; and MICHAEL PICKER,
18 President of the CALIFORNIA
19 PUBLIC UTILITIES COMMISSION,
20 and DOES 1-100, inclusive,

21 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
VIOLATIONS OF FEDERAL AND
STATE PROVISIONS PROTECTING
THE RIGHT OF DUE PROCESS
[42 U.S.C. § 1983]**

22 Plaintiff RUTH HENRICKS alleges as follows:

23 1. RUTH HENRICKS (HENRICKS) brings this action to redress
24 violations by MICHAEL PICKER, President of the CALIFORNIA PUBLIC
25 UTILITIES COMMISSION (“CPUC”), of Ms. HENRICKS’ right to equal
26 protection and due process under the 14th Amendment to the United States
27 Constitution.

1 2. RUTH HENRICKS (HENRICKS) brings this action to redress
2 violations by CALIFORNIA PUBLIC UTILITIES COMMISSION (“CPUC”) of
3 Ms. HENRICKS’ right to equal protection and due process under the 14th
4 Amendment to the United States Constitution.

5 3. Ms. HENRICKS, a San Diego Gas & Electric (SDG&E) ratepayer,
6 was granted party status in CPUC proceeding A.15-09-010 in February 2016. This
7 proceeding (A.15-09-010) was held to determine whether SDG&E imprudently
8 operated its electricity equipment when that equipment started the San Diego fires
9 of 2007. SDG&E claimed it acted prudently and therefore was entitled to recover,
10 from its ratepayers and fire victim, losses of \$379,000,000 claimed to have been
11 incurred beyond that covered by SDG&E’s insurance.

12 4. Proceeding A.15-09-010 is the second proceeding SDG&E initiated
13 before the CPUC seeking reimbursement for SDG&E’s payments connected to its
14 claimed 2007 San Diego fire victim losses. The CPUC denied SDG&E any
15 recovery in the first proceeding (A.09-080-20) on 28 December 2012. The CPUC
16 ruled any future SDG&E 2007 fire cost recovery proceedings would be subject to a
17 **“reasonableness review.”**

18 5. In September 2015, SDG&E initiated a reasonableness review of its
19 uninsured 2007 fire losses in proceeding A.15-09-010. In the proceeding, Ms.
20 Henricks filed and served a Motion for Party Status on 2 October 2015; the motion
21 was granted in February 2016.

22 6. On 11 April 2016, the assigned CPUC Administrative Law Judge
23 issued a Scoping Ruling that implemented a two-phase approach for proceeding
24 A15-09-010. In Phase 1, the parties were to address “Whether SDG&E’s operation,
25 engineering and management of the facilities alleged to have been involved in the
26 ignition of the fires was reasonable.”

27 7. The April 2016 scoping ruling provided that “Each of the three San
28 Diego 2007 fires (Witch, Guejito and Rice Wildfires) should be addressed

1 separately.” The Scoping Ruling noted that prior CPUC “decisions indicate that a
2 reasonableness standard should entail a review of the prudence of SDG&E’s
3 actions leading up to the fire.” The Scoping Ruling specifically referenced D.14-06-
4 007, in which the CPUC held that for costs to be found reasonable, the utility must
5 prove that they were prudently incurred by competent management exercising the
6 best practices of the era, and using well-trained, well-informed and conscientious
7 employees who are performing their jobs properly.”

8 8. In October 2016, this proceeding (A.15-09-010) was reassigned to ALJ
9 Pat Tsen and ALJ Pro Tem Sasha Goldberg. Evidentiary Hearings for Phase 1 of
10 this proceeding were held at the CPUC’s San Francisco hearing rooms the week of
11 23 January 2017. The record for Phase 1 of this proceeding was submitted for
12 CPUC consideration on 6 July 2017.

13 9. On 22 August 2017, ALJs Tsen and Goldberg issued a decision
14 finding that SDG&E “did not reasonably manage and operate its facilities prior to
15 the 2007 Southern California Wildfires and therefore denies the utility’s request to
16 recover costs”

17 10. On 28 September 2017, the CPUC was scheduled to approve the
18 ALJs’ proposed decision denying SDG&E any further 2007 fire cost recovery at the
19 CPUC’s meeting in Chula Vista. The item was “held” and not decided on 28
20 September 2017. The item was continued to the CPUC’s meeting on 12 October
21 2017. The item was again held and continued to the CPUC’s 26 October 2017
22 meeting.

23 11. The CPUC created the delay so as to provide an opportunity for
24 SDG&E and its utilities monopoly kin—PG&E and SCE, neither who had been a
25 party in the proceeding’s evidentiary hearings—to meet privately with the
26 Commissioners and lobby against the ALJs’ proposed decision denying SDG&E its
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1 request to lay the burden of its \$379,000,000 fire costs on ratepayers, instead of on
2 the management found to have acted imprudently and unreasonably by the ALJs.

3 12. These and other pre- and post-proceeding antics by the CPUC—a
4 regulatory agency that has been “captured” by the utilities it is supposed to
5 regulate—was done as a pretext for the CPUC’s goal of not adopting the ALJs’
6 decision. A violation of Ms. Henricks’ due process thus results.

7 **PARTIES AND KEY PLAYERS**

8 13. Ms. Henricks is a resident of the County of San Diego and the
9 Southern District of California. Ms. Henricks is an SDG&E customer and
10 ratepayer. Ms. Henricks was admitted as a party to proceeding A.15-09-010. 015 in
11 February 2016. Ms. Henricks was an active participant in the proceedings from
12 October 2016 to the filing of this Complaint. Ms. Henricks filed briefs, attended
13 the evidentiary hearing, and cross-examined witnesses.

14 14. SDG&E is a monopoly that provides electricity service in San Diego
15 County and South Orange County. SDG&E directs the actions of the CPUC
16 through its parent corporation SEMPRA. SDG&E and SEMPRA annually spend
17 hundreds of thousands of dollars in campaign contributions to those who appoint or
18 approve the appointment of CPUC Commissioners, lobbying the CPUC
19 Commissioners and staff. SDG&E was actively involved in the decision to appoint
20 each of the CPUC Commissioners. SDG&E, in so acting, has obtained regulatory
21 capture of the CPUC. SDG&E exercised its regulatory capture powers of the
22 CPUC in this case to deny Ms. Henricks’ right to due process and equal protections.

23 15. Defendant CPUC is an SDG&E-regulatory captured agency of the
24 State of California. The CPUC is required to conduct proceedings such as A.15-09-
25 010 in compliance with the 14th Amendment due process and equal protection
26 requirements.

1 16. The CPUC operates as an SDG&E “regulatory captured” agency.
2 Regulatory capture is a form of political corruption that occurs when a regulatory
3 agency like the CPUC, created to act in the public interest, instead advances the
4 commercial concerns of special interest like SDG&E that dominate the sector the
5 CPUC is charged with regulating.

6 17. The CPUC has succumbed to regulatory capture by SDG&E. SDG&E
7 has co-opted CPUC decision makers to further SDG&E’s special interests. In this
8 case, it is the special interest of SDG&E to recover from its ratepayers the
9 \$379,000,000 of 2007 fire victim losses not covered by SDG&E’s fire insurance
10 even though SDG&E was not operating its equipment prudently when that
11 equipment ignited the 2007 San Diego fires.

12 18. MICHAEL PICKER is the President of the CPUC. CPUC President
13 Picker dominates decision making at the CPUC in general and specifically in
14 carrying out directives from SDG&E. Picker approved twice-delaying the CPUC
15 decision on whether to confirm the ALJ’s decision denying SDG&E any further
16 recovery related to the 2007 fire cases.

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18 **OTHER UTILITIES ADDED *AFTER* HEARINGS ENDED AND *AFTER***
19 **ALJ’S PROPOSED DECISION IS ISSUED**

20 19. On 28 September 2017, *after* the record was closed and the case
21 decided by the ALJs, Picker improperly allowed SDG&E to make additional
22 arguments outside the evidentiary hearing record at the CPUC meeting in Chula
23 Vista. Picker improperly allowed SDG&E to make such arguments at an “All Party
24 Meeting;” the meeting was improperly authorized by Picker be held at the CPUC’s
25 meeting in Chula Vista.

26 20. Pacifiic Gas & Electric Company (PG&E) is a second monopoly that
27 provides electricity to customers in Northern California. Two months after the case
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1 was submitted, PG&E filed for party status in this proceeding (A 15-09-010) on 11
2 September 2017. On 26 September 2017 the CPUC under Picker's direction
3 improperly granted party status to PG&E in A 15-09-010. PG&E was granted party
4 status to argue the issue of "inverse condemnation" in support of SDG&E. The
5 issue of inverse condemnation is an issue outside the scope of the evidentiary
6 hearing in proceeding A 15-09-10. The CPUC granted party status to PG&E two
7 years after the proceedings started, two months after the case was submitted for
8 decision, and one month after the ALJs had decided the case. The CPUC so acted
9 in furtherance of the dominance and control SDG&E exercises over the CPUC in
10 granting party status to PG&E.

11 21. Southern California Edison is (SCE) is a third monopoly that
12 provides electricity to customers in Central and Southern California. Two months
13 after the case was submitted, SCE also filed for party status in this proceeding
14 (A.15-09-010) on 11 September 2017. On 26 September 2017, the CPUC under
15 Picker's direction improperly granted party status to SCE in A.15-09-010. SCE was
16 granted party status to allow it to argue the issue of "inverse condemnation" in
17 support of SDG&E. The issue of inverse condemnation is an issue outside the
18 scope of the evidentiary hearing in proceeding A.15-09-10. The CPUC granted
19 party status to SC&E two years after the proceedings started, two months after the
20 case was submitted for decision, and one month after the ALJs had decided the
21 case. The CPUC so acted in furtherance of the dominance and control SDG&E
22 exercises over the CPUC in granting party status to SCE.

23 **JURISDICTION AND VENUE**

24 22. This Court has jurisdiction over this action pursuant to: (a) 28 U.S.C. §
25 1331 in that the action arises under the United States and Ms. Henricks' right to
26 relief depends on resolution of substantial questions of federal Constitutional law;
27 (b) 28 U.S.C. § 1343(3) and (4). In this action, Ms. Henricks seeks to redress a
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1 deprivation, under color of law, of a right, privilege or immunity secured by the
2 United States Constitution and seeks to recover equitable and other relief under 42
3 U.S.C. § 1983, an Act of Congress providing for the protection of civil rights.

4 23. Venue is proper in the Central District of California pursuant to: (a) 28
5 U.S.C. § 1391(b)(1) in that the CPUC resides in the and does business in this
6 District, including business related to the claims in this Complaint; and (b) 28
7 U.S.C. § 1391(b)(2) in that the events giving rise to the Ms. Henricks' claims
8 occurred, and the property that is the subject of this action is located in this District.

9 24. SDG&E is a Wall Street traded electric utility corporation that the
10 CPUC is supposed to regulate because SDG&E holds monopoly power over a
11 commodity essential for the public to enjoy modern life.

12 25. In this action, Plaintiff seeks preliminary and final injunctive relief to
13 prevent the CPUC from imposing upon ratepayers the \$379,000,000 denied by the
14 ALJ who presided over the proceedings in which neither PG&E nor SCE were
15 involved. Plaintiff also seeks to recover the attorneys' fees it has incurred to date,
16 and will continue to incur during the pendency of this action. Plaintiff is entitled to
17 recover attorneys' fees pursuant to 42 U.S.C. §§ 1983 and 1988(b) and California
18 Code of Civil Procedure § 1021.5.

19 **SDG&E AND THE FIRES**

20 26. During late October 2007, Predictive Services at the Southern
21 California Geographic Area Coordination Center (OSCC) continued to forecast an
22 extreme fire weather event of strong, hot, dry, winds. The OSCC, established in
23 1972, provides Coordination and logistical support for the Southern California
24 forests for wildland fire and all risk incidents.

25 27. On Thursday, 18 October 2007, "High Risk Days" were added to the
26 7-day forecast for Sunday, October 21, and Monday, October 22, highlighting the
27 prediction that this anticipated offshore event would be strong and widespread, and
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1 accompanied by very warm and very dry conditions. On Friday 19 October 2007,
2 Predictive Services forecasters added Tuesday, October 23, as a High-Risk Day in
3 the 7-day report.

4 28. On Sunday 21 October 2007, SDG&E equipment ignited the **Witch**
5 **Fire** at approximately 12:35 p.m. in the rural area of Witch Creek, east of Ramona
6 in San Diego County. On Monday, 22 October 2017, SDG&E's equipment (along
7 with Cox Cable's) ignited the **Guejito Fire** in Pasqual Valley first reported by Cal
8 Fire at 1am on 22 October 2007. On Monday, 22 October 2017, SDG&E
9 equipment ignites the Rice Fire, reported at 4:16 a.m. in Rice Canyon, north San
10 Diego County.

11 29. The SDG&E facility involved in the ignition of the Witch Fire was
12 Tie Line (TL) 637. TL 637 is a 69 kilovolt (kV) transmission line that connects the
13 Santa Ysabel and Creelman substations. TL 637 is approximately 14 miles long
14 and runs along a remote backcountry section of San Diego County. Cal Fire
15 investigator determined that a fault on TL 637 between poles Z416675 and
16 Z416676 on October 21, 2007 led to arcing of the lines, which dispersed hot
17 particles to land in the grassy field below the powerlines. These particles were
18 determined to have ignited the Witch Fire which was then spread by wind.

19 30. The **Guejito Fire** was first reported by Cal Fire at 01:00 on October
20 22, 2007 near the City of Escondido, in San Diego County. The SDG&E facility
21 involved in the ignition of the Guejito Fire was a 12 kV overhead conductor. CPSD
22 and Cal Fire attributed the ignition of the Guejito Fire to a Cox Communications
23 (Cox) lashing wire coming into contact with an SDG&E 12 kV overhead
24 conductor, between SDG&E poles P196387 and P196394.1

25 31. The **Rice Fire** ignited on 22 October 2007 in Fallbrook, California.
26 The Cal Fire Investigation Report into the Rice Fire concluded that the cause of the
27 fire was a downed powerline. Staff in the CPUC's Consumer Protection and Safety
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