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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.
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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. Pacifiç 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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1 Division (CPSD determined that a limb from sycamore Tree FF1090 (FF1090)
2 broke and fell onto SDG&E 12 kV overhead conductors on 22 October 2007, which
3 in turn caused the conductors to break and fall to the ground.

4 32. On 22 August 2017, the ALJs determined that “SDG&E fails to prove
5 by a preponderance of the evidence that it acted prudently in its operation and
6 management of its facilities linked to the ignition of the **Witch Fire.**”

7 33. On 22 August 2017, the ALJs determined that “SDG&E fails to prove
8 by a preponderance of the evidence that it acted prudently in its operation and
9 management of its facilities prior to the ignition of the **Rice Fire.** “

10 34. On 22 August 2017 the ALJs determined that “SDG&E fails to prove
11 by a preponderance of the evidence that it acted prudently in its operation and
12 management of its facilities prior to the ignition of the **Guejito Fire.**”

13 35. The Witch Fire led to the destruction of 1,141 homes, 509
14 outbuildings, and 239 vehicles. Once combined with the Guejito Fire, the Witch
15 Fire burned a total of 197,990 acres. The Rice Fire burned 9,472 acres, destroyed
16 206 homes, two commercial properties, and 40 other buildings before being
17 contained. The three fires threatened the safety and security of the people of San
18 Diego. These fires came perilously close to cutting off all three of San Diego’s
19 freeways to the North and East as shown in this CalFire Map:



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CPUC ACTS IN VIOLATION OF DUE PROCESS AND EQUAL PROTECTION

36. After the ALJs' 22 August 2017 rulings finding SDG&E acted imprudently and denying SDG&E any further recovery for the 2007 fires, the CPUC engaged in a series of actions in violation of the due process and equal protection clauses of the 14th Amendment to the United States Constitution, all of which were aimed at denying SDG&E utility customers the benefit of the 22 August 2017 decision.

37. On 5 and 6 September 2017, SDG&E representatives had five individual Ex Parte communications in meetings with CPUC Commissioner advisers. The SDG&E representatives were Lee Schavrien, Senior Vice President for Regulatory Affairs, Dave Geier, Senior Vice President for Electric Operations, Chris Lyons, Senior Counsel and Brian Prusnek, Director of Regulatory Affairs. The meetings took place at 505 Van Ness Ave in San Francisco, California, and lasted approximately 30 minutes. The communications were oral and a handout was provided at each meeting. The discussions tracked the handout.

38. The private meetings occurred as follows: 1) On September 5 2017, at 1:00 p.m., the listed representatives from SDG&E met with Sean Simon, Interim Chief of Staff and Travis Foss, Legal Advisor, for Commissioner Clifford Rechtschaffen. 2) On September 5, 2017, at 1:30 p.m., the listed representatives from SDG&E met with Dave Peck, Advisor to President Picker. 3) On September 5, 2017 at 2:00 p.m., the listed representatives from SDG&E met with Dave Gamson, Advisor to Commissioner Martha Guzman Aceves. 4) On September 6, 2017 at 11:30 a.m., the listed representatives from SDG&E met with Rachel Peterson, Chief of Staff to Commissioner Liane Randolph. 5) On September 6, 2017 at 2:15 p.m., the listed representatives from SDG&E met with Ehren Seybert, and Shannon O'Rourke, Advisors to Commissioner Carla Peterman.

1 39. During the above-described ex parte meetings, Mr. Lyons began the
2 meeting by **asking the Proposed Decision not be adopted** by the Commission
3 because it commits legal error by failing to address the critical legal issue of the
4 relationship between inverse condemnation and cost recovery, does not correctly
5 apply the reasonableness standard, and contains factual errors in its review of and
6 conclusions regarding the record evidence, particularly with respect to the wind and
7 weather conditions in October 2007. Mr. Lyons then provided an overview of
8 SDG&E's request in this proceeding, stating that the company requested recovery
9 of approximately \$379 million that resulted from claims in excess of coverage that
10 were filed against SDG&E as the result of the 2007 wildfires in its service territory.

11 40. During each of each of the private ex parte meetings, Mr. Lyons
12 summarized the inverse condemnation doctrine that he claimed was a component of
13 proceeding A.15-09-010 and stated that it is an action instituted by a property
14 owner against a public entity for property damage linked to a public improvement.
15 He explained that the public entity may be held strictly liable, irrespective of fault,
16 where a public improvement constitutes a substantial cause of the plaintiff's
17 damages even if only one of several concurrent causes. California courts have
18 applied inverse condemnation in order to spread the costs associated with a public
19 good as widely as possible on the premise that public entities (including IOUs) may
20 spread costs through rates. The courts found that inverse condemnation applied to
21 SDG&E after the 2007 wildfires.

22 41. During each of the 5 and 6 September 2017 ex parte meetings, Mr.
23 Lyons requested that the CPUC should permit SDG&E to spread the San Diego
24 2007 fires losses through rates. Mr. Schavrien then explained the costs associated
25 with the application and also how the Federal Energy Regulatory Commission
26 ("FERC") has treated these costs. FERC assessed the reasonableness and prudence
27 of the FERC-jurisdictional portion of the San Diego fire costs for which SDG&E
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1 has sought recovery, and it approved SDG&E's request. By the end of 2017,
2 SDG&E will have recovered all of the costs allocated to FERC rates.

3 42. During the 5 and 6 September 2017 ex parte meetings, Mr. Schavrien
4 went on to reference the FERC decision which granted the recovery of these costs
5 and stated that the decision said, "the record indicates that SDG&E behaved as a
6 reasonable, prudent utility in the maintenance of its lines prior to the wildfires and
7 in its settling of the claims of injured third-party homeowners ... [and] under
8 California law SDG&E would likely have been held responsible for such costs
9 irrespective of fault."

10 43. During each of the 5 and 6 September 2017 ex parte meetings, Mr.
11 Schavrien next explained how FERC Account 925 operates and that utilities are
12 generally permitted to recover for liabilities and settlement payments in rates
13 established through General Rate Cases through FERC Account 925. He also
14 explained how the 2007 San Diego fires created a situation in which for the first
15 time, the utility had liability in excess of coverage.

16 44. During the 5 and 6 September 2017 ex parte meetings, Mr. Geier
17 described the wind and weather conditions at the time of the 2007 wildfires. He
18 discussed how there were more than a dozen fires in southern California during this
19 time period and the significant evacuations that were taking place. He described the
20 work that was done between the Forest Service and UCLA in back-casting data
21 related to wind speeds, moisture and other factors in how they developed the results
22 shown on pages seven and eight in Attachment A. Mr. Geier questioned the
23 Proposed Decision's reliance on data that showed wind speeds that were in the
24 range of 40 miles per hour. Furthermore, Mr. Geier took issue with the Proposed
25 Decision's description of the weather and wind in October 2007 as something
26 typical of Santa Ana winds. Finally, Mr. Geier walked through some of the quotes
27 on slide 10 and pointed to the reports that were part of the record that properly
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1 described the facts surrounding the fires 5 and discussed how the Proposed
2 Decision largely ignores these credible sources of information. Mr. Lyons then
3 walked through each of the three fires at issue. In summary, he stated that the
4 Proposed Decision did not appropriately use the Commission's long held
5 reasonableness review standard. Furthermore, he explained that the Proposed
6 Decision did not focus on what actually caused the fires, but instead, focused on
7 technical violations associated with the fires. Mr. Lyons walked the attendees for
8 the private ex parte meetings through each fire as explained on slide 11. Mr.
9 Prusnek concluded by requesting that the Proposed Decision in its current form not
10 be adopted, that the item be held from an upcoming meeting and that there be an
11 oral argument and/or alternate proposed decision authored that correctly weighs the
12 evidence in this case.

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14 **CPUC CREATES A PRETEXT TO JUSTIFY**
15 **NOT ADOPTING THE ALJ DECISION**

16 45. On 11 September 2017, PG&E and SCE both filed for party status in
17 proceedings and sought leave to submit comments jointly with PG&E under Rule
18 14.3 and otherwise to participate in this proceeding as a party. SCE advised its
19 comments will focus on legal, factual and technical errors as required by that rule.
20 SCE advised it does not seek to introduce new facts, its comments will focus on the
21 existing record. It argued granting SCE's request will not prejudice any party.

22 46. On 18 September 2017, under the direction of Picker and CPUC
23 Commissioner Liane Randolph, the CPUC announced it was holding something the
24 CPUC calls an "All-Party Meeting" regarding the Proposed Decision in Application
25 15-09-010. The CPUC directed that the meeting take place on Thursday, 28
26 September 2017 from 1:00 p.m. to 2:00 p.m. at the Chula Vista Council Chambers.
27 The CPUC scheduled the "All Party" meeting the day after the 27 October 2017
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1 CPUC posted it posted its decision to “hold” the matter so as not to be taken up at
2 the Voting Meeting in Chula Vista – a City within the County of the SDG&E fires,
3 and within the SDG&E ratepayer area.

4 47. The CPUC, under Picker, planned for the participation of all of the
5 Commissioners at the “All Party” meeting the email. Announcing the “All Party”
6 meeting was misleading because it stated that “a quorum of Commissioners and/or
7 their staff **may be** in attendance.”

8 48. On 26 September 2017, the CPUC granted party status to PG&E and
9 SCE “for the limited purpose of filing comments on the legal issue of inverse
10 condemnation from the existing record.”

11 49. Picker and Randolph agreed amongst themselves and with PG&E,
12 SDG&E and SCE that the CPUC would allow the three utilities to use the “All
13 Party” meeting as a forum for SDG&E, PG&E and SCE to improperly insert the
14 inverse condemnation issue into the proceedings—even though it was outside the
15 scope of the evidentiary hearing. This was done over Ms. Henricks’ objection.

16 50. The utility (San Diego Gas & Electric) did not frame as one of the
17 issues to be tried, and did not try, the issue about whether it paid out funds to settle
18 the third-party fire damage cases based on inverse condemnation. The utility
19 presented no evidence at the hearing on the issue of inverse condemnation.
20 Perforce, the proposed decision which resolves the issues that were tried does not
21 mention inverse condemnation, an issue the utility chose not to try. Having been
22 found to have acted negligently in causing the 2007 catastrophic fires in San Diego,
23 the utility now seeks to step outside the record to raise an inverse condemnation
24 defense it had so little confidence in that it did not even seek to try the issue in the
25 evidentiary hearing.

26 51. Ms. Henricks objected in writing to SDG&E’s insertion of the inverse
27 condemnation in the proceedings post trial. Ms. Henricks objected to SDG&E’S
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1 enlisting its fellow utilities (PG&E and SCE) to support SDG&E’s attempt to undo
2 the ALJS’ decision.

3 52. On 26 September 2017, the CPUC under the direction of Picker and
4 Randolph, provided an agenda for the “All-Party” meeting which is a form of an ex
5 parte communication with CPUC decision makers described in CPUC Rule of
6 Procedure 8.3(c)(1). The CPUC, under Picker, contrived with SDG&E, SCE and
7 PG&E to allow PG&E and SCE to join the proceedings as parties so they could join
8 the effort to improperly insert the inverse condemnation issue into the proceedings.
9 This scheme was carefully choreographed by the CPUC under Picker with SDG&E,
10 PG&E and SCE. The agenda noted all five CPUC Commissioners would be
11 present.

12 53. At the 28 September 2017 All Party meeting, the CPUC—over Ms.
13 Henricks’ objection—allowed SDG&E, PG&E and SCE to raise the inverse
14 condemnation issue, even though it was outside the scope of the evidentiary hearing
15 and even though it was moot given the fact the ALJS ruled SDG&E acted
16 imprudently.

17 54. On 29 September 2017, the day after the CPUC improperly allowed
18 (under Picker) SDG&E, PG&E and SCE to introduce the inverse condemnation
19 issue into the proceedings at the Chula Vista All-Party meeting, the CPUC sent out
20 another ruling allowing PG&E and SCE to make *further* comments on the inverse
21 condemnation in connection with the pending proposed decision in proceeding
22 A.15-09-010. PG&E and SCE were given until 4 October 2017 to submit their
23 comments.

24 55. On 4 October 2017, PG&E filed for itself and for SCE a pleading in
25 A.15-09-010 that improperly inserted the inverse condemnation issue into the case.
26 In the comments, SCE and PG&E asserted the proposed decision failed to discuss
27 inverse condemnation. Yet PG&E and SCE, with no factual support, stepped
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1 outside the evidentiary record to assert that SDG&E paid settlements and legal
2 defense bills “resulting from inverse condemnation claims.”

3 56. The CPUC allowed PG&E and SCE to violate the CPUC’s order that
4 purportedly restricted PG&E and SCE to the inverse condemnation issue. In their
5 filed comments, SCE and PG&E told the CPUC that the CPUC “should not impose
6 the additional requirement of a prudence review of SDG&E’s operations as a
7 condition to recovery of uninsured costs incurred by the utility.” PG&E and SCE
8 argued that the CPUC should instead address any compliance issues arising from
9 the event under the mechanism provided in Public Utilities Code Section 2107.

10 57. SCE and PG&E were allowed, by the CPUC, to improperly argue that
11 a review of SDG&E’s conduct was already made by the CPUC that resolved
12 alleged violations through a CPUC-approved settlement. PG&E and SCE were
13 allowed, by the CPUC, to argue that the proposed decision commits legal error by
14 imposing a “prudence” condition on the recovery of reasonably incurred settlement
15 and defense costs arising from inverse condemnation claims, which arbitrarily and
16 disproportionately shifts the entire risk of any uninsured costs arising from a
17 wildfire to the utility.

18 58. The CPUC allowed SCE and PG&E to improperly include in their
19 comments a replacement “conclusions of law” section in the proposed decision as
20 follows:

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22 The Conclusions of Law should be deleted in their entirety. SCE
23 and PG&E propose the following Conclusions of Law: [#]. Under
24 inverse condemnation, privately owned public utilities such as
25 SDG&E are strictly liable for property damage related to their
26 facilities, irrespective of fault, and even where their facilities are
27 one of several concurrent causes. Under inverse condemnation,
28 utilities are also liable for plaintiff’s attorneys’ fees. [#].
California courts apply inverse condemnation to privately owned
public utilities on the grounds that they can spread costs through
rates, just as a public entity can spread costs through taxation.
[#]. Utilities may recover just and reasonable costs. Because the

1 WEMA Costs at issue here resulted from the applicability of the
2 inverse condemnation doctrine, SDG&E must be permitted to
3 demonstrate the amounts paid in settlement and for defense were
4 reasonable. If it is determined that such amounts were
5 reasonable, SDG&E must be permitted to spread the WEMA
6 Costs through rates.

7 59. In violation of Ms. Henricks' rights, the CPUC decision makers have
8 already decided to relieve SDG&E from the proposed decision that makes SDG&E,
9 and not the ratepayers, bear the costs of the fires for which they were found to have
10 acted unreasonably and imprudently.

11 **CLAIMS FOR RELIEF**

12 **FIRST CLAIM FOR RELIEF**

13 **(Violation of Substantive Due Process)**

14 60. Plaintiff re-alleges and incorporates the allegations of all prior
15 paragraphs of the complaint, as though fully set forth herein.

16 61. The Due Process Clause is incorporated in the United States
17 Constitution under the Fifth Amendment.

18 62. The Due Process Clause is incorporated amongst the states by the
19 Fourteenth Amendment of the United States Constitution by providing that no state
20 shall "deprive any person of life, liberty, or property, without due process of law."

21 63. Ms. Henricks was deprived of her liberty and property interests
22 without due process of law.

23 64. Plaintiff was a party to the fire proceeding and participated throughout,
24 including at the trial (the evidentiary hearings) with vigorous cross-examination and
25 an argument on the evidence. Plaintiff participated in the hearings in which the
26 ALJs judged credibility and weight of witnesses, their testimony, and their
27 proffered evidence.

28 65. When the ALJs found SDG&E imprudent and unreasonable as to all
three fires, the CPUC—under Picker—ushered in backup for SDG&E and

1 restructured the proceeding to set a pretext for its ultimate objective of rewarding
2 the utilities.

3 66. The CPUC, under Picker, first allowed utilities to become parties, even
4 though the fact-finding evidentiary hearings had passed and the ALJs rendered their
5 decision.

6 67. The CPUC, under Picker, then set an "All Party" meeting to provide a
7 forum for PG&E's and SCE's comments as they were not in the record because
8 they never sought party status until after they did not like the ruling as to SDG&E.

9 68. The CPUC, under Picker, delayed the vote on the ALJs' decision so as
10 to create time for PG&E and SCE to privately meet with the decision makers
11 without others present.

12 69. The CPUC, under Picker, continues its pattern of rendering moot the
13 diligence and evidence and credibility weighing of the judges hearings the case, all
14 done because it is a regulatory body that has been captured by those it is tasked
15 with regulating.

16 70. With the decision making going on outside the public proceedings in
17 which Plaintiff participated. the CPUC and Picker have thereby infringed upon
18 Plaintiff's substantive due process rights.

19 **SECOND CLAIM FOR RELIEF**

20 **(Violation of Procedural Due Process)**

21 71. Plaintiff re-alleges and incorporates the allegations of all prior
22 paragraphs of the complaint, as though fully set forth herein.

23 72. Procedural due process is defined as a fundamental requirement of
24 fairness requiring not only the right to present evidence but also a reasonable
25 opportunity to know the claims of the opposing party and to meet them. Procedural
26 due process mandates that the defendant receive proper notice and have an
27 opportunity to be heard.
28

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against the CPUC as follows:

- 3 1. Declare that the CPUC and Picker violated fundamental principles of
4 the Due Process and Equal Protection Clauses of the United States Constitution.
- 5 2. Declare that the CPUC and Picker violated the statutory, contractual,
6 and Constitutional rights of Plaintiff.
- 7 3. Grant a preliminary and permanent injunction prohibiting Defendants,
8 their affiliates, agents, employees, and attorneys, and any and all other persons in
9 active concert or participation with them, from seeking enforcing a decision to
10 charge ratepayers with any part of the \$379 million for the SDG&E 2007 fires, or to
11 act as described in Plaintiff's claim for declaratory relief.
- 12 4. An award attorneys' fees and costs to Plaintiff to the extent permitted
13 by law; and
- 14 5. For such other and further relief as the Court may deem just and
15 proper.

16 **AGUIRRE & SEVERSON LLP**

17
18 Dated: 24 October 2017

By: /s/Michael J. Aguirre
Michael J. Aguirre

19
20 By: /s/Maria C. Severson
Maria C. Severson

21 Attorneys for Plaintiff
22 Ruth Henricks
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