BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Rulemaking Regarding Whether, or Subject to What Conditions, the Suspension of Direct Access May Be Lifted Consistent with Assembly Bill 1X and Decision 01-09-060.	Rulemaking 07-05-025 (Filed May 24, 2007)

CARE'S APPLICATION FOR REHEARING OF D. 10-05-047, DECISION DENYING REQUEST OF CALIFORNIANS FOR RENEWABLE ENERGY, INC. FOR INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION (D.) 09-08-031 AND GRANTING INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO D.08-11-056

CAlifornians for Renewable Energy, Inc. (CARE) requests rehearing of Decision (D.) 10-05-047 ("Decision") that was issued on May 21, 2010. CARE was a party to the proceeding and so is eligible to file a rehearing request pursuant to Rule 16.1[1] of the California Public Utilities Commission's ("Commission")'s Rules of Practice and Procedure. This request is timely because the decision was issued on May 21, 2010.

ISSUES

Rule 16.1 explains that an application 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.

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[1] 16.1. (Rule 16.1) Application for Rehearing

(a) Application for rehearing of a Commission order or decision shall be filed within 30 days after the date the Commission mails the order or decision, or within 10 days of mailing in the case of an order relating to (1) security transactions and the transfer or encumbrance of utility property as described in Public Utilities Code Section 1731(b), or (2) the Department of Water Resources as described in Public Utilities Code Section 1731(c). An original plus four exact copies shall be tendered to the Commission for filing.

(b) Filing of an application for rehearing shall not excuse compliance with an order or a decision. An application filed ten or more days before the effective date of an order suspends the order until the application is granted or denied. Absent further Commission order, this suspension will lapse after 60 days. The Commission may extend the suspension period.

(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.

1. Decision (D.) 10-05-047 improperly is based on the erroneous findings that "[w]e carefully reviewed all of CARE's documents filed in this proceeding. *Each of them focuses on the same matter of the contract validity and federal judicial review*. D.08-11-056 again rejected CARE's position: "… *we find no basis in the arguments of CARE that pending federal litigation relating to existing wholesale power contracts provides any basis to halt progress in this proceeding toward securing ratepayer benefits through replacement contracts through the process outlined herein*." D.08-11-056, at 83 84." This finding on its face is inconsistent with the *Assigned Commissioner and Administrative Law Judge Ruling Clarifying Scope and Scheduling Further Proceedings* that was made available on June 15, 2010[2] discontinuing the proceeding regarding DWR contract novation which states in part:

> "*In D.08-02-033, the Commission determined that DA suspension was required by statute as long as Department of Water Resources (DWR) supplied power. Phase II was bifurcated to facilitate the novation of contracts to terminate DWR's role of supplying power.* A Working Group was established to develop protocols and strategies for this purpose. The Working Group Progress Reporting schedule was stayed by ruling dated November 18, 2009, pending further notice. Under § 365.1, the DA suspension is no longer linked to DWR contract duration. SB 695 provides for a limited modification of the existing DA suspension. Any further modification of the suspension can only be done by legislation. *Accordingly*, Phase II (a) of *the proceeding regarding DWR contract novation will not be pursued further*. While the Investor-owned Utilities (IOUs) may independently choose to continue with efforts to novate DWR contracts, where deemed beneficial, this proceeding will not be used as a vehicle to monitor or approve those efforts. Accordingly, the working group process established to support DWR contract novation efforts is permanently discontinued." [*Ruling* at 2]

Additionally this Decision is inconsistent with the State Court of Appeals findings in *Southern California Edison Co. v. PUC* (2004) that "*once a customer makes such a contribution to a PUC proceeding, that customer may obtain compensation for the fees and costs of obtaining judicial*

[2] See http://www.cpuc.ca.gov/EFILE/RULC/119308.htm

review, regardless whether that judicial review work made a substantial contribution to the PUC proceeding".

2. The parts of *PART II: SUBSTANTIAL CONTRIBUTION, A. Claimant's description of its contribution to the final decision (see § 1802(i), §1803(a) & D.98-04-059)*, incorrectly finds:

Contribution	**Citation to Decision or Record (Provided by Claimant)**	**Showing Accepted by CPUC**
1. CARE introduced a relevant US Supreme Court decision at the July 1, 2008, workshop, *Morgan Stanley Capital Group v. Public Utility Dist. No. 1 of Snohomish County*, 128 S. Ct. 2733 Decision (decided June 26, 2008).	1. Section 6.6 discussed CARE's recommendations.	No.
2. A motion seeking to dismiss the entire proceeding was filed by CARE, *arguing that the issue of valid contract formation should be addressed before the proceeding goes forward.* The ALJ issued a ruling denying the motion on the basis that CARE failed to provide any convincing rationale warranting dismissal of the proceeding.	2. Section 2 addressed CARE's motion.	No.
3. *CARE response to Cost Allocation comments addressed validity of contracts not being negotiated with a ratepayer representative as a party to the contract*: "CARE believes that the contracts negotiated during the western energy crisis of 2000-1 should not be assigned or allocated because the Federal Energy Regulatory Commission ("FERC") has not reviewed them to determine whether they are valid contracts. These contracts were negotiated without the participation of the ratepayers who were assigned to pay for excessive costs for electricity generated and transmitted for a far lower cost-of-service. The parties' comments did not explain how ratepayers would participate in the assignment or allocation of these contracts so CARE does not believe that the Commission has been presented with an acceptable means for relieving DWR from continuing to administer the contracts." http://docs.cpuc.ca.gov/EFILE/RESP/86428.htm	3. The Decision did not address this issue but stated that the regulated utility companies would not negotiate in a manner that harms ratepayers, pages 9-10.	No.
4. *CARE's reply to post workshop comments issued on June 16, 2008, alerted the Commission to the pending*	4. The decision devoted section 6.6 to discussing	No.

US Supreme Court decision in the Morgan-Stanley case addressing the validity of the contracts that are the subject of this proceeding: http://docs.cpuc.ca.gov/efile/CM/84437.pdf "CARE's presentation at the workshop explained that the validity of the contracts is still unresolved and the subject of appeals in the United States Court of Appeals, Ninth Circuit, Case No. 08-70010. The validity of wholesale electric contracts is also the subject of a pending United States Supreme Court case, *Morgan Stanley Capital Group Inc., Petitioner v. Public Utility District No. 1 of Snohomish County, Washington, et al.*"	the Morgan-Stanley case and its implications to the contract novation process. CARE then asked for a rehearing of the decision because CARE believed it to be in error.	
5. http://docs.cpuc.ca.gov/efile/R/95684.pdf CARE's rehearing request recommended that the Commission not address the DWR contract issue because the issue is presently being considered by the federal courts and it is premature for any agency to act when the validity of the contracts is uncertain. The Commission should follow the FERC's lead and also not issue a decision authorizing wholesale electric contracts subject to FERC review and approval until after a federal court decision is issued.	5. D.09-08-031 addressed all of CARE's issues and denied them.	No.

3. The parts of *C. Additional Comments on Part II:*, incorrectly finds:

#	Claimant	CPUC	Comment
1		Part II. A	**Information in Support of CARE's Claims of Substantial Contributions** 1. The Commission's requirements. In order to demonstrate a claimed substantial contribution, an intervenor must show that it "substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer…" (California Public Utilities Code Section 1802 (i)). In accordance with Section 1804(c) of the Code, a request for an award shall include at a minimum a description of the customer's substantial contribution to the hearing or proceeding. ALJ's ruling in this proceeding specifically directed CARE to "support its ultimate request for compensation, including substantiating that it has made a substantial contribution in this proceeding." (August 17, 2007 ruling at 3).

			2. Failure to support the claim with proper citations to decision or record. As stated in Part I.C, although the compensation request includes numerous "hidden" claims related to D.08-11-056, the request on its face refers to D.09-08-031. For example, CARE enumerates five specific issues identified as constituting substantial contributions to D.09-08-031. However, for its Issues 1 through 4, CARE fails to provide citations to anything in D.09-08-031 that relates to these enumerated issues. At the same time, the references relate to the contents of D.08-11-056. CARE's citations to decision or record provided to support CARE's substantial contribution showing do not fulfill that purpose. A reference should at least identify a document and a place in the document where the referenced text can be found. CARE's "references" do not meet these basic requirements. In four out of five issues listed in the "Contributions" column, CARE fails to identify a document (and most of the time, page). Since CARE's claim concerns two decisions, this information is critical. In a single case where CARE identifies a document by a decision number (issue listed under number 5 in the "Contributions" column), it fails to indicate where the relevant text can be found. 3. Failure to Provide Description of CARE's contributions. *We note that CARE includes in its request hours spent in 2007 on the first phase of the proceeding leading to D.08-02-033.* However, the claim does not contain any references, either implied or explicit, to CARE's contributions to that decision. CARE's work in the first phase consisted almost exclusively of reviewing documents.[3] In its issues listed under numbers 1 through 4, CARE does not state how they contributed to D.08-11-056 and/or D.09-08-031. The fifth work task is identified as CARE's request for rehearing of D.08-11-056. CARE states that "D.09-08-031 addressed all of CARE's issues and denied them." Here, again, CARE does not explain how the Commission's denial of CARE's contentions in seeking rehearing of D.08-11-056 is reflective of CARE's contribution to D.09-08-031.
2		Part II.A	

[3] On page 15 of its timesheets, CARE explains that it did not file comments on the draft decision leading to D.08-02-033 because it supported the decision as written.

			Analysis of CARE's Claim of Substantial Contributions The request does not describe CARE's contributions to D.08-02-033, yet claims hours spent in the first phase of the proceeding leading to D.08-02-033. *According to the timesheets, CARE's work consisted of reviewing other parties' documents and was, therefore, unproductive. We find that CARE did not contribute to that decision.* In the second phase of the proceeding, *CARE continuingly raised issues related to the validity of the contracts, alleging conflict between federal litigation matters and the matters subject to this proceeding (see, for example, CARE's June 16, 2008 reply to post-workshop comments at 1-2 or comments on proposed decision, at 1, 4, 5, 7, 12, 13, and 14-15).* *CARE's position was rejected in the very beginning of this proceeding: "We find no basis to deny the petition [for rulemaking] based on the claims of CARE which argues that the Petition is made "moot" by two federal appellate orders issued on December 20, 2006.* CARE claims that these orders 'effectively gutted FERC's decade-old approach to fostering bulk power markets…'[4] CARE claims that Alliance for Retail Energy Market's Petition would violate requirements that wholesale contracts be presented in advance to FERC for review subject to 'the just and reasonable standard set by Sec. 206(a) of the Federal Power Act….' We disagree that the Petition is made 'moot' as the result of any federal court action or that opening a rulemaking would conflict with federal regulations. *Our inquiry in no way is intended to interfere or conflict with FERC jurisdiction or federal contract review standards.*" [5] In its July 8, 2008 motion to dismiss, *CARE furthered the same approach by arguing that the proceeding should be dismissed because its scope did not include the issue of the validity of the long-term wholesale electric contracts.* An August 22, 2008 ruling denied the motion. The ruling found no basis to dismiss this proceeding, and no merits in CARE's arguments. We carefully reviewed all of CARE's documents filed in this

[4] The circuit opinions to which CARE refers are: *Public Utility District v. FERC* (Docket No. 04-70712) and *Public Utilities Commission v. FERC* (Docket No. 03-74207), both issued by the U.S. Court of Appeals Ninth Circuit on December 20, 2006.

[5] *See* R.07-05-025, Order Instituting Rulemaking Regarding Whether, or Subject to What Conditions, the Suspension of Direct Access May Be Lifted Consistent with Assembly Bill 1X and Decision 01-09-060, filed May 24, 2007, at 12-13.

			proceeding. *Each of them focuses on the same matter of the contract validity and federal judicial review. D.08-11-056 again rejected CARE's position: "... we find no basis in the arguments of CARE that pending federal litigation relating to existing wholesale power contracts provides any basis to halt progress in this proceeding toward securing ratepayer benefits through replacement contracts through the process outlined herein."* D.08-11-056, at 83-84. *We find that CARE's participation on these issues did not contribute to D.08-11-056.* *CARE's application for rehearing of D.08-11-056 forced the Commission to revisit these issues once more.* D.09-08-031 found no merits in CARE's application and denied it (D.09-08-031 at 4-7): "*Decision [D.08-11-056] does address the fact that there is ongoing litigation challenging the reasonableness of the existing DWR contracts.... The Decision does not make a finding as to the reasonableness of the existing DWR contracts and states that the Commission will not be making any findings as to the reasonableness of any existing DWR contracts.*" (D.09-08-031 at 2-3). The Commission affirmed its conclusions on these issues reached in the OIR and August 22, 2008 ruling on CARE's motion to dismiss. *The decision concludes that CARE's rehearing application fails to demonstrate that any pending review before the FERC or the federal courts precludes the Commission from lawfully authorizing the measures it did in D.08-11-056.* *We find that CARE did not contribute to D.09-08-031.*[sic]
3		Part II.A	**CARE's Substantial Contributions** *CARE's request does not demonstrate that CARE has met the statutory standards for compensation. Independent of CARE's request, we undertook a task of finding out if CARE contributed to D.08-11-056 in areas others than those mentioned in the request.* We remind CARE, however, that it is the customer who carries the burden of describing the customer's substantial contributions. § 1804(c); Rule 17.4(a) of the Commission Rules of Practice and Procedure. We expect that in its future compensation claims, CARE will describe its contributions more thoroughly and fully. As a separate matter in Phase One, on July 19, 2007, CARE filed an opposition to the Direct Access Residential Energy's (DARE) NOI. CARE expressed concern that DARE may represent the interests of the utilities' competitors in the direct access retail market which were the interests of "market participants" under D.06-12-030 in R.05-06-040. CARE argued that DARE had failed

			to demonstrate that it represented the interests of direct access customers that were not already adequately represented by CARE, TURN, or DRA. On August 1, 2007, DARE filed a reply to CARE's opposition. CARE's argument did not prevail. ALJ's ruling of August 17, 2007 found that DARE was eligible to claim intervenor compensation and made the showing of significant financial hardship. However, to the extent that CARE's intervention helped to clarify the intervenor status of a party who has been active in both phases of the proceeding, we find that CARE's participation contributed to this issue. We note, however, that the time spent on this collateral matter (the total of 8 hours) was not necessary to make contributions of this, rather minor significance, as compared to major issues of this proceeding. *We have carefully reviewed the record and found only two instances where CARE's input was relevant to the issues under review in this proceeding.* CARE's comments on cost allocation filed on July 29, 2008, stated that there were many potential risks and costs of relieving DWR of its role as a supplier of electric power which extended beyond any implications for Direct Access and few benefits to retail ratepayers, and in particular for low-income people (July 29, 2008 comments at 3). Although CARE did not elaborate this point any more, it was a valuable one. It brought to the Commission's attention a position of the low-income residential customers whom CARE claims to represent. CARE's statement occupies one short paragraph these three-page comments. Further, in its August 11, 2008 response to cost allocation comments, CARE again stepped outside its focus area and provided some limited comments on other parties' cost allocation proposals. To that extent, the comments contributed to D.08-11-056. CARE's relevant analysis occupies approximately 2 pages of its nine-page response. (See, portions of the text on pages 3, 4, 5 and 6 of CARE's August 11, 2008 response).

4. The parts of *PART III: REASONABLENESS OF REQUESTED COMPENSATION A.General Claim of Reasonableness (§§ 1801 & 1806):* incorrectly finds:

Concise explanation by claimant as to how the cost of claimant's participation bears a reasonable relationship with benefits realized through participation	**CPUC Verified**
http://docs.cpuc.ca.gov/efile/R/95684.pdf CARE's rehearing request recommended that the Commission not address the DWR contract issue because the issue is presently being considered by the federal courts and it is premature for any agency to act when the validity of the contracts is uncertain. The Commission should follow the United States FERC's lead and also	*Claimant's statements are irrelevant to the overall reasonableness analysis*: they do not assist the Commission in determining how the costs of CARE's

not issue a decision authorizing wholesale electric contracts subject to FERC review and approval until after a federal court decision is issued. CARE also indicated that the ratepayers were not represented in the contract negotiations and yet are paying the cost for these extraordinarily high electric rates. CARE asks for a FERC review before the CPUC approves a contract novation. The FERC is currently conducting such a review in FERC Dockets EL02-71 and EL02-56, a complaint filed by the California Attorney General's office.	participation bear a reasonable relationship to the benefits realized through its participation. Based on our own analysis, we conclude that with significant adjustments and reductions that we make in this decision, the cost of CARE's participation that we authorize bears a reasonable relationship with benefits realized through its participation.

5. The parts of *PART III: REASONABLENESS OF REQUESTED COMPENSATION B. Specific Claim*:* incorrectly finds:

CLAIMED						CPUCA WARD			
ATTORNEY AND ADVOCATE FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
Martin Homec	2007	5.5	520		2,860	2007	0.15	$170	$25.50
	2008	47	535		25,145	2008	1.20	$175	$210.00
	2009	2	535	D.07-01-009 and D.08-04-010	1,070	2009	0.00		$0
				Subtotal:	***29,075***			***Subtotal:***	***$235.50***
EXPERT FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
Michael Boyd	2007	14	115		1,610	2007	0.60	$115	$69.00
	2008	45	125		5,625	2008	0.50	$125	$62.50
	2009	2	135	D.09-08-021	270	2009	0.00		$0
Lynne Brown	2007	5	110		770[6]	2007	0.50	$110	$55.00
	2008	13	120	D.09-08-021	1,560	2008	0.50	$120	$60.00
				Subtotal:	***9,565***[7]			***Subtotal:***	***$246.50***
INTERVENOR COMPENSATION CLAIM PREPARATION **									

[6] CARE makes a calculation error here; the correct arithmetic result is $550.00.

[7] The correct arithmetic result is $9,615.00.

Item	Year	Hours	Rate $	Basis for Rate*	Total $	Year	Hours	Rate $	Total $
Martin Homec	2007	1	260	D.07-01-009 and D.08-04-010	260	2007	0.15	$85	$12.75
	2009	4	267.50		1,070	2009	0.50	$92.50	$46.25
Michael Boyd	2007	5	57.50	D.09-08-021	287.50	2007	0.65	$57.50	$37.38
	2009	4	67.50		270	2009	0.50	$67.50	$33.75
Lynne Brown	2007	2	55		110	2007	0.25	$55.00	$13.75
				Subtotal:	***1,997.50***			***Subtotal:***	***$143.88***
COSTS									
				TOTAL REQUEST $:	**40,637[8]**			**TOTAL AWARD $:**	**$625.88**

*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.

6. The hourly compensation[9] for CARE used in the R.07-05-025 proceeding is the same as that adopted for the Application 07-12-021 proceeding. These criteria were determined using reasoning never before used for any other person claiming compensation in a Commission proceeding specifically to deprive people of color of representation in Commission proceedings. In keeping with the Commission's tradition of denying compensation to CARE's attorneys so that people of color will not be permitted to participate as parties in Commission proceedings, the Decision provides that Martin Homec will be paid the lowest rate possible, equivalent to someone with little experience even though CARE hired him because he had over thirty years of experience as a Commission employee and a California Energy Commission employee. The only possible rationale for this action is that the Commission does not want to listen to the positions of poor people of color; single white men representing themselves are paid, but not attorneys with thirty years of experience working in Commission proceedings.

[8] The correct arithmetic result is $40,687.50.

[9] D.10-05-047 at 10

7. CARE has reason to believe[10] this denial of appropriate compensation by changing the D.08-04-010 rules for intervenor compensation to be retaliatory discrimination for CARE repeatedly explained that CARE represents low income people of color during the hearings, and the Decision doesn't address CARE's comments on the proposed decision explaining that people of color have a statutory right to be represented in Commission proceedings. The burden of proof is on the Commission to demonstrate its compensation award and associated practices is neither based on racial nor age discrimination.

8. The Legislature enacted the Intervenor Compensation Provisions in 1984 and they became effective on January 1, 1985.[11] (See Stats.1985, ch. 297, § 2, pp. 374-377.) The Legislature declared that the purpose of the Intervenor Compensation provisions "is to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any proceeding of the commission." (§ 1801) . The provisions "apply to all formal proceedings of the commission involving electric, gas, water, and telephone utilities" and are to be "*administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process*." (§ 1801.3, subds.(a), (b).) The Legislature declared its intent that "[i]ntervenors be compensated for making a substantial contribution to proceedings of the commission, as determined by the commission in its orders and decisions." (§ 1801.3, subd. (d), italics added.)

9. Section 1803 specifies the conditions for an award of compensation:

"The commission shall award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or

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[10] There is another outstanding civil rights claim against the Commission. The class action lawsuit filed by Commission employees for age discrimination before the Superior Court of the State of California for the County of San Francisco, Case Number CGC-07-464877. This lawsuit was filed because allegedly the Commission has been hiring and promoting people who are less than 40 years old and not promoting those who are older.

[11] The legislation was passed after several utilities initiated court challenges to rules the PUC had adopted in 1983, which provided for the award of "public participation costs," including attorney and expert witness fees, to deserving intervenors in regulatory and rate-making proceedings. After the legislation became effective, the Supreme Court dismissed as moot petitions for review by three utilities which had challenged the PUC's rules. (*Southern Cal. Gas Co. v. Public Utilities Com.* (1985) 38 Cal.3d 64, 211 Cal.Rptr. 99, 695 P.2d 186.) http://scholar.google.com/scholar_case?case=6856703568463543002&hl=en&as_sdt=2002

proceeding to any customer who complies with Section 1804 and satisfies both of the following requirements:[12]

"(a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.

"(b) *Participation or intervention without an award of fees or costs imposes a significant financial hardship*." (Italics added.)

"`Substantial contribution' means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."[13] (§ 1802, subd. (h).)

10. As reflected in the provisions discussed above, the Legislature sought to encourage customers to participate in PUC proceedings and contribute to PUC decisions. The Legislature recognized, however, that a decision by the PUC is not necessarily the final word on a matter, and it saw fit to assist customers who wished to continue advocating their positions after the PUC has issued a decision. Therefore, it defined "compensation" as "payment for all or part, as determined by the commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and *of obtaining judicial review, if any*." (§ 1802, subd. (a).) (italics added) Therefore it would be unreasonable, arbitrary, and

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[12] Section 1804 specifies the procedures that apply in the intervenor compensation process, beginning with the customer's notice of intent to claim compensation and ending with the PUC's decision.

[13] The original version of the senate bill that contained the Intervenor Compensation Provisions (Sen. Bill No. 4 (1983-1984 Reg. Sess.)) specifically excluded the costs of obtaining judicial review from the definition of "compensation." However, the phrase "does not include the fees and costs of obtaining judicial review" was replaced with "includes the fees and costs of obtaining judicial review" in the Conference Committee.

capricious for the Commission to deny CARE compensation because it sought judicial review in the federal court.

11. In enacting the Intervenor Compensation Provisions, the Legislature recognized the importance of obtaining a customer perspective on matters before the PUC. Moreover, the Legislature specifically provided for compensation to customers, even if their efforts may duplicate to some extent those of the PUC. (See § 1802.5 ["Participation by a customer that materially supplements, complements, or contributes to the presentation of another party, *including the commission staff*, may be fully eligible for compensation if the participation makes a substantial contribution to a commission order or decision, consistent with Section 1801.3" (italics added)].)

12. Decision 10-05-047 is inconsistent with existing case law; for example in *Southern California Edison Co. v. PUC*, 12 Cal. Rptr. 3d 441, 117 [14] the Court found that, "TURN Was Entitled to Compensation for Its Federal Court Efforts…The PUC's construction of the judicial review clause is reasonable and is consistent with the statutory purpose of promoting effective customer participation in the public utility regulation process…As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose. [Citation.] We begin by examining the statute's words, giving them a plain and commonsense meaning. [Citation.] We do not, however, consider the statutory language `in isolation.' [Citation.] Rather, we look to `the entire substance of the statute ... in order to determine the scope and purpose of the provision.... [Citation.]' [Citation.] That is, we construe the words in question `"in context, keeping in mind the nature and obvious purpose of the statute...." [Citation.]' [Citation.] We must harmonize `the various parts of a statutory enactment ... by considering the particular clause or section in the context of the statutory framework as a whole.' [Citations.]" (*People v. Murphy* (2001) 25 Cal.4th 136, 142, 105 Cal.Rptr.2d 387, 19 P.3d 1129, original ellipses, fourth and sixth brackets in original.)…In this case, however, we must also consider and afford considerable deference to the PUC's interpretation of the statute because, as noted above, the "PUC's interpretation of the Public Utility Code `should not be disturbed unless it fails to bear a reasonable relation to statutory

[14] *In Southern California Edison Co. v. PUC*, 12 Cal. Rptr. 3d 441, 117 Cal. App. 4th - Cal: Court of Appeal, 2nd, 2004. See http://scholar.google.com/scholar_case?case=9389074142122034327

purposes and language.'" (*SCE v. Peevey, supra,* 31 Cal.4th at p. 796, 3 Cal.Rptr.3d 703, 74 P.3d 795, quoting *Greyhound Lines, Inc. v. Public Utilities Com., supra,* 68 Cal.2d at pp. 410-411, 67 Cal.Rptr. 97, 438 P.2d 801).[15] …SCE claims the award to TURN for its federal court work was improper because TURN was not "obtaining judicial review" under subdivision (a) of section 1802 when it intervened in the federal court actions filed by SCE and PG & E. According to SCE, only a customer who initiates a proceeding in a judicial forum is engaged in the process of obtaining judicial review…The PUC rejected SCE's narrow construction of the phrase "obtaining judicial review." The PUC explained that "[o]nce judicial review is initiated, all parties that participate in the process are seeking to `obtain' judicial review in their favor. Thus, an intervenor can obtain judicial review not just by succeeding when it initiates judicial review to challenge a Commission decision, but also when the intervenor successfully defends a Commission decision against a challenge."…We cannot say that this construction bears no "reasonable relation to statutory purposes and language." (*SCE v. Peevey, supra,* 31 Cal.4th at p. 796, 3 Cal.Rptr.3d 703, 74 P.3d 795.) In seeking to intervene in the federal court actions, TURN was seeking to ensure that its views concerning the issues would be fully considered (i.e., reviewed) by the courts in those actions. When the federal courts granted TURN's requests to intervene, TURN "obtained judicial review." That there would have been some form of judicial review even absent TURN's participation does not negate the fact that TURN also obtained judicial review….Moreover, the PUC's construction of the statutory language is entirely consistent with the express statutory purpose. As the PUC explained, its "interpretation is buttressed by the legislative mandate to interpret the statutory provisions to encourage effective intervenor participation. (§ 1801.3(b)). If an intervenor cannot gain compensation to defend a Commission decision in which the intervenor prevailed, the intervenor's effectiveness is severely limited."[16] …SCE seeks support for its position from the fact that, when the Legislature was

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[15] SCE notes that in an earlier PUC decision in an unrelated case, the PUC commented that customers cannot obtain compensation "following their successful participation in federal proceedings." (*Toward Utility Rate Normalization v. Pacific Bell* (1997) 72 Cal.P.U.C.2d 799, 800.) Because entitlement to intervenor compensation was not at issue in the case, the PUC's casual comment was mere dicta. In any event, it was not binding on the PUC in subsequent cases. (See *Hudson v. Board of Administration* (1997) 59 Cal.App.4th 1310, 1326, 69 Cal.Rptr.2d 737.)

[16] SCE claims the public interest will not be served by permitting compensation in cases such as this because the cost of such awards will be passed on to ratepayers. The same can be said about *any* award of intervenor compensation. We also find it somewhat ironic that SCE invokes the interests of ratepayers to support its position,

considering amendments to the Intervenor Compensation Provisions in 1992, an early draft of the bill included language that would have defined "compensation" to include compensation for fees and expenses incurred "in a court of law considering a decision or proceeding of the commission, whether on appeal or otherwise," but that language was ultimately not included in the final bill…However, SCE offers nothing reflecting on the reason why the language was later omitted from the bill. "The deleted language might equally have been intended to clarify existing law. `We can rarely determine from the failure of the Legislature to pass a particular bill what the intent of the Legislature is with respect to existing law. "As evidences of legislative intent they [unpassed bills] have little value." [Citations.]' [Citations.]" (*Lolley v. Campbell* (2002) 28 Cal.4th 367, 378-379, 121 Cal.Rptr.2d 571, 48 P.3d 1128, first two brackets in original.) …Moreover, what the Legislature may or may not have intended in 1992 when it was considering amendments to the Intervenor Compensation Provisions demonstrates nothing about what the Legislature intended in 1984 when it enacted those provisions and authorized judicial review compensation.[17] (*Lolley v. Campbell, supra,* 28 Cal.4th at p. 379, 121 Cal.Rptr.2d 571, 48 P.3d 1128; *Harry Carian Sales v. Agricultural Labor Relations Bd.* (1985) 39 Cal.3d 209, 230, 216 Cal.Rptr. 688, 703 P.2d 27.)… *TURN was entitled to compensation for its federal court work notwithstanding the PUC's involvement in the cases*...Citing section 1801.3, subdivision (f), SCE, as well as PG & E in its amicus brief, claim that compensating customers who intervene to oppose a utility's position in federal court is not warranted because the PUC is fully capable of defending its own position.[18] …The PUC's answer to SCE's writ petition in this case is evidence that it is capable of defending its position in a highly competent manner. *However, in enacting the Intervenor Compensation Provisions, the Legislature recognized the importance of obtaining a customer perspective on matters before the PUC. For the very same reason, it is important that the customer perspective be fully represented when a matter shifts to a judicial*

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while TURN represents those very ratepayers and the PUC concluded TURN had made a substantial contribution to its proceedings.

[17] In connection with its argument, SCE notes that "[w]hen courts have construed a statute and the Legislature thereafter reenacts that statute without changing its language, the Legislature is presumed to have been aware of and acquiesced in the judicial construction." (*Reese v. Wong* (2001) 93 Cal.App.4th 51, 59-60, 112 Cal.Rptr.2d 669.) Here, however, no court had construed the language in question when the 1992 amendments were considered.

[18] Section 1801.3, subdivision (f), provides that it is the Legislature's intent the Intervenor Compensation Provisions "be administered in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding."

forum….Moreover, *the Legislature specifically provided for compensation to customers, even if their efforts may duplicate to some extent those of the PUC*. (See § 1802.5 ["*Participation by a customer that materially supplements, complements, or contributes to the presentation of another party, including the commission staff, may be fully eligible for compensation if the participation makes a substantial contribution to a commission order or decision*, consistent with Section 1801.3" (italics added)].)[19] ...*TURN was entitled to compensation for its federal court work, regardless whether such work made a "substantial contribution" to the PUC decisions for which compensation was sought*...SCE claims the costs of TURN's federal court work are not compensable because the federal court work did not make a "substantial contribution" to the PUC decisions for which TURN sought compensation. Indeed, SCE claims, TURN's federal court work could not have made a substantial contribution to the PUC decisions because the federal court work was performed *after* the PUC issued those decisions….It is true, as SCE notes, that the Intervenor Compensation Provisions were designed to compensate customers who make a "substantial contribution" to PUC proceedings. (§ 1801.3, subd. (d).) Indeed, making a substantial contribution is a prerequisite to an award of compensation. (§ 1803.) However, *once a customer makes such a contribution to a PUC proceeding, that customer may obtain compensation for the fees and costs of obtaining judicial review, regardless whether that judicial review work made a substantial contribution to the PUC proceeding*. Any contrary construction would render the judicial review clause of section 1802, subdivision (a), meaningless in most cases because such review virtually always occurs *after* the PUC has issued its decision.[20] ...*Judicial review compensation is not limited to state court review*...SCE also

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[19] Of course, before making an award, the PUC must first conclude that the fees and costs for which compensation is sought were "reasonable." (§ 1802, subd. (a).) Therefore, where a customer's presentation in court adds nothing to claims already presented, the PUC could conclude the costs incurred in connection with that presentation were not reasonable.

[20] To the extent SCE and PG & E were challenging in the federal actions the PUC's authority to issue the decisions it made in the PTR proceedings, one can say that TURN's federal court efforts in opposition to the utilities did make a "substantial contribution" to those decisions, even if the decisions were issued before the federal actions were filed.

We also note that the PUC's decision adopting TURN's accounting proposal was issued in March 2001, approximately five months after the federal actions were filed and a month after the federal court hearing SCE's action denied its request for a preliminary injunction. In that sense, the compensation for TURN's federal court efforts could be viewed as compensation for TURN's "costs of preparation for and participation" in the PUC proceeding considering its accounting proposal. (§1802, subd. (a).)

claims the Intervenor Compensation Provisions authorize compensation for judicial review only when such review is sought in state court. However, SCE cites no authority for this assertion….As this case demonstrates, judicial review of a PUC decision may be sought in federal court (though on more limited grounds than in state court). *There is nothing in the language of the Intervenor Compensation Provisions limiting judicial review compensation to instances where that review is sought in state court.*[21] *It was therefore not unreasonable for the PUC to conclude that compensation for federal court review was authorized*."

13. Since TURN was "entitled to compensation for its federal court work, regardless whether such work made a 'substantial contribution' to the PUC decisions for which compensation was sought" therefore it would be unreasonable, arbitrary, and capricious for the Commission to deny CARE compensation because it sought judicial review in the federal court.

14. In opposite to the court's findings in *Southern California Edison Co. v. PUC, 12 Cal. Rptr. 3d 441, 117*, Decision 10-05-047 that was issued on May 21, 2010 appears to be intended to perpetrate retaliatory discrimination against CARE for its federal court work in particular "CARE's presentation at the workshop explained that the validity of the contracts is still unresolved and the subject of [CARE's] appeals in the United States Court of Appeals, Ninth Circuit, Case No. 08 70010. The validity of wholesale electric contracts is also the subject of a pending United States Supreme Court case, *Morgan Stanley Capital Group Inc., Petitioner v. Public Utility District No. 1 of Snohomish County, Washington, et al.*" and additionally retaliation for the *Morgan Stanley* decision in the favor of the ratepayers' and against market Participants interests.

15. Violations of Title 42 of the United States Code section 1981 *et seq.* In addition the Commission wrongfully denied compensation to CARE's attorney experts and advocates in several past proceedings resulting in CARE, the only representative of people of color in Commission proceedings, having to continually recruit new attorneys. *See Affidavit of Lynne*

[21] SCE appears to rely on the fact that elsewhere in the Public Utilities Code, the Legislature authorized parties aggrieved by a PUC decision to file a petition for a writ of review in the California Court of Appeal or in the California Supreme Court, not in a federal court. (§1756.) As the PUC's amici point out, however, it is not surprising the state Legislature did not presume to create a federal right of action. Moreover, there is nothing to indicate the Legislature intended judicial review compensation under the Intervenor Compensation Provisions to be limited only to compensation for the writ review provided for in section 1756.

Brown[22]. This is a violation of Title 42 of the United States Code ("USC") section 1981 *et seq.* This action serves to preclude participation by people of color in Commission proceedings and is part of a pattern and practice of the Commission to wrongfully deny compensation to CARE's attorneys.

> TITLE 42 > CHAPTER 21 > SUBCHAPTER I > § 1981
> ## § 1981. Equal rights under the law
> **(a) Statement of equal rights**
> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
> **(b) "Make and enforce contracts" defined**
> For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
> **(c) Protection against impairment**
> The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

And is enforceable by the United States Attorney, 16 USC 242:

> TITLE 18 > PART I > CHAPTER 13 > § 242
> ## § 242. Deprivation of rights under color of law
> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

16. In the proceeding Application ("A.") 02-09-043, CARE timely filed its compensation request on October 7, 2004, within 60 days of the D.04-08-046 being issued, but was not awarded compensation until D.06-04-014 was issued on April 14, 2006, far more than the California Public Utility Code section 1804 statutory limit of 75 days. This award was not

[22] http://docs.cpuc.ca.gov/efile/R/102010.pdf

processed until after CARE's Vice President Lynne Brown inquired with the United States' Attorney's Office about filing a complaint pursuant to 42 USC 1981.

Request for Oral Argument under Rule 16.3

Pursuant to rule 16.3 of the Commission's Rules of Practices and Procedure, CARE requests oral argument before the Commission on the basis that this Decision raises the following issue of major significance: Is the Commission knowingly depriving people of color the right to participate in Commission proceedings? Does the Commission's order, D.10-05-046 demonstrate actual intent to deprive people of color of protected rights due to their race? All persons within the jurisdiction of the United States have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, yet the Commission always discriminates against attorneys representing CARE, an organization specifically representing poor people of color in Commission proceedings.

CARE needs the opportunity of oral argument to address this issue to explain its position.

CONCLUSION

The compensation request submitted by CARE in this proceeding is reasonable and should be granted. CARE should receive $40,687.50 to pay for its costs of participation in this proceeding.

Respectfully submitted,

Martin Homec

Martin Homec
P. O. Box 4471
Davis, CA 95617
Tel.: (530) 867-1850
E-mail: martinhomec@gmail.com
Attorney for CALIFORNIANS FOR RENEWABLE ENERGY

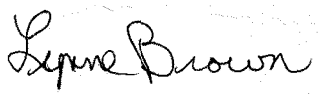
Dated: June 21, 2010

Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

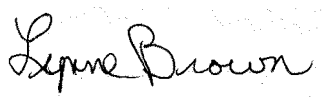
Executed on June 21, 2010 at San Francisco, California.



Lynne Brown Vice-President
CAlifornians for Renewable Energy, Inc.
(CARE)

Certificate of Service

I hereby certify that I have this day served the foregoing document "*CARE's Application for Rehearing of D.10-05-047, Decision Denying Request of CAlifornians for Renewable Energy, Inc. for Intervenor Compensation for Substantial Contributions to Decision (D.) 09-08-031 and Granting Intervenor Compensation for Substantial Contributions to D.08-11-056"* under CPUC Dockets R.07-05-025. Each person designated on the official service list, has been provided a copy via e-mail, to all persons on the attached service list on June 21, 2010, for the proceeding A R.07-05-025, transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.



Lynne Brown Vice-President
CAlifornians for Renewable Energy, Inc. (CARE)
24 Harbor Road
San Francisco, CA 94124
Phone: (415) 285-4628
E-mail: l_brown369@yahoo.com

R.07-05-025 Service List
etoppi@ces-ltd.com,
keith.mccrea@sablaw.com,
twertz@tyrenergy.com,
debra.gallo@swgas.com,
chilen@nvenergy.com,
tdillard@sppc.com,
nwhang@manatt.com,
lpettis@calstate.edu,
klatt@energyattorney.com,
douglass@energyattorney.com,
douglass@energyattorney.com,
AdviceTariffManager@sce.com,
mike.montoya@sce.com,
rkmoore@gswater.com,
jleslie@luce.com,
KHassan@SempraUtilities.com,
CFPena@SempraUtilities.com,
KFoley@SempraUtilities.com,
liddell@energyattorney.com,
jeff.malone@calpeak.com,
GDixon@SempraUtilities.com,
SRahon@SempraUtilities.com,
ewdlaw@sbcglobal.net,
mtierney-lloyd@enernoc.com,
ek@a-klaw.com,
mdjoseph@adamsbroadwell.com,
chh@cpuc.ca.gov,
jeanne.sole@sfgov.org,
norman.furuta@navy.mil,
mflorio@turn.org,
scarter@nrdc.org,
mrh2@pge.com,
michael.hindus@pillsburylaw.com,
lisazycherman@dwt.com,
mday@goodinmacbride.com,
stevegreenwald@dwt.com,
crmd@pge.com,
bkc7@pge.com,
lex@consumercal.org,
Service@spurr.org,
wbooth@booth-law.com,
mbyron@gwfpower.com,
barmackm@calpine.com,
ds1957@att.com,
george.waidelich@safeway.com,
phanschen@mofo.com,
gmorris@emf.net,
michaelboyd@sbcglobal.net,
bhines@svlg.org,
mike@alpinenaturalgas.com,
westgas@aol.com,
martinhomec@gmail.com,
jderosa@ces-ltd.com,
wamer@kirkwood.com,
mary.lynch@constellation.com,
cmkehrein@ems-ca.com,
ddavie@wellhead.com,
abb@eslawfirm.com,
rliebert@cfbf.com,
zdavis@advantageiq.com,
wetstone@alamedamp.com,
clamasbabbini@comverge.com,
ccasselman@pilotpowergroup.com,
tciardella@nvenergy.com,
mrw@mrwassoc.com,
tam.hunt@gmail.com,
jmcmahon@8760energy.com,
szaminski@starwood.com,
steven.huhman@morganstanley.com,
AndersonR@conedsolutions.com,
myuffee@mwe.com,
srantala@energymarketers.com,
joseph.donovan@constellation.com,
ralphdennis@insightbb.com,
shannonrmaloney@msn.com,
jcasadont@bluestarenergy.com,
iibarguren@tyrenergy.com,
ddickey@tenaska.com,
dcurrie@rrienergy.com,
plook@rrienergy.com,
sliu@bear.com,
tcarlson@rrienergy.com,
julie.martin@bp.com,
ntreadway@defgllc.com,
HKingerski@mxenergy.com,
john.holtz@greenmountain.com,
kjsimonsen@ems-ca.com,
pucservice@manatt.com,
gbawa@cityofpasadena.net,
amber.wyatt@sce.com,
case.admin@sce.com,
dhaval.dagli@sce.com,
james.schichtl@sce.com,
janet.combs@sce.com,
jennifer.shigekawa@sce.com,
debeberger@cox.net,
mary@solutionsforutilities.com,
WDSmith@SempraUtilities.com,
MMcclenahan@SempraUtilities.com,
SNelson@SempraUtilities.com,
TRoberts@SempraUtilities.com,
TCorr@SempraUtilities.com,
mshames@ucan.org,
rob@teamryno.com,
marcie.milner@shell.com,
KKloberdanz@SempraUtilities.com,
WKeilani@SempraUtilities.com,
thomas.r.del.monte@qmail.com,
kjuedes@urmgroup.com,
igoodman@commerceenergy.com,
pk@utilitycostmanagement.com,
dorth@krcd.org,
rshilling@krcd.org,

sue.mara@rtoadvisors.com,
michael.mcdonald@ieee.org,
colin.cushnie@sce.com,
omv@cpuc.ca.gov,
mramirez@sfwater.org,
tburke@sfwater.org,
cjw5@pge.com,
Kcj5@pge.com,
pvh1@pge.com,
sww9@pge.com,
RegRelCpucCases@pge.com,
bcragg@goodinmacbride.com,
cassandra.sweet@dowjones.com,
gblack@cwclaw.com,
hgolub@nixonpeabody.com,
jscancarelli@crowell.com,
jarmstrong@goodinmacbride.com,
joshdavidson@dwt.com,
sdhilton@stoel.com,
todd.edmister@bingham.com,
dhuard@manatt.com,
jkarp@winston.com,
tsolomon@winston.com,
jeffgray@dwt.com,
judypau@dwt.com,
Diane.Fellman@nrgenergy.com,
cem@newsdata.com,
lisa_weinzimer@platts.com,
rfg2@pge.com,
ssmyers@att.net,
ken@in-houseenergy.com,
kerry.hattevik@nexteraenergy.com,
ralf1241a@cs.com,
sean.beatty@mirant.com,
kowalewskia@calpine.com,
sbeserra@sbcglobal.net,
perdue@montaguederose.com,
phil@auclairconsulting.com,
JerryL@abag.ca.gov,
brbarkovich@earthlink.net,
pasteer@sbcglobal.net,
ron.perry@commercialenergy.net,
rschmidt@bartlewells.com,
philm@scdenergy.com,
sberlin@mccarthylaw.com,
mnelson@mccarthylaw.com,
mary.tucker@sanjoseca.gov,
blairj@mid.org,
joyw@mid.org,
rogerv@mid.org,
dgrandy@caonsitegen.com,
Saeed.Farrokhpay@ferc.gov,
david.oliver@navigantconsulting.com,
kenneth.swain@navigantconsulting.com,
lwhouse@innercite.com,
grehal@water.ca.gov,
gohara@calplg.com,
mcox@calplg.com,
mjaske@energy.state.ca.us,
millsr@water.ca.gov,
bernardo@braunlegal.com,
blaising@braunlegal.com,
steven@iepa.com,
dvidaver@energy.state.ca.us,
lmarshal@energy.state.ca.us,
jjg@eslawfirm.com,
lmh@eslawfirm.com,
rpistoc@smud.org,
jspence@water.ca.gov,
makens@water.ca.gov,
karen@klindh.com,
atrowbridge@daycartermurphy.com,
sas@a-klaw.com,
wmc@a-klaw.com,
californiadockets@pacificorp.com,
michelle.mishoe@pacificorp.com,
gifford.jung@powerex.com,
SJP@cpuc.ca.gov,
jmcmahon@8760energy.com,
ayk@cpuc.ca.gov,
ako@cpuc.ca.gov,
bfs@cpuc.ca.gov,
los@cpuc.ca.gov,
clu@cpuc.ca.gov,
crv@cpuc.ca.gov,
dbp@cpuc.ca.gov,
dbr@cpuc.ca.gov,
edd@cpuc.ca.gov,
jw2@cpuc.ca.gov,
kpp@cpuc.ca.gov,
kar@cpuc.ca.gov,
kkm@cpuc.ca.gov,
kdw@cpuc.ca.gov,
lwt@cpuc.ca.gov,
lmi@cpuc.ca.gov,
mjd@cpuc.ca.gov,
wtr@cpuc.ca.gov,
rhh@cpuc.ca.gov,
scr@cpuc.ca.gov,
trp@cpuc.ca.gov,
jpacheco@water.ca.gov,
kellie.smith@sen.ca.gov,
iryna.kwasny@doj.ca.gov,
mwofford@water.ca.gov,