IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

ALLCO FINANCE LIMITED	:	3:16-CV-00508-CSH
Plaintiff	:	
	:	
v.	:	
	:	
ROBERT KLEE	:	
ARTHUR HOUSE	:	
JOHN W. BETKOSKI, III	:	
MICHAEL CARON	:	
Defendants	:	JUNE 8, 2016

DEFENDANT'S OPPOSITION TO PLAINITFF'S MOTION FOR ORDER TO SHOW CAUSE

Introduction

Pursuant to the Court's order (Doc. #17) dated May 13, 2016, Defendant Robert J. Klee, Commissioner ("Commissioner") of the Connecticut Department of Energy and Environmental Protection ("DEEP"), hereby files this Opposition to the Plaintiff's Motion for Order to Show Cause ("Motion") filed April 18, 2016 (Doc. #13). As noted in the Defendant's Motion to Dismiss (Doc. #20) filed May 26, 2016, Allco has not established jurisdiction to bring this action, Plaintiff lacks standing, and there is virtually no chance that Plaintiff will prevail on the merits.

BACKGROUND

Complaint

On March 30, 2016, Allco filed the present complaint alleging one count against Robert J. Klee, Commissioner ("Commissioner") of the Connecticut Department of Energy and Environmental Protection ("DEEP"), and Arthur House, John Betkoski, III,

and Michael Caron, Utility Commissioners ("PURA Commissioners") of the Public Utilities Regulatory Authority ("PURA"), in their official capacities, arguing that the state's actions in connection with two renewable energy procurements in which the Commissioner will direct regulated utilities to enter into contracts for renewable energy are preempted by the Federal Power Act and therefore void. Plaintiff's Complaint, *Allco Fin. Ltd. v. Klee et al*., 3:16-CV-00508 (CSH) (filed Mar. 30, 2016) (*Allco III*), ¶¶ 5, 6. Plaintiff seeks a declaratory ruling that the two state energy procurement efforts are preempted by the Federal Power Act; a ruling that "the Number Nine [power purchase agreement] from the 2013 [procurement]" is void; and an order enjoining the defendants from further renewable energy solicitations "inconsistent with the Federal Power Act[.]" *Compl*., Prayer for Relief.[1]

[1] This current action is related to two earlier cases, *Allco Fin. Ltd.* v*. Klee*, No. 3:13-CV-1874 (JBA), 2014 WL 7004024 (D. Conn. Dec. 10, 2014) (*Allco I*), brought by the same Plaintiff, Allco, against DEEP, and *Allco Fin. Ltd.* v*. Klee et al*., No. 3:15-CV-608 (CSH) (filed Apr. 26, 2015) (*Allco II*) which Allco has brought against both Defendants, Klee and the PURA Commissioners. Plaintiff's present complaint is based in part upon the same legal theory advanced in *Allco I*. *Compl.*, ¶ 4, footnote 1. There, the district court in *Allco I* dismissed Allco's complaint, and the Second Circuit affirmed on alternative grounds, *Allco I*, 805 F.3d 89, 93 (2d Cir. 2015). Specifically, the Second Circuit ruled that to the extent that Allco properly asserts a claim under Public Utility Regulatory Policies Act of 1978, codified in part at 16 U.S.C. § 824a-3, ("PURPA"), Allco failed to exhaust its administrative remedies with the Federal Energy Regulatory Commission (FERC). *Allco I*, 805 F.3d at 98; *see* 16 U.S.C. § 824a-3(f) & (h)(2); *see also Niagara Mohawk Power Corp.* v*. FERC*, 306 F.3d 1264, 1269-70 (2d Cir. 2002). Allco filed a PURPA administration implementation challenge under 16 U.S.C. §824a-3(h)(2) to enforce the requirements under subsection (f) with the FERC. *Allco Renewable Energy Ltd*., FERC Docket No. EL16-11-000 (filed Nov. 9, 2015). FERC responded in its January 8, 2016 Notice of Intent Not to Act declining to take action under PURPA. *Allco Renewable Energy Ltd*., 154 FERC ¶ 61,007 (Jan. 8, 2016).

State Renewable Energy Procurements

The Commissioner has issued several RFPs based on the authority given by Connecticut Public Acts 13-303 (2013) and 15-107 (2015). The first was on July 8, 2013 ("2013 Procurement"), when DEEP released a Notice of Request for Proposals, issued pursuant to Public Act 13-303, § 6. *Compl*., ¶¶ 2, 26. On July 22, 2013, Plaintiff filed five solar power bid proposals with the Department, along with bidders that submitted forty-two other proposals. *Compl*., ¶ 27. After an extensive review and consideration of the forty-seven bids, the Commissioner, in a letter dated September 18, 2013, (the "Directive") directed the electric distribution companies ("EDCs") to enter into purchase power agreements ("PPAs") with two selected projects; one of which was the Fusion Solar Center, a 20 megawatt ("MW") solar project and the other was the Number Nine Wind Farm, a 250 megawatt (MW) wind power project. *Compl*., ¶ 28. None of Plaintiff's projects were selected. PURA, after a full hearing and review, approved the two PPAs. Final Decision, PURA Docket No. 13-09-19 (October 23, 2013).[2]

More recently, a new, larger-scale renewable energy procurement plan was released on November 12, 2015 ("2015 Procurement"), and more than fifty bids were received from renewable energy developers, including solar developers. *Compl*., ¶¶ 5, 33. Allco chose not to submit a bid in this procurement. *Compl*., ¶ 35. As of the date of this motion to show cause, these bids are under active consideration by the Department

[2] *Application for Approval of Class I Renewable Power Purchase Agreements Resulting from Department of Energy and Environmental Protection's July 8, 2013 Requests for Proposals pursuant to Section 6 of P.A. 13-303*, Final Decision, PURA Docket No. 13-09-19 (October 23, 2013), *available at* http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/8b29b17e17254cd285257c0d006af56e?OpenDocument.

as well as by the relevant soliciting parties in Massachusetts and Rhode Island. Simultaneously, DEEP is also conducting a smaller scale 2-20 MW renewable energy procurement.[3]

In its Complaint, Allco asks the Court to declare that these state procurement actions are preempted by the Federal Power Act and that one of the contracts from the 2013 Procurement is void. *Compl.*, Prayer for Relief. Please note, however, that in Allco's April 18, 2016 Motion for An Order to Show Cause For Temporary Restraining Order and Preliminary Injunction, Plaintiff appears to seek only an order barring any further action under the 2015 Procurement and does not mention the 2013 Procurement.

STANDARD

A preliminary injunction is an "extraordinary remedy." *UBS Fin. Servs*. v. *W. Va. Univ. Hosps., Inc.*, 660 F.3d 643, 648 (2d Cir. 2011) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)); *see also Sussman v. Crawford,* 488 F.3d 136, 139 (2d Cir.2007) (describing preliminary injunction as "extraordinary and drastic remedy"). A movant must show, beyond "irreparable" harm or injury, a "likelihood of [ultimate] success" where, as here, the preliminary injunction would affect "governmental action taken in the public interest pursuant to a statutory or regulatory scheme." *Red Earth LLC* v. *United States*, 657 F.3d 138, 143 (2d Cir. 2011). That "likelihood of success" standard is heightened further to a "clear" or

[3] Notice of Request for Proposals, DEEP (Mar. 9, 2016), *available at* http://www.dpuc.state.ct.us/DEEPEnergy.nsf/$EnergyView?OpenForm&Start=1&Count=30&Expand=5&Seq=1.

"substantial" showing of such a likelihood of ultimate success where, as here, plaintiff seeks a mandatory preliminary injunction that would "alter, rather than maintain, the status quo." *Almontaser* v*. New York City Dep't of Educ.*, 519 F.3d 505, 508 (2d Cir. 2008). Further, the heightened standard of likelihood of ultimate success becomes even higher where, as here, the preliminary injunction "(1) would provide the plaintiff with 'all the relief that is sought' and (2) could not be undone by a judgment favorable to defendants on the merits at trial." *Citigroup Global Mkts., Inc.* v*. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (citations omitted). Finally, the preliminary injunction movant must also show "that the public's interest weighs in favor of granting an injunction." *Red Earth LLC*, 657 F.3d at 143.

I. Preliminary Errors of Law

Before addressing the merits of Plaintiff's Motion, there are two threshold issues that need to be addressed. Specifically: Plaintiff lacks standing to bring this Motion and the Motion is based upon a fundamental error of law; precisely that the Court of Appeals in *Allco I* has adopted Plaintiff's theory of the case.

A. Standing

Allco has not suffered a legally cognizable injury and thus Plaintiff lacks standing. Plaintiff must demonstrate that it has suffered cognizable harm to a legally recognized right or interest for which the court can provide relief. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). In its Complaint, Plaintiff acknowledges that it did not bid into

the 2015 Procurement. *Compl*., ¶ 35. Allco has no legal interest in the 2015 Procurement of any kind and thus lacks standing to challenge the state's action.

Allco appears to claim that it did not bid in 2015 because there were bid fees. *Compl*., ¶ 35. There is, of course, no legal impediment to filing fees, particularly when those fees are used to offset expert consultant review expenses. Plaintiff provides no citation to any case supporting its position. Further, as noted in the published Request for Proposals, the State of Connecticut did not accept any bid fees for this procurement.[4]

Finally Plaintiff states that "Allco's QF projects that are under 20MW in size . . . were prohibited from responding to the 2015 RFP." *Compl*., ¶ 36. While it is true that the procurement effort being challenged is limited to larger projects, the state is simultaneously conducting a renewable energy procurement for projects between 2MW to 20MW under a separate provision of state law.[5] Plaintiff therefore has other options for participating in state energy RFPs.

B. Misapprehension of Law

The Motion is premised upon a fundamental error. Specifically, Plaintiff asserts that the Second Circuit Court of Appeals in *Allco I* concluded that the "Defendant [does not have] the authority to regulate or compel any wholesale energy transaction not any term of such a transaction, unless an exemption applies." *Compl*., ¶ 20. To the contrary, not only do states have the authority to direct regulated utilities to contract for renewable

[4] 2015 Procurement documents available at: http://www.cleanenergyrfp.com.
[5] *See* supra footnote 3.

energy, as will be discussed below, Plaintiff enormously misconstrues the Court of Appeals' holding.

In *Allco I*, the Court of Appeals upheld the dismissal of Plaintiff's complaint for failure to exhaust administrative remedies by ruling on a motion to dismiss. In acting on a motion to dismiss, the Court was required to accept as true the allegations in the Plaintiff's complaint. What is very clear is that the Court of Appeals did not hold anything beyond the fact of Plaintiff's failure to petition FERC as required by PURPA and specifically did not reach the merits of Plaintiff's legal theory. That the Court of Appeals did not accept Plaintiff's view of the Federal Power Act is incontrovertibly found in the difference between the original decision of November 6, 2015 and the amended decision issued on December 1, 2015.

The Court ruled on Defendant's Rule 40 Motion to clarify that its original decision was not intended to support the argument being made by Plaintiff. In doing so, the Second Circuit made two changes. On page 12 of the original decision, the Court stated: "Because the only way in which Allco may obtain a Section 6 contract is for the Commissioner to conduct a PURPA-compliant bidding process . . . ."[6] The amended decision of December 1, 2015, however, states: "*But under Allco's theory*, the only way in which it may obtain a Section 6 contract . . . ." *Allco I*, 805 F.3d at 94; (emphasis added). Similarly, in the second change the Court corrected the original decision which

[6] Many of the arguments and documents in the several *Allco* cases are the same and to avoid unnecessary duplication of documents, Defendant Commissioner directs the court to Attachments A and B in Defendant's Motion to Dismiss (Doc. 37-1) filed March 30 26, 2016, in *Allco Fin. Ltd.* v. *Klee et al*., No. 3:15-CV-608 (CSH) (filed Apr. 26, 2015) (*Allco II*).

initially stated: "Based on the record before us, the only way in which the Commissioner can issue a Section 6 contract that is not preempted by the Federal Power Act is if that contract meets the PURPA exception."[7] The amended opinion reads: "*Again*, *under Allco's theory*, the only way in which the Commissioner can issue a Section 6 contract that is not preempted by the Federal Power Act is if that contract meets the requirements of the PURPA exceptions." *Allco I*, 805 F.3d at 96 (emphasis added).

The intent of the changes cannot be clearer. *Allco I* does not stand for the proposition that the state cannot direct utilities to enter into renewable energy contracts, only that the Plaintiff has alleged that in its complaint under its *theory*.

II. Plaintiff Cannot meet the Requirements of a Preliminary Injunction

Even if the Court does not find that the Plaintiff lacks standing, Plaintiff must also show, beyond "irreparable" harm or injury, a "likelihood of [ultimate] success" where, as here, the preliminary injunction would affect "governmental action taken in the public interest pursuant to a statutory or regulatory scheme." *Red Earth LLC*, 657 F.3d 138, 143. Finally, the preliminary injunction movant must also show "that the public's interest weighs in favor of granting an injunction." *Id.*

A. No Injury

As noted above, Plaintiff is not a new generation unit within the regional grid and is not participating in the 2015 Procurement and thus has not suffered, and cannot suffer, any cognizable injury. *Compl*., ¶ 35. It must be stressed that the

[7] Defendant Commissioner directs the court to Attachments A and B in Defendant's Motion to Dismiss (Doc. 37-1) filed March 30 26, 2016, in *Allco Fin. Ltd.* v. *Klee et al*., No. 3:15-CV-608 (CSH) (filed Apr. 26, 2015) (*Allco II*).

state's procurement effort is, as noted above, being conducted under state law. Allco has claimed that it has various rights under PURPA. *Compl*., ¶¶ 21-24. While Defendant does not agree with the essence of Allco's interpretation of PURPA, to the extent Plaintiff has any rights under PURPA, Allco has other avenues to pursue those rights. For example, Plaintiff is currently before defendant PURA seeking PURPA contracts for several solar projects. *See* PURA Docket No. 16-03-08.[8] Further, Plaintiff was fully welcomed and able to bid into the ongoing 2MW to 20MW RFP. Thus, whatever PURPA rights Allco may have are in no way harmed or restricted by the state's continued procurement actions.

Finally, Allco has not demonstrated that any claimed injury is actual and imminent, rather than remote or speculative, and that it cannot be remedied with monetary damages. *See Rodriguez* v*. DeBuono,* 175 F.3d 227, 234 (2d Cir.1999). For example, Allco claims that, if the 2015 Procurement is not stopped, "Plaintiff will suffer substantial economic losses due to the inability to build its projects . . . ." *Compl*., ¶ 62. On the one hand, Allco clearly believes that it has other options to seek contracts to build its projects by virtue of its recently filed PURPA action before Defendant PURA. Beyond this, as noted above, there is another, simultaneous procurement for smaller resource projects like Allco's that is being conducted right now. Finally, it is purely speculative for Allco to assume that, if the 2015 Procurement were conducted as it thinks it should be, that somehow Allco can

[8] PURA Docket No. 16-03-08, *available at* http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/f5d852fd421d7aa585257f8700585f8a?OpenDocument.

assume that it would be a winning bidder and receive a contract. This, of course, highlights the fact that what Allco seeks, an order blocking the state's procurement, will avail Allco of nothing because granting the order will not result in Allco obtaining a contract.

While Plaintiff does not face irreparable harm for the reasons outlined above, that is clearly not the case with Defendant DEEP or the numerous parties that have filed bids into the 2015 procurement. The 2015 procurement is directed by Public Act 15-107 and has consumed significant state resources. As noted in the Notice of Request for Proposals, other states are conducting similar efforts and there is a clear intention and in fact, legal duty to coordinate procurements to obtain the greatest ratepayer benefits. Public Act 15-107, § 1(g), codified at Conn. Gen. Stat. § 16a-3j(g) ("If the commissioner finds proposals received pursuant to this section to be in the best interest of electric ratepayers . . . the commissioner may select any such proposal[s]."). Enjoining Connecticut's procurement would directly threaten the public interest inherent in this major undertaking and substantially interfere with the state's environmental policies, renewable energy goals and energy system reliability directives.[9] In addition, the preparation of the more than fifty bids already submitted into the 2015 Procurement required expending significant funds and effort by private developers all of whom will be immediately affected by an injunction. An injunction at this point would have immediate and irreparable impacts.

[9] *See e.g.*, Conn. Gen. Stat. § 22a-200c.

B. No Likelihood of Success

Allco cannot demonstrate that it is likely to succeed on the merits of its claim. Indeed, given the outcome of *Allco I*, the opposite is more likely. Plaintiff asserts that states are barred by the Federal Power Act ("FPA") from any actions that regulate or direct utility contracting outside of PURPA. *Compl*., ¶¶ 19-25. This is not true.[10] *See Entergy Nuclear Vermont Yankee LLC v. Shumlin*, 733 F.3d 393, 417 (2d Cir. 2013); *New York v. FERC*, 535 U.S. 1, 24 (2002) (citing Order No. 888, at 31,782, n.544 (1996)); *Niagara Mohawk Power Corp.* v. *FERC*, 306 F.3d 1264, 1269-70 (2d Cir. 2002).

1. Permissible State Energy Programs

Section 201(b) of the FPA grants FERC jurisdiction over "the transmission of electric energy in interstate commerce" and "the sale of electric energy at wholesale in interstate commerce." 16 U.S.C. § 824(b)(1). "FERC's authority includes 'exclusive jurisdiction over the rates to be charged [a utility's] interstate wholesale customers.'" *Shumlin*, 733 F.3d at 432 (quoting *Nantahala Power & Light Co.* v. *Thornburg,* 476 U.S. 953, 966 (1986)) (alterations in original). For example, § 205 of the FPA prohibits, among other things, unreasonable rates and undue discrimination "with respect to any

[10] "[S]tates have broad powers under state law to direct the planning and resource decisions of utilities under their jurisdiction. States may, for example, order utilities to build renewable generators themselves, or . . . order utilities to purchase renewable generation." *Entergy Nuclear Vt. Yankee, LLC* v. *Shumlin*, 733 F.3d 393, 417 (2d Cir. 2013) (citing *S. Cal. Edison Co. San Diego Gas & Elec. Co*., 71 FERC ¶ 61,269, at *8 (June 2, 1995)). "[I]t is clear that the Vermont Legislature can direct retail utilities to 'purchase electricity from an environmentally friendly power producer in California or a cogeneration facility in Oklahoma,' if it so chooses." *Id*. (citing *New York v. FERC*, 535 U.S. 1, 8 (2002) (alteration in original).

transmission or sale subject to the jurisdiction of the Commission," 16 U.S.C. §§ 824d(a)–(b), and § 206 authorizes FERC to correct unlawful practices and gives it jurisdiction over "any rule, regulation, practice, or contract affecting" such rates and charges, *id.* § 824e(a).

On the other hand, the Supreme Court has explained that under the FPA, states retain "authority over local service issues, including reliability of local service; administration of integrated resource planning . . . including DSM [demand-side management]; authority over utility generation and resource portfolios; and authority to impose nonbypassable distribution or retail stranded cost charges." *New York v. FERC*, 535 U.S. 1, 24 (2002) (citing Order No. 888, at 31,782, n.544. (1996)). FERC itself has recognized the authority of states to direct the procurement of renewable energy noting that "[w]e respect the fact that resource planning and resource decisions are the prerogative of state commissions and that states may wish to diversify their generation mix to meet environmental goals in a variety of ways." *S. Cal. Edison Co.*, 70 FERC P 61215, 1995 WL 169000 (1995). FERC has further elucidated its recognition of state authority, stating in its issuance of new PURPA regulations that "nothing in this Final Rule affects any electric utility's resource adequacy obligations . . . or resource portfolio obligations under state law including obligations to purchase renewable energy." *18 CFR Part 292 New PURPA Section 210 Regulations Applicable*, 117 F.E.R.C. P61,078, 61411, 2006 FERC LEXIS 2367, *8, 2006 FERC LEXIS 2367 (F.E.R.C. 2006); *see also Midwest Power Systems, Inc*., 78 FERC 61,067, 1997 WL 34082 (holding, in which FERC stated that, "states have numerous ways outside of PURPA to encourage

renewable resources”)*; see also Conn. Dep’t of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009), *cert. denied*, 558 U.S. 1110 (2010) (“State and municipal authorities retain the right to forbid new entrants from providing new capacity, to require retirement of existing generators, to limit new construction to more expensive, environmentally-friendly units, or to take any other action in their role as regulators of generation facilities without direct interference from [FERC]”); *Otter Creek Solar LLC*, 78 FERC P 61,282 (2013) (making the distinction that FERC did not strike down an *optional* program for certain QFs even though rates differed from PURPA rates) (emphasis added).

This is especially true in New England. FERC has recognized that the entry of State-sponsored new resources into the FERC-regulated market administered by ISO-New England, subject to applicable market rules, is consistent with FERC’s regulation of the interstate wholesale markets. *See e.g.*, *ISO New England, Inc.*, 135 FERC ¶ 61,029 (Apr. 13, 2011) at P 170 (“The Commission acknowledges the rights of states to pursue policy interests within their jurisdiction”); *see also id.* P 171 (“We recognize that states and state agencies may conclude that the procurement of new capacity, even at times when the market-clearing price indicates entry of new capacity is not needed, will further specific legitimate policy goals.”). FERC has recognized, therefore, that the design of the market rules in FERC-regulated markets neutralizes any potential adverse impacts of State initiatives on market rates while accommodating States’ rights to ensure reliability for their citizens and pursue these “legitimate policy goals.”

Thus, Plaintiff's assertion that a state can only require utilities to contract for energy under the requirements of PURPA directly contravenes the FPA and the holding in *Entergy Nuclear Vermont Yankee LLC v. Shumlin*, 733 F.3d 393 (2d Cir. 2013). In *Shumlin*, the Court of Appeals for the Second Circuit held that the FPA clearly permits states to "direct the planning and resource decisions of utilities under their jurisdiction. . . . States may . . . order utilities to purchase renewable generation. . . ." *Id*. at 417. That is exactly what the Commissioner did in the 2013 Procurement and would do in the 2015 Procurement.

In fact, FERC has recently argued to the U.S. Supreme Court that the Connecticut state contracts at issue in this matter are expressly not preempted by the Federal Power Act.[11] In its brief, the Solicitor General distinguished the types of contracts held to be preempted by the courts below from "permissible" state contracts, arguing that

> Permissible state programs might also involve contracts between generators and utilities that are not directly tied to participation in and clearing the [regional system administrator's] auction, a requirement that local utilities purchase a percentage of electricity from a particular generator or renewable resources, or the creation of renewable energy certificates to be independently used by utilities in compliance with state requirements.

[11] The General Counsel for FERC and the Solicitor General submitted the brief for the United States in No. 14-623 *CPV Maryland, LLC v. Talen Energy Mktg., LLC,* 136 S. Ct. 356 (2015), consolidated with No. 14-614, *Hughes v. Talen Energy Mktg., LLC* 136 S. Ct. 382 (2015), *cert. granted sub nom. Hughes v. Talen Energy Mktg., LLC*, 136 C. Ct. 993 (Oct. 19, 2015) (Nos 14-614 and 14-623). On October 9, 2015, the Court granted certiorari, over the Solicitor General's objection. The Court heard argument on February 24, 2016 and issued its decision on April 19, 2016, *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288 (2016).

SG Brief, p. 22.[12] Connecticut's program at issue in this case falls squarely within the "permissible" state programs set forth by the Solicitor General and FERC. Indeed, the Solicitor General cited the District Court's holding in *Allco I, noting* that the Connecticut program was not "preempted by FERC's authority over wholesale rates for electricity." *Id*. (citing the *Allco I* District Court's decision at *6-*10). FERC noted that the "Connecticut law did not directly distort the wholesale market," and thus was not preempted by the FPA. SG Brief, p.23.

We need not go any further to show that, indeed, there is broad support for state involvement in how regulated utilities function and many ways that generators can sell their power. *See e.g.*, *Kentucky W. Va. Gas Co. v. Pa. Pub. Util. Comm'n*, 837 F.2d 600, 608-09 (3d Cir.1988) ("FERC's rate-making determination does not govern the entire wholesale transaction. . . ."). Ultimately, FERC's authority over wholesale rates does not preclude state activities that direct utilities to contract for energy, and particularly renewable energy resources, in coordination with and in furtherance of legislatively-set state policy goals.

2. The Procurement Was Conducted Under State Law, Not PURPA

As noted above, federal law permits states to direct utilities to purchase renewable power. Connecticut has decided that supporting renewable power is a chief policy goal, as evidenced in the passage of legislation including Public Acts 13-303 and 15-107.[13] Neither of these public acts mentions PURPA or gives the Commissioner of

[12] Defendant Commissioner directs the court to the Solicitor General's brief in Defendant's Motion to Dismiss (Doc. #20-1) filed May 26, 2016, Attachment A.
[13] Codified at Conn. Gen. Stat. §§ 16a-3f and 16a-3j, respectively.

DEEP any authority at all to set rates or determine avoided costs under PURPA, or otherwise. For example, Section 6 of P.A. 13-303 states, in pertinent part

> On or after January 1, 2013, the commissioner of [DEEP] . . . may . . . solicit proposals . . . from providers of Class I renewable energy sources . . . if the commissioner finds such proposals to be in the interest of ratepayers . . . [he or she] may select proposals from such resources to meet up to four per cent of the load distributed by the state's electric distribution companies. The commissioner may direct the electric distribution companies to enter into power purchase agreements for energy, capacity and environmental attributes, or any combination thereof, for periods of not more than twenty years.

P.A. 13-303, § 6. Public Act 15-107 similarly states that the Commissioner may conduct procurements for energy resources if they are in the public interest but, as with P.A. 13-303, does not give the Commissioner any authority to change, modify or regulate wholesale energy rates.

In short, all of Connecticut procurements, including the 2015 Procurement, were conducted under state law, not PURPA, and the Commissioner faithfully followed the terms of state law.

CONCLUSION

For the reasons set forth above, Defendant respectfully requests that this Court deny Plaintiff's Motion in its entirety.

Respectfully submitted,

ROBERT J. KLEE
COMMISSIONER

GEORGE JEPSEN
ATTORNEY GENERAL

BY: */s/ Robert D. Snook*

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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2016, a copy of the foregoing was electronically filed. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Robert D. Snook
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