Vol. # II

SW #70763

CASE NUMBER

SUPERIOR COURT OF CALIFORNIA
County of Los Angeles

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CASE NUMBER

WARNING!

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Rec'd 3A 10/20/16

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Attorneys for People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

In re June 5, 2015 Search Warrant issued to California Public Utilities Commission	Case No. SW-70763 STIPULATION AND ~~[PROPOSED]~~ PROTECTIVE ORDER FILED UNDER SEAL PURSUANT TO COURT ORDER MARCH 24, 2016

The California Public Utilities Commission ("CPUC") and the California Department of Justice ("Attorney General") by and through their counsel of record, respectfully submit this stipulation and proposed protective order related to CPUC's production of documents pursuant to the Attorney General's November 5, 2014 search warrant ("November Warrant"), and the June 5, 2015, and March 9, 2016 search warrants ("SONGS Search Warrants").

STIPULATION

1. The CPUC agrees to produce all documents previously withheld on the basis of Deliberative Process Privilege and so designated on its privilege logs pertaining to the SONGS Search Warrants within 10 days of the Court's execution of this Stipulation and Protective Order.

2. As to the November Warrant, the CPUC is continuing its review of the remaining documents. The CPUC agrees to produce all of the remaining not privileged documents[1] by

[1] "Not privileged documents" are all documents not subject to privilege in the context of a (continued...)

by November 21, 2016. The CPUC agrees to produce a privilege log listing any documents withheld on privileged grounds in response to the November Warrant by December 5, 2016.

3. As to the SONGS Search Warrants, the CPUC agrees to further search and produce all responsive documents that trigger the additional "non-unique" terms requested by the Attorney General's office. The CPUC agrees to produce approximately 80% of the remaining not privileged documents by December 31, 2016 and the rest, approximately 20%, as well as a privilege log by January 6, 2017. This log shall list all documents withheld and the grounds on which a privilege is asserted.

4. The CPUC will designate as "Deliberative Process Privilege" any documents or information it is providing to the Attorney General pursuant to the search warrants that the CPUC in good faith believes is protected from disclosure under applicable law in the civil or administrative contexts.

5. The CPUC will clearly designate any documents or information to be designated as "Deliberative Process Privilege" before it is disclosed or produced to the Attorney General. Such designations appear directly on the documents or in the load files, to the extent the documents are being produced in native format only.

6. The inadvertent production by the CPUC of any document or information during the investigation without the "Deliberative Process Privilege" designation shall be without prejudice to any claim that such item is protected and the CPUC shall not be held to have waived any rights by such inadvertent production. In the event that any document or information that is subject to "Deliberative Process Privilege" designation is inadvertently produced without such designation, the CPUC shall give written notice of such inadvertent production within twenty (20) days of discovery of the inadvertent production, together with a further copy of the subject document or information designated as "Deliberative Process Privilege" (the "Inadvertent Production Notice") to the Attorney General. Upon receipt of such Inadvertent Production Notice, the Attorney General shall promptly destroy the inadvertently produced document or

(...continued)
state criminal proceeding.

information and all copies thereof and shall retain only the "Deliberative Process Privilege" designated materials.

7. Access to and/or disclosure of materials designated as "Deliberative Process Privilege" shall be permitted only to the following persons:

a. the Court;

b. (1) Attorneys of record for the Attorney General and their affiliated attorneys, paralegals, investigators, clerical and secretarial staff who are involved in the Investigation, provided, however, that each non-lawyer given access to the Deliberative Process Privilege Documents shall be advised by the Attorney General that such materials are being disclosed pursuant, and subject to, the terms of this Stipulation and Protective Order and that they may not be disclosed other than pursuant to its terms;

c. Any Investigation witnesses provided, however, that each such witness given access to Deliberative Process Privilege Documents shall be advised by the Attorney General that such materials are being disclosed pursuant, and subject to, the terms of this Stipulation and Protective Order and that they may not be disclosed other than pursuant to its terms;

8. If the Attorney General criminally charges an individual or entity as a result of its Investigation and therefore is required to disclose the Deliberative Process Privilege materials under criminal discovery rules, the Attorney General shall promptly give the CPUC, through its counsel of record, notice of the date, time and location of the first arraignment on the criminal charges so that the CPUC can take appropriate measures to confine the dissemination of its deliberation documents to the fullest extent available under law. The Attorney General agrees that it will not produce the Deliberative Process Privilege Documents to any person or entity who is not involved in the criminal case.

9. This Stipulation and Protective Order shall continue to be binding after the conclusion of the Investigation and all subsequent proceedings arising from the Investigation, except that the parties may modify the Stipulation and Protective Order in writing or may move the Court for relief from the provisions of this Stipulation and Protective Order. Should the

Attorney General decide not to file any criminal charges, it will provide notice to the CPUC's counsel of record of its request to the court to return or dispose of property obtained during the course of the investigation so that the CPUC may take appropriate action. The CPUC counsel will also periodically inquire with the Attorney General's office as to when it intends to file the request to return or dispose of property obtained during the course of the investigation. To the extent permitted by law, the Court shall retain jurisdiction to enforce, modify, or reconsider this Stipulation and Protective Order.

10. The entry of this Stipulation and Protective Order does not alter, waive, modify, or abridge any right, privilege or protection otherwise available to the CPUC, including but not limited to the CPUC's right to assert the attorney-client privilege, the attorney work product doctrine, or other privileges.

Dated: 10/14/16

By: Amanda G. Plisner
Amanda G. Plisner
Deputy Attorney General

Dated: 10/19/16

By: Edward Poolos
Attorneys for the CPUC

[PROPOSED] ORDER

GOOD CAUSE appearing, and based upon the stipulation of the parties, the requested protective order is hereby GRANTED.

CPUC is to produce the outstanding documents responsive to the Attorney General's search warrant as detailed in paragraphs one through three of the stipulation.

The parties are to maintain the confidentiality of items CPUC identifies as "Deliberative Process Privilege Documents" as detailed in paragraphs four through eight of the stipulation.

Dated: 10-24-2016

Judge of the Superior Court of Los Angeles County

WILLIAM C. RYAN

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012	FILED Superior Court of California County of Los Angeles AUG 16 2016 Sherri R. Carter, Executive Officer/Clerk BY _____ Deputy
PLAINTIFF/PETITIONER: IN RE SW ISSUED TO CALIFORNIA PUBLIC UTILITIES COMMISSION	
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)	CASE NUMBER: Sw-70763

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- ☐ Order Extending Time
- ☐ Order to Show Cause
- ☐ Order for Informal Response
- ☐ Order for Supplemental Pleading
- ☐ Memorandum of Decision
- ☒ Order re: Order to Compel, Return of seized property and OSC Re: contempt
- ☐ Order re: Appointment of Counsel
- ☐ Copy of Petition for Writ of Habeas Corpus /Suitability Hearing Transcript for the Attorney General

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

8/16/16
DATED AND DEPOSITED

SHERRI R. CARTER, Executive Officer/Clerk

By: S. HUMBER, CLERK

Department of Justice – State of California
Office of the Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Attn: Deputy Attorney Generals Amanda Plisner and Maggy Krell

DLA Piper, LLP
Pamela Naughton
Rebecca Roberts
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San Diego, CA 92101-4297

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER

CRIMINAL WRITS CENTER

In re SEARCH WARRANTS ISSUED TO CALIFORNIA PUBLIC UTILITIES COMMISSION.	Case No.: SW-79763 ORDER RE: - PETITION FOR ORDER TO COMPEL - MOTION FOR RETURN OF SEIZED PROPERTY - APPLICATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT

AFTER HEARING

Parties appearing in Court regarding Search Warrant SW-79763, the California Public Utilities Commission ("CPUC"), represented by Pamela Naughton, Esq. and Rebecca Roberts, Esq. of DLA Piper, LLP. The People of the State of California, represented by Deputy Attorneys General Maggy Krell and Amanda G. Plisner.

PROCEDURAL HISTORY

All motions before this Court pertain to two search warrants issued by this Court on June 5, 2015 and March 9, 2016. The search warrants in question pertain to a criminal investigation regarding the San Onofre Nuclear Generating Station ("SONGS") closure settlement agreement.

On March 21, 2016, the Attorney General filed a "Petition for an Order Compelling [the CPUC] to Comply with the Search Warrant." On April 11, 2016, the CPUC filed an Opposition.

On June 16, 2016, the CPUC filed a Supplemental Opposition. On April 5, 2016, the CPUC filed a Motion to Quash the Search Warrant, seeking to quash both search warrants for lack of probable cause. The Court held a closed hearing on April 27, 2016. After argument, the Court held the Motion to Compel in abeyance pending the filing of privilege logs by the CPUC. The Court denied the motion to quash on May 20, 2016.

The CPUC filed a Motion for Return of Seized Property on June 9, 2016. The Attorney General filed an Opposition and the CPUC filed a Reply. On July 14, 2016 the CPUC filed an "Application for an Order to Show Cause Re Contempt."

The Court held a hearing on July 27, 2016. Both parties made additional arguments and submitted on their filed papers.

PETITION TO COMPEL

On June 5, 2015, Agent Reye Diaz obtained a search warrant signed by the Honorable David Herriford. The affidavit supporting the search warrant was ordered sealed. The search warrant identified records to be seized from the CPUC and information that the CPUC would provide to comply with the seizure of the property. (Search Warrant, June 5, 2015.) The warrant was served upon counsel for the CPUC, in the method agreed upon by the parties. The Attorney General and the CPUC were in contact over the months following the service of the SONGS Warrant. The CPUC produced 59,546 documents in compliance with the SONGS Warrant.[1]

In December of 2015, the Attorney General provided additional search terms. The CPUC refused to produce additional documents. After reviewing the sealed June 5, 2015 affidavit with the Court's permission, the CPUC claimed that the affidavit contained an error. On March 9, 2016, the Attorney General obtained a new search warrant from this Court seeking the same documents. The affidavit was identical to the June 5, 2015 affidavit, but omitted a single line which the CPUC alleged to be incorrect. On March 21, 2016, the Attorney General filed the instant Petition to Compel.

[1] The CPUC notes that the agency has produced over 1.1 million documents to the Attorney General and over 1.7 million documents in total to government agencies regarding the SONGS settlement. Prior search warrants issued by other courts and foreign grand jury subpoenas, which are not before this Court, have resulted in the production of these documents. Only the search warrants from June 5, 2015 and March 9, 2016 are before this Court.

The Attorney General cites Penal Code section 1523 as the basis that the CPUC must comply with the warrant, "[a] search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property...." Additionally, Penal Code section 1530 provides, "[a] search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution."

Here, the warrant was not executed in a traditional manner, in that a peace officer did not seize the documents, nor was an officer present during the review and production of the documents. Instead, the CPUC requested—and the Department of Justice ("DOJ") agreed—that the DOJ would provide search terms and the CPUC would provide documents containing those terms. The CPUC, months later, will not be heard to complain about a process to which they agreed. In the Court's view, they are equitably estopped from doing so. Estoppel generally provides that a party is barred from taking certain positions contrary to their previous actions. (*People v. Miller* (2012) 202 Cal.App.4th 1450, 1456, fn. 5.) "Estoppel effects a forfeiture, i.e., the loss of an otherwise viable right." (*City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 487.) An "accurate description of the elements of equitable estoppel would appear to be: (1) The party to be estopped has engaged in blameworthy or inequitable conduct; (2) that conduct caused or induced the other party to suffer some disadvantage; and (3) equitable considerations warrant the conclusion that the first party should not be permitted to exploit the disadvantage he has thus inflicted upon the second party." (*Id.*, at p. 488.)

Here, the CPUC has engaged in inequitable conduct, by insisting upon a method for execution of a search warrant, and now claiming that execution was improper. The Attorney General relied upon the CPUC's promise that it would comply with the warrant if served in the manner agreed upon. The Attorney General has cooperated with the CPUC over several months of production and is now disadvantaged by the CPUC's refusal to review or produce the final documents. To not require compliance the CPUC's compliance would permit the CPUC to exploit the Attorney General's disadvantage.

Contrary to the CPUC's argument, the Attorney General's December 2015 request for additional search terms did not expand the scope of the originally requested documents under the June 5, 2015 warrant. Indeed, these search terms were provided as an "alternative...to limit the number of documents [the CPUC] must review." (CPUC Opposition, Letter dated Oct. 22, 2015, Exh. 17.) The CPUC has produced approximately 59,546 documents in response to the June 5, 2015 warrant. (CPUC Opposition, Letter dated Feb. 24, 2016, Exh. 23.) The CPUC's compliance and production of other documents outside of the June 5, 2015 and March 9, 2016 warrants is immaterial as to whether the CPUC should be compelled to comply with these warrants.

The Court requires that the CPUC fully comply with the search warrants, by the process agreed to by the parties at the outset of the service of the June 5, 2015 warrant.[2] The Petition to Compel is granted with a condition. The condition is that the CPUC's review of the documents which trigger the terms requested in December of 2015 is limited to "non-unique" documents, "i.e., documents which trigger multiple terms."

The CPUC has also requested to respond to the search warrants *seriatum*, and the Attorney General has not objected. That request is also granted.

MOTION FOR RETURN OF SEIZED PROPERTY

Penal Code section 1540 provides a mechanism for a non-defendant to challenge a search warrant, "If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken."

First, the CPUC claims that the June 5, 2015 and March 9, 2016 warrants are facially defective because both order the CPUC to search through documents and seize those documents, not a law enforcement officer. Penal Code section 1540 provides that a motion for return of property should be granted "If it appears that the property taken [pursuant to a warrant] is not the

[2] The CPUC also requests that the Court, in equity, shift the cost of production for the remaining documents to the Attorney General. The CPUC cites no authority for this request. Indeed, in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 708–09, the California Supreme Court expressly stated the superior court could not require the parties to share the cost of a special master proceeding, it follows that the Court cannot order the Attorney General to cover the cost of the production and review of the documents for privilege in this instance.

same as that described in the warrant." Here, the CPUC does not allege that the property obtained was not the same as what was described in the warrant, but instead attempts to claim that the method of execution of the warrant is sufficient to obtain return of the property. There is no basis for this in the statute. Further, any error in the execution of the warrant was in good faith, per the agreement between the DOJ and the CPUC, as discussed above. Thus, the Motion for the Return of Property based on the execution of the warrant is DENIED.

Second, the CPUC claims that the June 5, 2015 and March 9, 2016 warrants are not supported by probable cause.[3] The Court has reviewed each of the affidavits supporting the search warrants. Because these affidavits are under seal, the Court will not outline the facts alleged in the warrant affidavits themselves.

An affidavit for a search warrant requires sufficient facts to show that probable cause exists that a crime occurred. "The test of probable cause is ... whether the facts contained in the affidavit are such as would lead a man of ordinary caution or prudence to believe, and conscientiously entertain, a strong suspicion of the guilt of the accused. [citations.]" (*People v. Stout* (1967) 66 Cal.2d 184, 192-93 [citations omitted].) The crime of conspiracy occurs if two or more persons conspire to commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws. (Pen. Code, § 182, subd. (a)(5).) An offense against public justice, or the due administration of law "includes both malfeasance and nonfeasance by an officer in connection with the administration of his public duties, and also anything done by a person in hindering or obstructing an officer in the performance of his official obligations." (*Lorenson v. Superior Court in and for Los Angeles County* (1950) 35 Cal.2d 49, 59.)

California Public Utilities Code section 1701.3 explicitly prohibits ex parte communications in rate setting proceedings, but allows them if specific conditions are met. Rule 8.3, subdivision (c)(2) of title 20 of the California Code of Regulations provides, "If a

[3] The June 5, 2015 search warrant and the March 9, 2016 search warrant are identical, with one exception. The June 5, 2015 warrant incorrectly cited California Public Utilities Code section 1701.2, subdivision (c) to establish that ex parte communication proceedings are prohibited in rate-setting proceedings, in fact the correct citation is California Public Utilities Code section 1701.3, subdivision (c). The March 9, 2016 warrant does not cite to either of these provisions.

decisionmaker grants an ex parte communication meeting or call to any interested person individually, all other parties shall be granted an individual meeting of a substantially equal period...The interested person requesting the initial individual meeting shall notify the parties that its request has been granted, and shall file a certificate of service of this notification, at least three days before the meeting or call." The ex parte communication is also subject to the reporting requirements of Rule 8.4 of title 20 of the California Code of Regulations.[4] The due administration of the law requires the notice and reporting of ex parte communications. (Cal. Pub. Util. Code, § 1701.3, subd. (c); Cal. Code of Regs., tit. 20, Rules 8.3 and 8.4.)[5]

Here, there were sufficient facts alleged in the affidavit that would lead to a strong suspicion of guilt that Michael Peevey—former President of the CPUC, and Stephen Pickett—former Executive President of External Relations at Southern California Edison, conspired to engage in an ex parte communication during a pending rate setting proceeding, with the intent to effect the outcome of the proceeding, without notice to the parties, and without reporting the communication. These facts are sufficient to find nonfeasance, and even malfeasance, on their part, establishing probable cause that they conspired to obstruct justice, or the due administration of the laws.[6]

DELIBERATIVE PROCESS PRIVILEGE

The CPUC has withheld hundreds of documents, documented in privilege logs, claiming the deliberative process privilege. The CPUC asserts the deliberative process privilege applies in state criminal investigations as a common law privilege, but cites only federal or civil cases

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[4] The CPUC argues that unnoticed ex parte communications are not prohibited under Rule 8.3 and Rule 8.4, but "happen all the time." (CPUC Reply, p. 6.) Regardless of whether unnoticed ex parte communications are commonplace, they must be reported within a short timeframe; here, the ex parte communication was not reported until nearly two years after the communication took place.

[5] The CPUC argues that the failure to report the ex parte communication did not rise to the level of criminal obstruction of justice, because there was no judicial proceeding. The CPUC cites *United States v. Metcalf* (9th Cir. 1970) 435 F.2d 754, 757, a Ninth Circuit case which does not interpret Penal Code section 182, subdivision (a)(5). Indeed, conspiracy to obstruct justice, in violation of Penal Code section 182, subdivision (a)(5) is not limited to judicial proceedings. (See *People v. Backus* (1979) 23 Cal.3d 360, 387 [finding probable cause for conspiracy to obstruct justice when police officers conspired to not execute a warrant of another jurisdiction for the arrest of a person in their custody, constituting both malfeasance and nonfeasance].)

[6] The affidavit alleges several additional grounds for probable cause; however, the Court does not reach those grounds because the Court finds sufficient probable cause for the warrant based on this ground.

where the privilege has been successfully asserted. (See *U.S. v. Nixon* (1974) 418 U.S. 683, 687 [claim of absolute executive privilege in federal grand jury investigation]; *Coito v. Superior Court* (2012) 54 Cal.4th 480 [wrongful death action where the defendant claimed attorney work product privilege, not the deliberative process privilege]; *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 708–09 [attorney client privilege asserted in response to search warrant]; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325 [deliberative process privilege applies in Public Records Act request for Governor's appointment calendars]; *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119 [civil litigation seeking to compel discovery from a state agency for documents relating to defense in underlying case]; *In re Sealed Case* (D.C. Cir. 1997) 121 F.3d 729, 737-38 [deliberative process privilege asserted in federal grand jury proceeding].)[7]

The deliberative process privilege is "a qualified, limited privilege not to disclose or to be examined concerning not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated." (*Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 540.) The privilege is codified in the Public Records Act, Government Code section 6254. "The exemptions in the Public Records Act are in the context that, unless exempted, all public records may be examined by any member of the public, often the press, but conceivably any person with no greater interest than idle curiosity. [citations.]" (*Marylander v. Superior Court, supra,* 81 Cal.App.4th at p. 1125 [citing Gov. Code, §§ 6252, subd. (f) , 6253, subds. (a), (b), 6258].) The effect of section 6254 is limited to the California Public Records Act, has no application to any procedure not under that Act, and "shall not be deemed...to limit or impair any rights of discovery in a criminal case." (Gov. Code, § 6260; See *Rubin v. City of Los Angeles* (1987) 190 Cal.App.3d 560, 585.)

[7] The CPUC also cites instances where the Attorney General claimed the deliberative process privilege in *civil* proceedings (*Coleman v. Schwarzenegger* (E.D. Cal., Dec. 6, 2007, No. C01-1351 TEH) 2007 WL 4328476; *Prime Healthcare Serv., v. Harris*, (C.D.Cal., Sept. 21, 2015) 2015 WL 9921572); however, this does not require the Court to find that CPUC's claim of the deliberative process privilege is proper in this circumstance.

In California, "[e]videntiary privileges are created by statute, and the courts of this state are not free to create new privileges as a matter of judicial policy but must apply only those privileges created by statute or that otherwise arise out of state or federal constitutional law." (*Union Bank of California, N.A. v. Superior Court* (2005) 130 Cal.App.4th 378, 388.) Moreover, courts are not free to expand the scope of existing privileges, unless required by the state or federal constitution. (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 441; See also *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373; *Welfare Rights Organization v. Crisan* (1983) 33 Cal.3d 766, 773; *People v. Velasquez* (1987) 192 Cal.App.3d 319, 327.)

Applying the deliberative process privilege in this criminal investigation, as the CPUC requests, would require the Court to improperly expand that privilege, as the CPUC does not show that the deliberative process privilege is required by state or federal constitutional law. Thus, the CPUC's withholding of documents pursuant to the deliberative process privilege is not permissible in this context.[8]

The CPUC claimed for the first time during the July 27, 2016 hearing that the official information privilege codified in section 1040 of the Evidence Code also protects the disclosure of the contested documents. The Court is not inclined to address that issue as the Attorney General has had no opportunity to respond.[9]

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[8] The CPUC also claims that "there is authority holding that if privileged material is produced in response to a grand jury subpoena, the privilege is deemed waiver as to production in related civil case." The CPUC cites *In re Pacific Pictures Corp.* (9th Cir. 2012) 679 F.3d 1121, 1130, a federal case in which an attorney waived the attorney-client privilege by not asserting it before producing documents pursuant to a grand jury subpoena. Under California law, "a waiver of privilege must be voluntary; i.e., 'without coercion' [citation]." (*Regents of the University of California v. Workers' Compensation Appeals Board* (2014) 226 Cal.App.4th 1530, 1536 [citing Evid.Code, § 912, subd. (a].) Here, the CPUC is being coerced to produce documents via a search warrant and has asserted their privilege, thus there is no voluntary waiver of the privilege.

[9] The CPUC is free to file appropriate documents with the Court demonstrating that the official information privilege applies, rather than ambush the Attorney General at oral argument.

APPLICATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT

The CPUC alleges that the Attorney General has engaged in a pattern of leaking evidence in violation of this Court's order to seal the pleadings and records in this matter.[10]

Indirect contempt occurs "[w]hen the contempt is not committed in the immediate view and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt." (Code Civ. Proc., § 1211.) "The affidavit is in effect a complaint, frames the issues before the court and is a jurisdictional prerequisite to the court's power to punish.'" (*Moss v. Superior Court (Ortiz)* (1998) 17 Cal.4th 396, 402, fn. 1 [citing *In re Gould* (1961) 195 Cal.App.2d 172, 175, 15 Cal.Rptr. 326]; Code Civ. Proc., § 1211; *In re Koehler* (2010) 181 Cal.App.4th 1153, 1169; *In re Cowan* (1991) 230 Cal.App.3d 1281, 1288.) "'After notice to the opposing party's lawyer, the court (if satisfied with the sufficiency of the affidavit) must sign an order to show cause re contempt...'" (*In re M.R.* (2013) 220 Cal.App.4th 49, 58 [citing *Cedars–Sinai Imaging Medical Group v. Superior Court* (2000) 83 Cal.App.4th 1281; Code Civ. Proc., § 1212].)

Here, the affidavit is so lacking in content that it does not establish the charge of contempt. (See Code Civ. Proc., § 1211.5, subd. (c).) The affidavit does not claim that the Attorney General gave information to outside parties in violation of the Court's sealing order. Instead, the Declaration signed by Ms. Naughton does not allege specific facts, but only references the Application for Order to Show Cause, claiming to the best of Ms. Naughton's knowledge and belief the allegations are true. The CPUC's claim is pure conjecture. The allegations are not sufficient to meet the standard of an affidavit in an indirect contempt proceeding and do not establish a prima facie case that the Attorney General has engaged in misconduct.

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[10] The CPUC also states that the media had knowledge of the June 24, 2015 return to the SONGS search warrant, but does not allege how this would be grounds for contempt. To the extent the CPUC raises claims regarding search warrants issued by the San Francisco Superior Court, these are outside the purview of this Court.

DISPOSITIONS

For the foregoing reasons, the Attorney General's Petition for Order to Compel is GRANTED with a condition; the CPUC's request to respond to the search warrants *seriatum* is GRANTED; the CPUC's Motion for Return of Seized Property is DENIED; and the Application for an Order to Show Cause Re Contempt is DENIED.

The Clerk is ordered to serve a copy of this decision upon Pamela Naughton, Esq. and Rebecca Roberts, Esq. of DLA Piper, LLP as counsel for the CPUC, and Deputy Attorney Generals Maggy Krell and Amanda G. Plisner as counsel for the People of the State of California.

Dated: 8-12-16

WILLIAM C. RYAN
Judge of the Superior Court

Send copy of order to:

Department of Justice – State of California
Office of the Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Attn: Deputy Attorney Generals Amanda Plisner and Maggy Krell

DLA Piper, LLP
Pamela Naughton
Rebecca Roberts
401 B Street, Suite 1700
San Diego, CA 92101-4297

1:30 P.M. **Last Day:**

Superior Court of California	CASE ACTION SUMMARY			Clerk: Sheryl Humber # 282371	
Defendant's Name **IN SEARCH WARRANT FOR CPUC**				**Case Number:** SW-70763	
Date: 7/27/16	**Div:** 56W	**Judge:** William C. Ryan # R0158	**Prosecutor:**	**Defense Atty:**	**Reporter:** A. BLANCO, CSR 10075	**Inter/ Language**

Defendant In Court _____ Defendant 977(A) _____

Case called for:

__1) MOTION BY THE DOJ FOR ORDER COMPELLING CPUC TO COMPLY WITH THE SEARCH WARRANT-

2) MOTION BY THE CPUC FOR RETURN OF SEIZED PROPERTY

3) Application by CPUC for OSC re Contempt

1:30 P.M.

Last Day:

Superior Court of California	**CASE ACTION SUMMARY**			**Clerk:** Sheryl Humber # 282371	
Defendant's Name **IN SEARCH WARRANT FOR CPUC**				**Case Number:** SW-70763	
Date: 6/23/16	**Div:** 56W	**Judge:** William C. Ryan # R0158	**Prosecutor:**	**Defense Atty:**	**Reporter:** A. BLANCO, CSR 10075	**Inter/ Language**

Defendant In Court _____ Defendant 977(A) _____

Case called for:

__1) MOTION BY THE DOJ FOR ORDER COMPELLING CPUC TO COMPLY WITH THE SEARCH WARRANT-

2) MOTION BY THE CPUC FOR RETURN OF SEIZED PROPERTY

Court to Court's Matrix by Department of Counsel to July 27 @ 1:30

ORIGINAL

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

In re June 5, 2015 Search Warrant issued to California Public Utilities Commission	CASE NO. SW-70763 **APPLICATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT** **FILED UNDER SEAL PURSUANT TO COURT ORDER MARCH 24, 2016**

PLEASE TAKE NOTICE that the California Public Utilities Commission ("CPUC") herein moves the Court for an Application for an Order to Show Cause ("OSC") why the Attorney General should not be held in contempt for leaking information from these proceedings in violation of the Court's order sealing the record pursuant to California Code of Civil Procedure sections 128, 1209 et seq. Throughout this investigation, the Attorney General's office has improperly leaked information to a plaintiff's attorney representing a private party in the CPUC SONGS proceeding and to the media. The most recent leak is evidenced by the private attorney's Public Records Act ("PRA") requests to the CPUC seeking copies of all filings made in this matter before this Court. Counsel for the CPUC has raised these concerns with the Attorney General's office and requested that they investigate the problem. However, the Attorney General's office has not returned calls from outside counsel or further addressed the problem, leaving the CPUC no choice but to file this OSC.

The CPUC requests that the Court issue an order to show cause why the Attorney General's representatives should not be held in contempt, allow the CPUC to issue discovery for communications between the Attorney General's office, the media, and the private attorney concerning this investigation, and hold a hearing on this matter. The CPUC also requests that it be reimbursed its legal fees incurred in connection with the contempt proceeding.

This OSC is based on this application, supporting memorandum of points and authorities and the Declaration of Pamela Naughton ("Naughton Decl."), all the papers and records on file in this action and on such oral and documentary evidence as may be presented at any hearing on the contempt proceeding.

Dated: July 14, 2016

DLA PIPER LLP (US)

By _____
PAMELA NAUGHTON
REBECCA ROBERTS
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I. BACKGROUND

A. Search Warrants and Media Coverage

Following the public release of emails between the CPUC and Pacific Gas & Electric Company ("PG&E") and the issuance of federal grand jury subpoenas, the Attorney General's office obtained a search warrant from the San Francisco Superior Court to seize documents, computers and other devices from the CPUC's headquarters in San Francisco and a second location in Los Angeles. The San Francisco Superior Court issued the search warrant on November 5, 2014 and ordered that it was not to be disclosed. (Naughton Decl. ¶ 2, Ex. 1 (Handwritten "Non Disclosure Yes [X]" indicated on search warrant)). Yet, in spite of this order, media outlets were alerted and set up TV cameras in the courtyard of CPUC headquarters. (*Id.* ¶ 3, Ex. 2.) Notably, the search warrant was not executed by uniformed officers but by special agents who presumably were not broadcasting over the police scanner.

During the execution of the search on November 6, CPUC staff made arrangements to clear the loading docks behind the office building so that the special agents could transfer the computers, records and other devices seized directly into their vehicles. However, some agents insisted on taking boxes of records out the front door, through the courtyard where the television cameras were stationed. (*Id.*) Stories concerning the search then appeared the next day in all major newspapers statewide.

Thereafter, on January 23, 2015, Special Agent Reye Diaz sought and obtained a search warrant from the San Francisco Superior Court to search the private residences of former Commission President Michael Peevey and PG&E executive Brian Cherry. (Naughton Decl. ¶ 4, Ex. 3.) The search warrant calls for:

> Any records, correspondence, or documentation between CHERRY, PEEVEY, [redacted name] and others, tending to show ex parte communications, judge shopping, bribery, Obstruction of Justice or due administration of laws, favors or preferential treatment related to HECA, the CPUC 100 year anniversary dinner, the 2014 GRC, rate incentives and other matters, coming before PUC . . .

Notably, the search warrant did not specifically identify any evidence pertaining to Southern California Edison ("SCE"), SONGS, or Pickett. That is because the investigation only

focused on the San Bruno proceedings, certain ballot measures, and an environmental project known as HECA.

The search warrant was executed on January 27, 2015 and the returns filed with the San Francisco Superior Court on January 28, 2015. (*Id.*) Once again, that same day, news outlets covered the search. (*Id.* ¶ 5, Ex. 4.) The filed returns list a number of items seized from both locations, including "RSG Notes on Hotel Bristol Stationary." The description does not mention the fact that the notes were handwritten.

Two days later, on January 30, 2015, the San Diego Union Tribune ("UT") published an article concerning the executed search warrant on Peevey's residence and posting a copy of the search warrant and return. The UT article pointed out that the "RSG notes on Hotel Bristol stationary" listed in the inventory "may be a reference to replacement steam generators – the fatally flawed project that led to the premature decommissioning of the San Onofre nuclear power plant on San Diego County's north coast." (*Id.* ¶ 6, Ex. 5.) The affidavits later filed in support of the SONGS search warrants issued to the CPUC, which are the subjects of the pending motions, specifically reference the January 30, 2015 UT article and its revelation of the significance of the RSG notes. (*See* Diaz Aff. In Supp. of SONGS Search Warrant at Section III(A)(2).)

Prior to the UT article's speculation that the RSG notes may concern the SONGS proceeding, the Attorney General's investigation had focused on CPUC proceedings concerning PG&E, not SCE. (*See, e.g.,* Naughton Decl. ¶¶ 2,4, Exs. 1,3.) However, a private plaintiff's attorney, Michael Aguirre, saw an opportunity to solicit the Attorney General's assistance with his private actions. Mr. Aguirre represented ratepayer Ruth Hendricks in the SONGS OII proceedings, throughout which Mr. Aguirre made sweeping accusations of corruption that garnered media attention. Aguirre also filed a civil lawsuit against the CPUC and the utilities challenging the SONGS settlement in November 2014 in the Southern District of California, *Citizen Oversight, Inc. et al. v. California Public Utilities Commission et al.*, Case No. 14-cv-02703-CAB-NLS.[1] Notably, in early January 2015, before the Attorney General obtained the

[1] This case was ultimately dismissed for lack of subject matter jurisdiction on April 16, 2015.

search warrant for Peevey's residence, Mr. Aguirre and his law partner, Maria Severson, submitted PRA requests for correspondence between Peevey and other utility officials and promptly turned them over to the UT, which posted the correspondence on its website along with an article speculating about illegal backroom meetings concerning SONGS. (*Id.* ¶ 7, Ex. 6.) It appears that Mr. Aguirre was instrumental in steering the Attorney General's investigation towards the SONGS proceeding.

Approximately a week after the UT article ran, Southern California Edison ("SCE") filed an ex parte notice of Pickett's, Peevey's and Randolph's meeting in Poland in March 2013, on February 9, 2015. This same day, the UT ran another article, touting its role in connecting the Warsaw notes with SONGS OII and speculating "the notes taken from Peevey's house may have been Pickett's summary of his meeting with Peevey." The article also quotes Mr. Aguirre as saying "[t]his undermines the settlement approval of the CPUC and necessitates an investigation by the criminal authorities into whether an illegal agreement was made to settle the case." (*Id.* ¶ 8, Ex. 7.) Also, on February 9, 2015, Mr. Aguirre submitted a PRA request to the CPUC for "[a]ny and all records showing when any Commission or staff of any Commissioner first was informed of the meeting in Poland at which Mr. Peevey discussed a settlement of the OII, as described in the late filed ex parte notice from Southern California Edison." (*Id.* ¶ 9, Ex. 8.) On February 27, 2015, UT reporter Jeff MacDonald submitted a similar PRA request: "[p]lease consider this a fresh PRA for all the materials released to Severson/Aguirre and other law firms and nonprofits that have received records form [sic] the CPUC since Jan. 1, 2014." (*Id.* ¶ 10, Ex. 9.)

B. Attorney General Release of the Warsaw Notes

On or about February 12, 2015, shortly after the UT article issued and Mr. Aguirre filed his PRA request, the CPUC requested a copy of the seized notes from the Attorney General's office so it could review the document to determine whether it was privileged and whether it should be produced in the pending proceedings at the CPUC concerning SONGS OII. (Naughton Decl. ¶ 11, Ex. 10.) The Attorney General's office refused, claiming that it could not release the document to the CPUC because it concerned an ongoing criminal investigation, but, nevertheless

the Attorney General was considering releasing it to third parties. Specifically, the Attorney General wrote:

> While you may have some awareness that a search warrant was executed in Los Angeles, you have not set forth any legal basis to receive a "copy" of evidence seized in a separate criminal investigation (evidence which must be retained in the custody of the officer pursuant to the warrant.) Following the laws relating to California search warrant, we typically do not release evidence obtained in confidential criminal investigations.
>
> . . . .
>
> One issue of note . . . is that this document may have been subject to previous disclosure requirements by both the CPUC and the SCE. For that reason, we are considering whether this document should be released to other parties that may claim an interest in this document or the information, as that document or information appears to have been shared between multiple parties already.

(Naughton Decl. ¶11, Ex. 10.) So, the government refused to provide a copy to the CPUC because it was seized as a result of an ongoing criminal investigation, but seemed to have no problem releasing the same document to third parties. The CPUC requested that the government at least provide it with notice if choose to share the document with third parties. The Attorney General did not respond and again stated: "I believe my previous points still hold – evidence obtained during the execution of a search warrant cannot be released, and all indications surrounding the document to which you refer are that no recognizable privilege could be asserted by the CPUC." *Id.* The Attorney General's office also indicated that it would oppose any motion the CPUC filed with the San Francisco Superior Court to obtain a copy of the notes. (Naughton Decl. ¶10.) On or about February 27, 2015, the CPUC renewed it request for a copy of the notes so that its Energy Division director was prepared for his testimony before the grand jury on March 2, 2016. (Naughton Decl. ¶ 12, Ex. 11.) The Attorney General again did not provide a copy of the notes to the CPUC. The CPUC therefore responded to Mr. Aguirre's PRA request that it did not have any documents. (*Id.* ¶ 9, Ex. 8.)

Meanwhile, on March 14, 2015, the UT published a very detailed article indicating that the focus of the Attorney General's investigation was now on whether the Warsaw notes dictated the terms of the SONGS settlement, the very same theory presented in the SONGS search warrant

affidavits issued months later. The UT article also included quotes from unidentified grand jury witnesses even though grand jury proceedings are subject to strict secrecy requirements. Cal. Penal Code sections 911, 915, 924.1, 924.2, 924.3, 939, 939.1. *See Goldstein v. Super. Ct.*, 45 Cal. 4th 218, 221 (2008). (Indeed, grand jurors who unlawfully disclose information received by the grand jury may be subject to a misdemeanor. *See, e.g.,* Cal. Penal Code sections 924.1, 924.2.) The UT article states: "**the handwritten** notes were the first evidence to connect the broken San Diego County power plant to the corruption investigation, which had been limited to commission dealings with Pacific Gas & Electric in Northern California." (Naughton Decl.¶ 13, Ex. 12 (emphasis added).) Notably, the inventory return did not mention that the RSG notes were "handwritten" (which they were). Thus, the UT article indicates that the content and perhaps the notes themselves were shared with the UT as early as March 2015, even though the Attorney General refused to provide a copy of these same notes to the CPUC at the time, even though the notes were presumably relevant to an open and ongoing CPUC proceeding.

A couple of days after the UT article issued, on March 18, 2015, Mr. Aguirre issued another PRA request to the CPUC, this time for:

> . . . any and all emails related to any discussions or understandings held or reached at the Bristol Hotel meeting in Warsaw, Poland amongst Peevey, and Pickett. Please provide any emails sent or received by Ed Randolph following the March 2013 Warsaw meeting to Florio, Picker, or Peevey related to San Onofre. Please provide any emails sent or received by Ed Randolph before the March 2013 Warsaw meeting to or from Florio, Picker or Peevey.

(*Id.* ¶ 9, Ex. 8.) Mr. Aguirre's PRA request, like the UT article, indicates a surprisingly detailed understanding of the Attorney General's investigation and witness statements and also dovetails with allegations in the supporting SONGS affidavits. The specificity of the PRA request suggests that the Attorney General may have shared the contents of the notes, and possibly the grand jury testimony of Ed Randolph, with Mr. Aguirre at this time.

While it is quite possible that the Attorney General shared the contents of the notes with Mr. Aguirre and/or the UT as early as March 2015, it is clear that it did provide an official copy to at least Mr. Aguirre before it provided a copy to the CPUC. For example, on April 10, the Attorney General finally agreed to produce a copy of the Warsaw notes to the CPUC, claiming it

was providing the copy so that Mr. Randolph could prepare for a follow up interview. Specifically, Agent Diaz wrote: "I would like to talk to Mr. Randolph again about the meeting in Poland. Prior to the meeting, I have no problem sharing the notes with you to go over with him." (Naughton Decl. ¶ 14, Ex. 13.) The CPUC received a copy from its counsel on April 10 at 3:30 p.m. The CPUC in turn produced them to Mr. Aguirre in response to the outstanding PRA requests at 5:07 p.m. and to the UT at 5:35 p.m. respectively. The CPUC also served a copy of the notes on all parties in the SONGS OII at approximately 6:11 p.m. that same day. (Naughton ¶¶ 9-10, 23, Exs. 8-9, 20.)

Yet, even before the CPUC produced these notes in response to the PRA requests or served them on the SONGS OII parties, Mr. Aguirre **had drafted and filed a pleading** in his civil lawsuit attaching the Warsaw notes themselves at 4:14 p.m. (*Id.* ¶ 15, Ex. 14.) Similarly, the UT initially published an article at 5:29 p.m. concerning the notes and posting the actual notes on its website, again before the CPUC PRA response and the SONGS OII service had issued. The UT later updated its article at 9:00 p.m. indicating that in addition to obtaining the notes from Mr. Aguirre's lawsuit, the CPUC produced them in response to its PRA request. (*Id.* ¶ 16, Ex. 15.) The timing makes clear that the Attorney General produced the notes at least to Mr. Aguirre and possibly the UT before it produced them to the CPUC. It does not appear that the Attorney General directly provided the notes to any of the other parties in the SONGS OII.

C. Media Knowledge of SONGS Search Warrants

As discussed at length in the CPUC's prior pleadings, the Attorney General sought and obtained a second search warrant from the Los Angeles Superior Court on June 5, 2015, based on allegations very similar to those identified in the March 2015 UT article. As discussed in the CPUC's prior pleadings, the Attorney General's office filed a return on June 24, 2015, falsely claiming that the CPUC would not comply with the search warrant. **Less than two weeks later**, on July 6, 2015, the UT published an article discussing the new search warrants executed on the CPUC and Edison concerning SONGS and posting the SONGS Search Warrants and return. (*Id.* ¶ 17, Ex. 16.) The UT article quoted directly the search warrant return: "CPUC legal counsel advises that due to limited resources, and concurrent demands of federal subpoenas and public

records act requests, the evidence is not currently available . . ." Despite requests, CPUC has still not provided a specific time frame as to when documents will be provided as ordered by the court." It is certainly more than coincidental that soon after the return was filed, the UT knew to check the search warrant return **in a brand new court** – Los Angeles Superior Court, when all other activity concerning the investigation had issued out of the San Francisco Superior Court.

Moreover, as discussed at length in the CPUC's prior pleadings, after months of producing records and explaining its process for review and production, the Attorney General, in December 2015, demanded that the CPUC search for additional terms, including the name "Aguirre". (*Id.* ¶ 18, Ex. 17.) Was the Attorney General's demand done to further its own investigation, or to produce more fodder for Mr. Aguirre's lawsuits and press interviews? Why else would prosecutors care at all about CPUC documents mentioning Aguirre?

D. Violation of Court Order Sealing Record

In conjunction with its initial motion for in camera review of the supporting SONGS affidavit, the CPUC filed a motion to seal the pleadings and record in this matter, which the Attorney General supported and the Court granted on March 24, 2016. (Naughton Decl. ¶ 19, Ex. 18; *see also* Attorney General "NO OPPOSITION TO CALIFORNIA PUBLIC UTILITY COMMISSION'S MOTIONS TO VIEW SEARCH WARRANT AFFIDVAIT *IN CAMERA* AND TO SEAL ALL DOCUMENTS AND HEARINGS RELATED TO ITS MOTION" *filed* March 21, 2016.[2])

Yet, on June 3, 2016, while this Court's order was in effect, Mr. Aguirre sent the CPUC another PRA request specifically demanding that the CPUC produce **any and all pleadings filed concerning the SONGS Search Warrant, No. SW-70763**. Specifically, the PRA request reads:

> Greetings, please provide to me under the Cal Public Records Act and the Art I, Sec 3 of the Cal State Constitution any and all

[2] The Attorney General wrote:

> CPUC requests that the pleadings and hearings related to its Motion to View Search Warrant *in Camera* be sealed. DOJ does not object to this request. As CPUC points out in its pleadings, the affidavit at issue was sealed to protect the integrity of DOJ's ongoing investigation. Because the warrant that is the subject of the hearing is sealed, DOJ agrees that it is appropriate for the proceedings and related pleadings to be sealed as well. (DOJ Brief at p. 3.)

> pleadings or court filings made with any court in connection witht **[sic]** the search warrant served on the CPUC in connection with the San Onofre matter including with regard to search warrant number 70763.

(*Id.* ¶ 20, Ex. 19.) Thus, it appears that consistent with its pattern of sharing confidential information with Mr. Aguirre, the Attorney General tipped him off concerning the matters pending before this Court, despite this Court's order sealing the record. Notably, Aguirre did **not** request **any** pleadings filed as to any of the other ten grand jury subpoenas and search warrants issued in this investigation, only **this** one. And this is the only search warrant or subpoena issued to the CPUC about which the CPUC has filed **any** pleadings.

Counsel for the CPUC raised its concerns about these leaks and violation of the Court's order directly with the supervisor in charge of the Attorney General's investigation. On June 6, 2016, Ms. Naughton, counsel for the CPUC, telephoned and spoke with Senior Assistant Attorney General James Root. Ms. Naughton went through the evidence of the series of leaks, as outlined above, and the June 3, 2016 PRA request from Mr. Aguirre. (Naughton Decl. ¶ 22.) Ms. Naughton asked Mr. Root to investigate the source of the leaks from his office and to take appropriate action to plug the leaks. (*Id.*) Ms. Naughton again telephoned Mr. Root over a week later and left him a voice message further inquiring as to his investigation into the leaks. Ms. Naughton again called Mr. Root on July 12, 2015 to see if the breach had been resolved. As of the date of this filing, Mr. Root has not returned Ms. Naughton's phone calls and no representative from the Attorney General's office has provided any update or explanation. (*Id.*) Thus, the CPUC had no alternative but to bring this OSC.

II. THE CPUC REQUESTS THAT THE COURT ISSUE AN ORDER TO SHOW CAUSE WHY REPRESENTATIVES FROM THE ATTORNEY GENERAL'S OFFICE SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING THE COURT'S ORDER SEALING THE RECORD

Pursuant to section 128 of California Code of Civil Procedure, every court has the power to enforce order in the proceedings before it, to compel obedience to its judgement, orders and process, and to control, in furtherance of justice, the conduct of its ministerial officers. *See* Cal. Code of Civ. Proc. Sections 128(a)(2)(3)(4)&(5); *Vidrio v. Hernandez*, 172 Cal. App. 4th 1443

(2009) (holding that a California court has inherent power to take appropriate action to secure compliance with its orders, to punish contempt and to secure its proceedings); *Rosato v. Sup. Ct.*, 51 Cal. App. 3d 190, 206 (1975)(Section 128 represents "a statutory confirmation of the court's power '(t)o provide for the orderly conduct of proceedings before it, or its officers,' of power '(t)o compel obedience to its judgments, orders, and process', and power '(t)o control . . . the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it . . .'"). Disobedience of a court order is punishable by contempt. Cal. Code of Civ. Proc. § 1209(a)(5); *Koshak v. Malek*, 200 Cal. App. 4th 1540, 1549 (2011) ("Willful failure to comply with an order of the court constitutes contempt.") (Citing *In re Grayson*, 15 Cal. 4th 792, 794 (1997)).

Special proceedings for indirect contempt, e.g., contempt that occurs outside the court's presence, may be initiated by an affidavit for an order to show cause re contempt. Cal. Code of Civ. Proc. §§ 1209, 1211(a), 1212; *Koshak*, 200 Cal. App. 4th at 1549 ("'A proceeding for the punishment of an indirect contempt is commenced by the presentation of an affidavit setting forth the alleged contemptuous acts. (Cal. Civ. Proc. §1211.) The affidavit is in effect a complaint, frames the issues before court and is a jurisdictional prerequisite to the court's power to punish.") LA Local Rule 3.11(a). The elements necessary to support punishment for contempt are: (1) a valid court order, (2) the alleged contemnor's knowledge of the order, and (3) noncompliance. *Koshak*, 200 Cal. App. 4th at 1549 (citing *Moss v. Sup. Ct.*, 17 Cal. 4th 396, 428 (1998)).

Contempt proceedings pursuant to California Code of Civil Procedure section 1209 et seq. can be brought in criminal matters and against prosecuting attorneys. *See, e.g., People v. Sup. Ct. (Greer)*, 19 Cal. 3d 255, 264 (1977) (recognizing that contempt power is available against public officials, including district attorneys and other trial participants) (*superseded on other grounds* by *People v. Conner*, 34 Cal. 3d 141 (1983)); *People v. Sup. Ct.*, 28 Cal. App. 3d 600, 605 (1972) (upholding contempt order against police officer for failing to return property seized pursuant to an invalid search warrant).

Indeed, a court is "empowered and duty bound to explore violations of its order by its officers." *Farr v. Sup. Ct.*, 22 Cal. App. 3d 60, 68 (1971) (trial court could hold press reporter in

contempt for refusing to identify prosecuting attorneys that may have violated court order prohibiting attorneys and staff from publically releasing the content or nature of any testimony to be given at trial).

A court:

> has the authority and duty to investigate possible violations of its protective and seal orders by those subject to their provisions in order to protect the integrity of the judicial process, to assure the proper administration of justice and to perfect the record pertaining to an issue like to arise on appeal. To this end, the court is empowered to require the attendance of witnesses, including those not subject to the orders, and to compel non-privileged testimony germane to the object of the hearings.

Rosato, 51 Cal. App. 3d at 207-08 (court had power to investigate whether orders sealing grand jury transcript and prohibiting officers from publically discussing case were violated.) Contempt is punishable by fines, jail time, and attorneys' fees. Cal. Code of Civ. Proc. § 1218 et seq.

The CPUC requests that the Court issue an order to show cause why the Attorney General's representatives should not be held in contempt, allow the CPUC to issue discovery for communications between the Attorney General's office, the media, and Mr. Aguirre concerning this investigation, and hold a hearing on this matter. There is no dispute that the order sealing the record to these proceedings is a valid court order. The Attorney General was clearly aware of the court's order sealing the record as its representatives were present at the March 24 hearing and supported, **in writing**, the order. (DOJ March 21, 2016 Brief at p. 3.) The parties and the Court have filed and served all pleadings and orders under seal and the Court has gone to great lengths to seal the record, and its courtroom, before any hearing on this matter before it. Yet, in spite of its knowledge of the order, it appears that the Attorney General has leaked information of these sealed proceedings to a private plaintiff's attorney who generates media fodder. As discussed above, this is part of a pattern of conduct that has occurred throughout the Attorney General's investigation.

Notably, the Attorney General itself has asked for all affidavits submitted in support its

various search warrants and demands[3] to be filed under seal to ensure that its investigation facts remain confidential. As a result, the CPUC has not been able to access the confidential affidavits without seeking relief from the Court. How inconsistent is it for the Attorney General to actively seal its investigation from the state agency responsible for evaluating all evidence relevant to SONGS OII on the one hand but then to leak confidential information to selected parties and the press on the other?

III. CONCLUSION

For the reasons discussed above, the CPUC requests that the Court issue an order to show cause why the Attorney General's representatives should not be held in contempt, allow the CPUC to issue discovery for communications between the Attorney General's office, the media and Mr. Aguirre concerning this investigation, and hold a hearing on this matter. Should the Attorney General's office ultimately be found to be contempt, the CPUC requests that the Court award the CPUC attorneys' fees and costs incurred by it in connection to the contempt proceeding, pursuant to California Code of Civil Procedure section 1218(a).

Dated: July 14, 2016

DLA PIPER LLP (US)

By _____
PAMELA NAUGHTON
REBECCA ROBERTS
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[3] The one exception is Special Agent Diaz's affidavit submitted in support of the search warrant for Pickett's personal emails.

ORIGINAL

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

In Re June 5, 2015 Search Warrant No. 70763 issued to California Public Utilities Commission	CASE NO. SW-70763 **DECLARATION OF PAMELA NAUGHTON IN SUPPORT OF ORDER TO SHOW CAUSE RE CONTEMPT** **FILED UNDER SEAL PURSUANT TO COURT ORDER MARCH 24, 2016**

I, Pamela J. Naughton, declare as follows:

1. I am a partner at DLA Piper, LLP, which represents the California Public Utilities Commission ("CPUC") in the government investigations. I have personal knowledge of the facts I state below except where they are stated on information and belief. If called upon by this Court, I could competently testify as follows:

2. Attached as Exhibit 1 is a copy of the November 5, 2014 search warrant issued to the CPUC.

3. Attached as Exhibit 2 is a copy of the news article which appeared in the San Francisco Gate on November 6, 2014.

4. Attached as Exhibit 3 is a copy of the January 23, 2015 search warrant to search the private residences of former Commission President Michael Peevey and PG&E executive Brian Cherry and inventory return dated January 28, 2015.

5. Attached as Exhibit 4 is a copy of the January 28, 2015 article which appeared in the San Francisco Gate.

6. Attached as Exhibit 5 is a copy of the January 30, 2015 article which appeared in the San Diego Union Tribune ("UT"). A copy of the January 23 search warrant and January 28 return were also posted on the UT's website with this article.

7. Attached as Exhibit 6 is a copy of the January 10, 2015 article which appeared in the UT. Copies of the emails Mr. Aguirre and Ms. Severson obtained from the CPUC through PRA requests were also posted on the UT's website with this article.

8. Attached as Exhibit 7 is a copy of the February 9, 2015 UT article.

9. Attached as Exhibit 8 is a copy of the CPUC's responses to Mr. Aguirre's PRA requests submitted on February 9, 2015 and March 6, 2015.

10. Attached as Exhibit 9 is a copy of the CPUC's response to the UT's PRA request submitted on February 27, 2015.

11. Attached as Exhibit 10 is a copy of February 12-13, 2015 correspondence between the Attorney General's office and the CPUC's then counsel of record, Raymond Marshall from the law firm Sheppard, Mullin, Hampton & Richter LLP. It is my understanding that on February 17, 2015, Mr. Marshall also spoke with Deputy Attorney General Brett Morris on the phone concerning whether the Attorney General's office was willing to turn over the Warsaw notes to the CPUC. My understanding is that Mr. Morris again refused and indicated that the Attorney General would oppose any motion the CPUC filed seeking a copy of the notes.

12. Attached as Exhibit 11 is a copy of February 27, 2015 correspondence between Mr. Marshall and Ms. Krell from the Attorney General's office again requesting a copy of the Warsaw notes. My understanding is that the Attorney General again refused to provide a copy of the notes at this time.

13. Attached as Exhibit 12 is a copy of the UT March 14, 2015 article.

14. Attached as Exhibit 13 is a copy of April 10, 2015 correspondence between CPUC counsel Mr. Marshall and Special Agent Diaz concerning production of the Warsaw notes.

15. Attached as Exhibit 14 is a copy of the pleading filed by Mr. Aguirre in *Citizens Oversight, Inc. et al. v. CPUC*, 14 cv 02703-CAB-NLS on April 10, 2015 at 4:14 p.m. attaching the Warsaw notes.

16. Attached as Exhibit 15 is a copy of the UT April 10, 2015 article.

17. Attached as Exhibit 16 is a copy of the UT July 6, 2015 article.

18. Attached as Exhibit 17 is a copy of the Attorney General's December 22, 2015 letter to the CPUC.

19. Attached as Exhibit 18 is a copy of the Court's March 24, 2016 minute order sealing the record.

20. Attached as Exhibit 19 is a copy of Mr. Aguirre's June 3, 2016 PRA request.

21. To the best of my knowledge and belief, the facts stated in Section I ("Background") of the CPUC's application for an order to show cause re contempt are true and correct.

22. On June 6, 2016, I telephoned and spoke with Senior Assistant Attorney General James Root. I went through the evidence of the series of leaks and the June 3, 2016 PRA request from Mr. Aguirre. I asked Mr. Root to investigate the source of the leaks from his office and resolve the problem of the leaks. I again telephoned Mr. Root over a week later, and left him a voice message further inquiring as to his investigation into the leaks. I also telephoned and left him a message on July 12, 2016 asking him to return my call and informing him that since we had no response to our request or to my follow up call, we would have to proceed with this Application for an Order to Show Cause. As of the date of this filing, Mr. Root has not returned my calls and no representative from the Attorney General's office has provided any update or explanation.

23. Attached as Exhibit 20 is a copy of a certificate of service indicating that the CPUC served the SONGS OII parties with a copy of the Warsaw notes on April 10, 2015 at approximately 6:11 p.m.

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

Executed this 14th day of July 2016 in Hibbing, Minnesota.

By _____
PAMELA NAUGHTON

EXHIBIT 1

No._____

SUPERIOR COURT OF CALIFORNIA

County of San Francisco

SEARCH WARRANT and AFFIDAVIT

SPECIAL AGENT Bradley Bautista swears under oath that the facts expressed by him in this Search Warrant and Affidavit and the attached and incorporated **Statement of probable cause**, are true and that based there on he has probable cause to believe and does believe that the property and/or person described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, Affiant requests that this Search Warrant be issued.

_____, NIGHT SEARCH REQUESTED: YES [ ] NO [X]
(Signature of Affiant) NON DISCLOSURE YES[X] NO[ ] 11/5/2014 (345 hours

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICE OFFICER OR PEACE OFFICER IN THE COUNTY OF SAN FRANCISCO: proof by affidavit having been made before me by Special Agent Bradley Bautista, California Department of Justice, Bureau of Investigations, that there is probable cause to believe that the property described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "X" (s) in that it:

_____ was stolen or embezzled,
__X__ was used as the means of committing a felony,
__X__ is possessed by a person with the intent to use it as a means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery,
__X__ tends to show that a felony has been committed or that a particular person has committed a felony,
_____ it tends to show that sexual exploitation of a child in violation of Section 311.3, or depiction of sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring
_____ there is a warrant for the person's arrest;

THE ANNEXED INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE.
ATTEST: CERTIFIED
NOV 05 2014
CLERK OF THE COURT
Superior Court of California, County of San Francisco
BY: _____ DEPUTY CLERK

YOU ARE THEREFORE COMMANDED TO SEARCH:
See Attachment #1 thru #6.

FOR THE FOLLOWING PROPERTY/PERSON:
See Attachment #1, thru #6.

AND TO SEIZE IT IF FOUND and bring it forth before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to as true and subscribed before me on this 5 Day of November, 2014 at 1:52 AM/(PM) Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

YOU ARE ORDERED TO PROVIDE INFORMATION WITHIN 10 DAYS OF SIGNED DATE.

_____, NIGHT SEARCH APPROVED: YES [ ] NO [X]
Judge of the San Francisco County Superior Court NON DISCLOSURE YES[X] NO[ ] 11/5/2014
DONALD SULLIVAN
HJT - 0/0 1 5 nov @ 1:52pm 345 hrs.

ATTACHMENT #1

FURTHER ORDERS:

The Court appoints Don Willenburg (SBN:116377), attorney at law, as the special master pursuant to Penal Code section 1524 subdivision (d) to conduct the search of location #1, **California Public Utilities Commission, 505 Van Ness, San Francisco, CA 94102** and location # 2, **California Public Utilities Commission, 320 West 4th Street, Suite 500, Los Angeles, CA 90013.**

A special master can determine whether the documents and items found during the search should be released to searching officers as evidence in this investigation. Any information deemed by the special master to be subject to the attorney-client privilege shall be placed under seal and delivered to the Court. This will include any information between the subjects of this investigation and attorneys representing them in this ongoing investigation.

Should a claim of privilege arise at the Los Angeles location, the agents seizing such items are ordered to seal such items without searching, and transfer custody to the special master.

Further, the Court also orders that the special masters may retain computer forensic assistants to assist in the searching and collection of such computer data, and this be done without further court order. Any and all data found to be within the scope of the search warrant is to be released to the investigating agency. Anything found not to be within the scope of this warrant shall remain on the seized computer and computer data materials.

If necessary, searching officers are authorized to employ the use of outside experts, acting under the control of the investigating officers, to access, preserve and examine any data seized.

The court orders that any items seized during the lawful service of this search warrant be disposed of in accordance with the law by the California Department of Justice upon adjudication of the case. The officers serving the search warrant are also hereby authorized, without necessity of further court order, to return seized items to any known victim(s) if such items have been photographically documented.

PLACES TO BE SEARCHED:

1. **505 VAN NESS AVENUE, SAN FRANCISCO, CALIFORNIA,** which is further, described as a multi-story office building constructed of concrete gray in color, Headquarters to the California Public Utilities Commission (PUC). The building is located on the northwest curb line. The number # **505 VAN NESS AVENUE** is etched into the concrete wall to the right of the entry walk way. The front door is made of wood brownish yellow in color with a glass pane. The word "Main Lobby" is labeled just above the door. There are security guards and a security checkpoint beyond the main entrance inside the main lobby. The elevators are situated west of the lobby area and security checkpoint. The front door is facing east towards Van Ness.

The search is to include all offices, rooms, attics, patios, basements, service areas, restrooms, lunch areas, out-buildings, mailboxes, trash containers (attached or unattached), debris boxes, storage areas and lockers, cabinets, closets, and all desks, filing cabinets, safes, and other containers in the premises. The search shall also include the inspection of any computer-based storage media contained within the premises.

ATTACHMENT #2

2. **320 W. 4TH STREET, SUITE 500, LOS ANGELES, CALIFORNIA,** which is, further described as a multi-story office building constructed of concrete and brick with large windows with gray metal frames. The brick and concrete is beige in color with blue-gray trim throughout columns, glass and door frames on the ground floor. The building is located on the south side of 4th Street between Broadway Avenue to the east and Hill Street to the west. The words, "Junipero Serra Building" in white trim on blue-gray trim is posted on top of a double glass entry doors that faces 4th street. The numbers "320" in white trim is posted on a large glass window above the double entry doors and below the words, "Junipero Serra Building". The United States flag is posted to the east and the California state flag is posted to the west of the main entry way facing 4th street. There are security guards and a security checkpoint beyond the main entrance inside the main lobby. The elevators are situated east of the lobby area and security checkpoint. Suite 500 is situated on the 5th floor of the "Junipero Serra Building". Suite 500 is west of the elevator lobby area. There is a directory sign posted inside the elevator lobby area on the 5th floor. The directory sign has the words, "5th Floor" in white trim and orange background. In addition, the words, "Public Utilities Commission" and the numbers, "500" in brown trim and beige background is listed on the directory sign. Suite 500 has a single wood door with bright orange wood stain and a glass siding in white metal frame to its left. A sign with the numbers, "500" in white trim and brown background and the words, "Public Utilities Commission" in brown trim and white background is posted adjacent and to the left of the single wood door and glass siding. An office lobby can be seen inside Suite 500 through the glass sidings.

The search is to include all offices, rooms, attics, patios, basements, service areas, restrooms, lunch areas, out-buildings, mailboxes, trash containers (attached or unattached), debris boxes, storage areas and lockers, cabinets, closets, and all desks, filing cabinets, safes, and other containers in the premises. The search shall also include the inspection of any computer-based storage media contained within the premises.

FOR THE FOLLOWING PROPERTY:

A.) For the time period from May 1, 2010 through September 30 2014, all stored electronic communications, including email, digital images, buddy lists, and any other files associated with user accounts identified as:

Michael.peevey@cpuc.ca.gov
Frank.lindh@cpuc.ca.gov
Michelpeter.florio@cpuc.ca.gov
Carol.brown@cpuc.ca.gov
Karen.clopton@cpuc.ca.gov
Paul.clanon@cpuc.ca.gov

B.) For the time period from May 1, 2010 through September 30 2014 all connection logs and records of user activity for each such account including:

1. Connection dates and times.
2. Disconnect dates and times.
3. Method of connection (e.g., telnet, ftp, http)
4. Data transfer volume.
5. User name associated with the connections.

ATTACHMENT

6. Telephone caller identification records.
7. Any other connection information, such as the Internet Protocol address of the source of the connection.
8. Connection information for the other computer to which the user of the above-referenced accounts connected, by any means, during the connection period, including the destination IP address, connection time and date, disconnect time and date, method of connection to the destination computer, and all other information related to the connection from PUC.

C.) For the time period from May 1, 2010 through September 30 2014, any other records or accounts related to the above-referenced names and user names, including but not limited to, correspondence, billing records, records of contact by any person or entity regarding the above-referenced names and user names, and any other subscriber information, referenced name, and any other subscriber information.

D.) All cellular telephones or computers assigned or issued to, or located in offices formerly assigned to Michael Peevey, Frank Lindh, Michel Florio, Carol Brown, Karen Clopton and Paul Clanon, for the presence of documents, letters, photographs, text messages, email correspondences or other electronic messages which tend to establish the possessors involvement in criminal activity. To listen, note and record any messages left on any telephone answering devices and/or machines inside the location and to answer any incoming telephone calls during the service of this search warrant.

E.) The viewing, photographing, recording and copying of any data and programs on any cellular telephone(s), as well as on any data storage devices and or mediums attached to those cell phones, including, but not limited to: A. Data that may identify the owner or user of the above-described cellular telephone(s); B. Address books and calendars including names and/or nicknames and associated telephone numbers listed in the "Phone Book" or "Contacts" feature of the device; C. Audio, photographic and video clips or images; D. Call histories and call logs including dates, times and telephone numbers; E. Text, e-mail and recorded messages (including voice mail messages) and subscriber information modules [SIM card].

F.) Due to the fact that at times a law enforcement agency does not have the right equipment to view or record technical devices such as computers, digital cameras and cellular telephones, after the search warrant has been executed the executing law enforcement officer may enlist the aid of a law enforcement computer forensics lab to assist in the searching, downloading, viewing, photographing, recording and copying of any and all of the information described in the items listed above.

G.) Provide all electronically stored digital files to include but not limited to:

1. All subscriber records, in any form, pertaining to the outside source provider "OTech" (California Office of Technology Services) who stores them,

a. including applications and account type,
b. subscribers' full names,
c. all screen names associated with the subscribers and/or account,
d. all account names associated with the subscribers,
e. methods of payment,
f. telephone numbers, addresses
g. any/all e-mail addresses,

ATTACHMENT #4

h. detailed billing records,
i. all records indicating the services purchased,
j. all contacts, imported contacts, invited friends,
k. all security verification methods,
l. all devices linked to the account,
m. all apps linked to the account and
n. all subscriber account photos.

H.) All stored electronic communications, existing print outs, and other files reflecting communications to or from the above-referenced accounts, including electronic communications in electronic storage, any and all records.

3. All transactional information and/or "session data" of all activity of the user described above, including log files, dates, times, methods of connecting, ports, IP addresses, dial-ups and/or location data.

4. All "sharing" or "link" data related to which files and folders are shared and with whom.

5. All "events" data showing a timeline of changes made to any CPUC folder.

6. All "notifications" data.

7. All files stored in the CPUC account.

CPUC shall disclose responsive data, if any, by sending this information to:

California Department of Justice
Bureau of Investigation, San Francisco Regional Office
2720 Taylor Street, Suite 300
San Francisco, CA 94133
Attn: Special Agent Bradley Bautista
510-772-2491
Bradley.bautista@doj.ca.gov

ATTACHMENT #5

I.) **Request for Off-Site Search Authorization:** For the following reasons, I request authorization to remove the listed computers and computer-related equipment on the premises and search them at a secure location:
(1) The amount of data that may be stored in hard drives and removable storage devices is enormous, and I do not know the number or size of the hard drives and removable storage devices that will have to be searched pursuant to this warrant.
(2) The data to be seized may be located anywhere on the hard drives and removable storage devices, including hidden files, program files, and "deleted" files that have not been overwritten.
(3) The data may have been encrypted, it may be inaccessible without a password, and it may be protected by self-destruct programming, all of which will take time to detect and bypass.
(4) Because data stored on a computer can be easily destroyed or altered, either intentionally or accidentally, the search must be conducted carefully and in a secure environment.
(5) To prevent alteration of data and insure the integrity of the search, I plan to make clones of all drives and devices, then search the clones; this, too, will take time and special equipment.
(6) Finally, a lengthy on-site search may pose a severe hardship on all people who [live][work] on the premises, as it would require the presence of law enforcement officers to secure the premises while the search is being conducted.

J.) **Order Authorizing Off-Site Search:** Good cause having been established in the affidavit filed herein, the officers who execute this warrant are authorized to remove the computers and computer-related equipment listed in this warrant and search them at a secure location.

K.) I am also asking for authorization to copy digital evidence stored on a server(s) in another location if the server can be remotely accessed from a computer(s) located at the site authorized to be searched by the approval of this court order. This authorization gives law enforcement the ability to preserve the integrity of the evidence and prevent it from being tampered with or destroyed. This is required for the following reasons:

a. Companies are starting to use remote service providers who provide the service of storing digital records and other data on a remote server for their customer who can access the data via a remote connection: This allows the customer to connect to the server from typically anywhere there is service to the internet. In doing so, an employee at the customer company can view, alter, create, copy and print the data from the remote server as if it was at the same location as the employee. The customer typically owns and controls the data stored at the remote server while the service provider owns the server on which the data is stored.

b. Law enforcement typically does not find out about the existence of the remote server until the service of the initial search warrant takes place. I have unsuccessfully attempted to elicit this information prior to obtaining this warrant.

c. The server is often times found to be located in another city or state from the site of the service (PREMISES) making it difficult for law enforcement to preserve the evidence. It takes hours and sometimes days to determine the location of the remote computer and gather the details containing the specificity necessary for the issuance of a second search warrant. Depending on the size of the evidence, it can take seconds to delete it from a system.

ATTACHMENT #6

d. If evidence is located and obtained from a remote server that is not located on PREMISES, I will note this in the property receipt for those items that were seized remotely. I will attempt to determine the location of the remote system and include this information in the property receipt. I will also obtain additional authorization from this Court or the consent from the appropriate parties prior to searching this evidence.

NON-DISCLOSURE/DISCLOSURE ORDER

It is further ordered that PUC not to notify any person (including the subscriber or customer to which the materials relate) of the existence of this order for 90 days in that such a disclosure could give the subscriber an opportunity to destroy evidence, notify confederates, or flee or continue his flight from prosecution. It is further ordered that affiant be allowed to share information with federal and state and criminal and civil law enforcement authorities who are also investigating this matter.

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

DIVISION OF LAW ENFORCEMENT

Investigation No. _____

PROPERTY RECEIPT

Date: _____

Property Received From:

Name: _____ Address: _____

I HEREBY ACKNOWLEDGE RECEIPT OF THE BELOW DESCRIBED PROPERTY

Item No.	Description (include serial number)	Exact Location found (if applicable)

Receiving Individual (print or type)	Receiving Individual (signature)
Witnessing Individual (print or type)	Witnessing Individual (signature)

CALIFORNIA DEPARTMENT OF JUSTICE

DIVISION OF LAW ENFORCEMENT

NOTICE

On _____, Agents of the California Department of Justice, Division of Law Enforcement, served a search warrant at _____

The items listed on the property receipt were seized pursuant to the search warrant.

The search warrant was issued on _____ by the Honorable _____ Judge of the _____ Court. The search warrant number is _____. (If a number is not provided contact the clerk of the issuing court for information regarding this incident.)

For further information concerning this search warrant or the return of property contact _____ at (_____) _____.

Pursuant to California Penal Code sections 1539 and 1540, you may file a written motion with the court where the warrant was issued seeking return of the property seized pursuant to this search warrant.

AVISO

El dia _____, Agentes del Departamento de Justicia del Estado de California, Division de Procuracion de Justicia ejecutaron una orden de cateo en _____ y embargaron la propiedad identificada en el recibo.

La orden de cateo fue expedida en _____, por el Honorable Juez _____ de la corte _____ y fue archivado bajo el numero de corte _____ (si no hay numero, puede hablar con el archivero de la corte). Para mas informacion acerca de esta orden de cateo, llame a _____ al telefono (_____) _____.

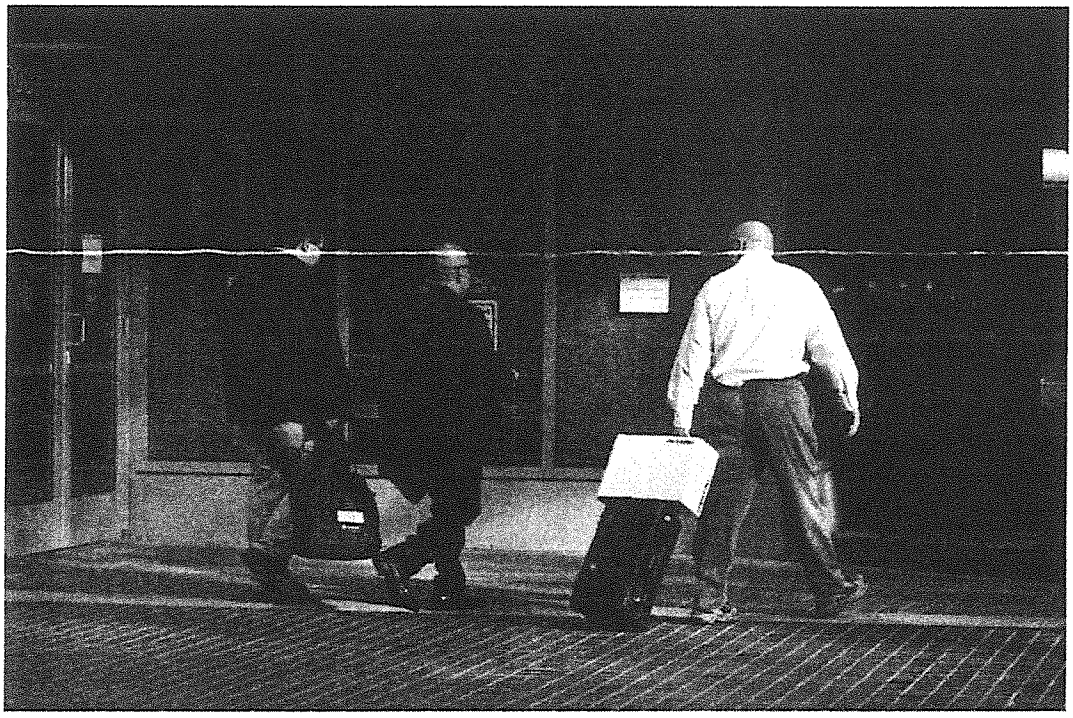
Se la avisa que bajo la ley de Codigo Penal del Estado de California 1539 y 1540, usted puede pedir por escrito a la corte que se le regrese la propiedad, siempre y cuando lo haga el juez que firmo la orden de cateo.

EXHIBIT 2

SFGATE http://www.sfgate.com/bayarea/article/Investigators-search-CPUC-in-judge-shopping-5876888.php

Investigators search CPUC in judge-shopping criminal probe

By Jaxon Van Derbeken Updated 5:43 pm, Thursday, November 6, 2014



Representatives with the California Attorney General's office carry a bag and rolling case with a box as they leave the California Public Utilities Commission offices on Thursday, November 6, 2014 in San Francisco, Calif.

Investigators with the state attorney general's office served a search warrant and removed records from the California Public Utilities Commission's office in San Francisco on Thursday as part of a probe into back-channel communications between the agency and Pacific Gas and Electric Co., sources said.

The search netted documents and other data sought under a sealed warrant, said the sources, who have knowledge of the state investigation but would not speak on the record because the criminal probe is ongoing.

Three investigators declined to comment as they carried a black case, a tote bag and other material from the commission's headquarters at 505 Van Ness Ave. Nick Pacilio, a spokesman for Attorney General Kamala Harris, also declined to comment, and commission representatives did not return calls.

State and federal investigators are looking into whether any laws were broken when at least one member of the utilities commission and a top aide to the commission president promised to help a PG&E executive who wanted a specific judge assigned to a rate-setting case involving the utility.

Harris' office told the commission Sept. 19 to preserve any e-mails or other evidence related to back-channel communications between PG&E and regulatory officials.

Those communications show that a PG&E vice president successfully lobbied two commissioners and their staffs to have his preferred judge assigned to the rate-setting case. The utility is seeking to have its customers pay for $1.3 billion in pipeline improvements arising out of the San Bruno natural-gas disaster in 2010.

PG&E released the e-mails in September and fired the vice president and two other executives implicated in the affair. The utilities commission has picked a new judge for the rate case, and commission President Michael Peevey's chief of staff, Carol Brown, was reassigned.

An administrative law judge has recommended against fining PG&E for the judge-shopping lobbying, citing the "very regrettable fact" that the utility was "aided by a commissioner's adviser and two commissioners." That was an apparent reference to Peevey, Brown and Commissioner Mike Florio, who said in an e-mail that he would "do what I can" to "bump" a judge PG&E didn't want.

In October, attorneys in the utilities commission's legal division complained that the agency's bosses hadn't passed along the order from Harris' office to protect evidence that might be sought by criminal investigators. In a memo addressed to the five members of the Public Utilities Commission, obtained by The Chronicle, 13 attorneys with the agency said the first they had heard of the order was when they read about it on a newspaper's website.

They said some agency offices were planning "clean-out days" in preparation for a return to the commission's renovated headquarters on Van Ness, "and that records may be destroyed in the process."

The lawyers asked the commission to compel the agency's executive director, Paul Clanon, to issue an order to preserve evidence and assure staffers that they will not face retaliation if they cooperate with the state and federal probes.

Clanon was not available for comment Thursday. He had earlier scoffed at the suggestion that anyone at the commission would destroy evidence.

"That's ridiculous, and of course we would never do anything like that," he said.

Clanon would not say whether the attorney general's order had been communicated to commission staffers.

Jaxon Van Derbeken is a San Francisco Chronicle staff writer. E-mail: jvanderbeken@sfchronicle.com Twitter: @jvanderbeken

EXHIBIT 3

SW No. _____

STATE OF CALIFORNIA – COUNTY OF SAN FRANCISCO

SEARCH WARRANT AND AFFIDAVIT

(AFFIDAVIT)

Special Agent Reye Diaz, California Department of Justice, swears under oath that the facts expressed by him/her in this Search Warrant, and in the attached and incorporated statement of probable cause consisting of 35 pages, are true and that based thereon he/she has probable cause to believe and does believe that the property and/or person described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

NIGHT SEARCH REQUESTED: YES [ ] NO [X] - Justification on page(s)_____

(Signature of Affiant) 1/23/15

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY OF SAN FRANCISCO: proof by affidavit having been made before me by Special Agent Reye Diaz, that there is probable cause to believe that the property described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "x"(s) in that it:

_____it was stolen or embezzled
X it was used as the means of committing a felony
X it is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery
X it tends to show that a felony has been committed or that a particular person has committed a felony
_____it tends to show that sexual exploitation of a child, in violation of Section 311.3, or depiction of sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring
_____there is a warrant for the person's arrest;

YOU ARE THEREFORE COMMANDED TO SEARCH:

See attached Exhibit "A"(SEALED AS OUTLINED IN AFFIDAVIT).

FOR THE FOLLOWING PROPERTY:

See attached Exhibit "B"

SEARCH WARRANT (Page 2)

AND TO SEIZE IT IF FOUND and bring it forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to as true and subscribed before me this 23 day of [illegible], 2015, at 1115 A.M./P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

_____ NIGHT SEARCH APPROVED: YES [ ] NO [X]

(Signature of Magistrate) **(Magistrate's Initials)**

Judge of the Superior Court – San Francisco County Judicial District

Executed by_____

Date_____ Hour_____

Be advised that pursuant to California Penal Code sections 1539 and 1540, you may file a written motion in the court of the above-mentioned judge who issued the warrant, seeking return of the property seized pursuant to this warrant.

For further information concerning this search warrant, contact the officer whose name appears on the warrant, Special Agent Reye Diaz at (916) 916-997-5396 or at reye.diaz@doj.ca.gov

FOR THE FOLLOWING PROPERTY:

EXHIBIT "B"

1. Any article of personal property tending to establish the identity of persons who have dominion and control over the premises and vehicles to be searched, including all keys to the described location and vehicles, rent receipts, utility bills, telephone bills, addressed mail, purchase receipts, sales receipts, and articles of personal property tending to show ownership of locations and vehicles including, but not limited to vehicle pink slips and vehicle registration. All personal property and documents used as means of identification, including but not limited to driver's license, credit cards, passports, social security cards, alien cards, California identifications and photographs relative to the person(s) found at the locations.

Any records, correspondence, or documentation between CHERRY, PEEVEY, [redacted] and others, tending to show ex parte communications, judge shopping, bribery, Obstruction of Justice or due administration of laws, favors or preferential treatment related to HECA, the CPUC 100 year anniversary dinner, the 2014 GRC, rate incentives and other matters coming before PUC stored on the following items from December 2009 until current and not limited to:

2. Any and all computer hardware which consists of all equipment which can collect, analyze, create, display, convert, store, conceal, or transmit electronic, magnetic, optical, or similar computer impulses or data. Hardware includes (but is not limited to), any mother-boards, any data-processing devices (such as chips, memory typewriters, and self-contained "laptop" or "notebook" computers); internal and peripheral storage devices (such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices, and other memory storage devices); peripheral input/output devices (such as keyboards, printers, scanners, plotters, video display monitors, and optical readers); and related communications devices (such as modems, cables and connections, recording equipment, RAM or ROM units, automatic dialers, speed dialers, programmable mechanisms, or parts that can be used to restrict access to computer hardware (such as physical keys and locks).

3. Any cellular phone or smartphone, and any electronic storage or Internet-connected device capable of storing information sought by this search warrant.

4. Any and all computer software which consists of any digital information which can be executed by a computer and any of its related components to direct the way they work, including programs to run operating systems, applications (like word-processing, graphics, or spreadsheet programs), utilities, compilers, interpreters, and communication programs. Including software used to test chips and software to direct laser equipment. Software can be stored in electronic, magnetic, optical, or other digital form.

5. Any and all computer-related documentation described as written, recorded, printed, or electronically stored material, which explains or illustrates how to configure or use computer hardware, software or other related items.

6. Any and all computer passwords and other data security devices designed to restrict access to or hide computer software, documentation or data, consisting of hardware, software

or other programming code. Data security hardware may include encryption devices, chips and circuit boards. Data security software or digital code may include programming code that creates "test" keys or "hot" keys, which perform certain pre-set security functions when touched. Data security software or code may also encrypt; compress, hide or "booby-trap" protected data to make it inaccessible or unusable, as well as reverse the process to restore it.

7. E-mail records (December 2009 until current), All stored electronic communications and any other files associated with the persons, address, user accounts, Any other records related to the above referenced names and user names, including but not limited to, correspondence, billing records, records of contact by any person or entity regarding the above referenced names and user names, and any other subscriber information.

8. Text Messages (December 2009 until current).

9. Diaries, Journals, address books, and Calendars, general correspondence from December 2009 until current to included records of meetings as well as general business related matters between and involving (any or all) CHERRY, PEEVEY,

10. Any and all records, stored communication, and other files relating to the customer(s), account holder(s) or other entity (ies) associated in any way with Michael PEEVEY, Thomas [redacted], Brian CHERRY, Including, without limitation, subscriber names, user names, screen names, or other identities, mailing addresses, residential addresses, business addresses, email addresses and any other contact information, telephone numbers or other subscriber number or identifier number, billing records, information about the length of service and the types of services the subscriber or customer utilized, and any other information, whether such records or other evidence are in electronic or any other form.

11. DISCLOSURE ORDER:
It is further ordered that affiant be allowed to share information with federal and state and criminal and civil law enforcement authorities who are also investigating this matter.

12. It is further ordered that a forensic technician, sworn or non-sworn, be granted authorization to examine, make duplicate images/copies of the above-mentioned electronic media and to determine if evidence of the offenses enumerated above are contained therein. Therefore authorization is given to make image/copies of the actual pre-requested data. Evidence copies of the items relating to these offenses will be created and retained for further proceeding and made available to the authorities

A. The above records and documents (Items 1-12) are seizable regardless of the medium on which they are stored, including, but not limited to, paper, microfilm, videotape, audiotape and electronic data storage devices (e.g., computers, telephone answering machines, facsimile machines, pocket computers, electronic address and appointment books, telephone dialers, telephones, cell phones, smart phones, portable memory devices, external hard drives, typewriters, watches, calculators, and pagers). The records and documents are also seizable

even if not stored on the premises, so long as they can be accessed using equipment on the premises (e.g., e-mail and voice-mail). When the records and documents described above are an integral part of a file or other collection of records or documents, the entire collection of records and documents may be seized.

In many cases, forensic examination of computer systems requires special equipment or software, which is not feasible to bring to the location being searched. Additionally, forensic expertise, not available during the execution of the search warrant, may be required to bypass encryption and coded documents in order to retrieve evidence. Records containing evidence stored on disks, even though erased or deleted by criminal suspects, in many cases can be recovered via the use of special programs and equipment not available at the scene.

Many complex computer systems will not operate properly without the attached printers and peripherals. Many files require accompanying software in order to properly read the file and criminal suspects commonly hide records of their criminal enterprise by copying those records over commercially manufactured software. Many sophisticated computer systems require special instructions available only through the user manuals, which accompany the system. Due to these circumstances, authorization is given to seize these items along with any computer system encountered subject to the requested warrant.

As previously set forth, the actual search of a computer and related software in the controlled environment of a laboratory is a complicated process, which takes in excess of ten days to complete. It often takes weeks or months to complete. Authorization is, therefore given for one hundred-twenty (120) days from the date of seizure to complete the search under controlled conditions.

B. In searching for data capable of being read, stored or interpreted by a computer, law enforcement personnel executing this search warrant will employ the following procedure:

1. Upon securing the premises, in the event there is a law enforcement personnel trained in searching and seizing computer data (the "computer forensic examiner") will make an initial review of any computer equipment and storage devices to determine whether these items can be searched on-site in a reasonable amount of time and without jeopardizing the ability to preserve the data.

2. If no law enforcement personnel trained in searching and seizing computer data (the "computer forensic examiner") is on site, and/or the computer equipment and storage devices cannot be searched on-site in a reasonable amount of time, then the related items will be seized and reviewed later by a computer forensic examiner.

3. Therefore, if it is not practical to perform an on-site search or make an on-site copy of the data within a reasonable amount of time, then the computer equipment and storage devices will be seized and transported to an appropriate location for review. The computer equipment and storage devices will be reviewed by appropriately trained personnel in order to extract and seize any data that falls within the list of items to be seized set forth herein.

4. Any data that is encrypted and unreadable will not be returned unless law enforcement personnel have determined that the data is not (1) an instrumentality of the offense

specified in the attached affidavit, (2) a fruit of the criminal activity, (3) contraband, (4) otherwise unlawfully possessed, or (5) evidence of the offense specified in the attached affidavit.

5. In searching the data, the computer forensic examiner may examine all of the data contained in the computer equipment and storage devices to view their precise contents and determine whether the data falls within the items to be seized as set forth herein. In addition, the computer forensic examiner may search for and attempt to recover "deleted", "hidden", or encrypted data to determine whether the data falls within the list of items to be seized as set forth herein. The forensic examiner may search for indicia of ownership or use, including but not limited to user accounts and registration data for software.

6. If the computer forensic examiner determines that the computer equipment and storage devices are no longer necessary to retrieve and preserve the data, these items will be returned within a reasonable period of time from the date of seizure.

C. In order to search for data that is capable of being read or interpreted by a computer, the following items may be seized and searched, subject to the procedures set forth above:

1. Any computer equipment and storage device capable of being used to commit, further, or store evidence of the offense described in the attached affidavit;

2. Any computer equipment used to facilitate the transmission, creation, display, encoding or storage of data, including word processing equipment, modems, docking stations, monitors, printers, plotters, encryption devices, and optical scanners;

3. Any magnetic, electronic, or optical storage device capable of storing data including but not limited to: floppy disks, hard disks, tapes, CD-ROMs, CD-R, CD-RWs, DVDs, optical disks, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants, and cellular phones;

4. Any documentation, operating logs, and reference manuals regarding the operation of the computer equipment, storage devices, or software;

5. Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware, storage devices, or data to be searched;

6. Any physical keys, encryption devices, dongles, and similar physical items that are necessary to gain access to the computer equipment, storage devices of data.

7. Any passwords, password files, test keys, encryption codes, or other information necessary to access the computer equipment, storage devices or data; and,

8. Investigating officers and those agents acting under the direction of the investigating officers are authorized to access all computer data to determine if the data contains "property," "records," and "information" as described above. If necessary, investigating officers are authorized to employ the use of outside experts, acting under the directions of the investigating officers, to access and preserve computer data.

SUPERIOR COURT OF CALIFORNIA

County of San Francisco

SEARCH WARRANT RETURN and INVENTORY

Search Warrant No.

Issuing Magistrate: **Judge Linda COLFAX**

Date warrant issued: **1/23/15**

Date warrant executed: **1/27/2015**

Location/Vehicles/Persons served and title:

[redacted], La Canada, CA & [redacted] Orinda, CA.

Manner of service: Served Search Warrant

I, the affiant for this search warrant, state: The information listed above is correct and during the execution of the search warrant, the following property was seized: (See Attachment A).

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

Date: 1/28/2015

Special Agent Reye Diaz AG#10 1/28/15
Affiant

Judge of the Court

Penal Code § 1537

ATTACHMENT "A"

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

DIVISION OF LAW ENFORCEMENT

Investigation No. BI-SF2014-00008

PROPERTY RECEIPT

Date: 1/27/15

Property Received From: PEEVEY

Name: MICHAEL PEEVEY Address: [redacted], LA CANADA, CA 91011

I HEREBY ACKNOWLEDGE RECEIPT OF THE BELOW DESCRIBED PROPERTY

Item No.	Description (include serial number)	Exact Location found (if applicable)
010-001	RSG NOTES ON HOTEL BRISTOL STATIONARY	ROOM A: OFFICE DESK
010-002	CHASE BANK STATEMENT IN NAME OF MICHEAL PEEVY & CAROL LIU	ROOM A: OFFICE DESK
010-003	6 DAY PLANNERS 2009-2014	ROOM A: OFFICE DESK
010-004	CPUC EMPLOYEE BOSTON AS OF DEC 2 2014	ROOM A: OFFICE DESK
010-005	2015 DAY PLANNER	ROOM A: OFFICE DESK
010-006	EMAIL FROM MARK TONE, 12/10/2009 J KEYBOARD	ROOM A: OFFICE DESK
010-007	1-APPLE IMAC COMPUTER C02K3R2TDNCR	ROOM A: OFFICE
010-008	1-DELL XPS 410 CPU TOWER 0J2684-MV283-0CPYF-M4KFM-X5228	ROOM A: OFFICE
010-009	1-DELL DIMENSION C521 SN/00141711986084	ROOM C: GARAGE
010-010	1-DELL DIMENSION 2400 SN/0004354999 14161	ROOM C: GARAGE
010-011	1- APPLE IPHONE 5 IMEI: 990002275918 58	ROOM D: KITCHEN
010-012	1-APPLE MACBOOK PRO PEW8938M3E66D & POWER CORD	ROOM D: KITCHEN ROOM D: KITCHEN

Receiving Individual (print or type) Rex Diaz MGM10

Receiving Individual (signature)

Witnessing Individual (print or type) JAMES E. HIATT, SOS, LA151

Witnessing Individual (signature)

MSB 1089 (rev. 1/00)

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

Page 2 of 3

DIVISION OF LAW ENFORCEMENT

Investigation No. BI-SF-2014-00009

PROPERTY RECEIPT

Date: 1/27/15

Property Received From: PRESENTER

Name: MICHAEL PERRY Address: [redacted], LA CANADA, CA 91011

I HEREBY ACKNOWLEDGE RECEIPT OF THE BELOW DESCRIBED PROPERTY

Item No.	Description (include serial number)	Exact Location found (if applicable)
010-013	1- THUMB DRIVE CNDA ATTACHED TO	
	ILBook Pro	

Receiving Individual (print or type) KEVIN DIAZ IAG#10

Receiving Individual (signature)

Witnessing Individual (print or type) [illegible], SA, DOJ, BI LA

Witnessing Individual (signature)

Mod 1689 (rev 12/80)

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

Page

DIVISION OF LAW ENFORCEMENT

Investigation No:

PROPERTY RECEIPT

Date:

Property Received From:

Name: Address: [redacted]

I HEREBY ACKNOWLEDGE RECEIPT OF THE BELOW DESCRIBED PROPERTY

Item No.	Description (include serial number)	Exact Location found (if applicable)

Receiving Individual (print or type)

Receiving Individual (signature)

Witnessing Individual (print or type)

Witnessing Individual (signature)

MSB 1089 (rev. 1/00)

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

Page ____ of ____

DIVISION OF LAW ENFORCEMENT

Investigation No. ____

PROPERTY RECEIPT

Date: ____

Property Received From:

Name: ____ Address: [redacted]

I HEREBY ACKNOWLEDGE RECEIPT OF THE BELOW DESCRIBED PROPERTY

Item No.	Description (include serial number)	Exact Location found (if applicable)

Receiving Individual (print or type)

Receiving Individual (signature)

Witnessing Individual (print or type)

Witnessing Individual (signature)

MSB 1089 (rev. 1/00)

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

DIVISION OF LAW ENFORCEMENT

Investigation No. [redacted]

PROPERTY RECEIPT

Date: [redacted]

Property Received From:

Name: [redacted] Address: [redacted]

I HEREBY ACKNOWLEDGE RECEIPT OF THE BELOW DESCRIBED PROPERTY

Item No.	Description (include serial number)	Exact Location found (if applicable)
[redacted]	[redacted]	[redacted]

Receiving Individual (print or type) [redacted]

Receiving Individual (signature) [redacted]

Witnessing Individual (print or type) [redacted]

Witnessing Individual (signature) [redacted]

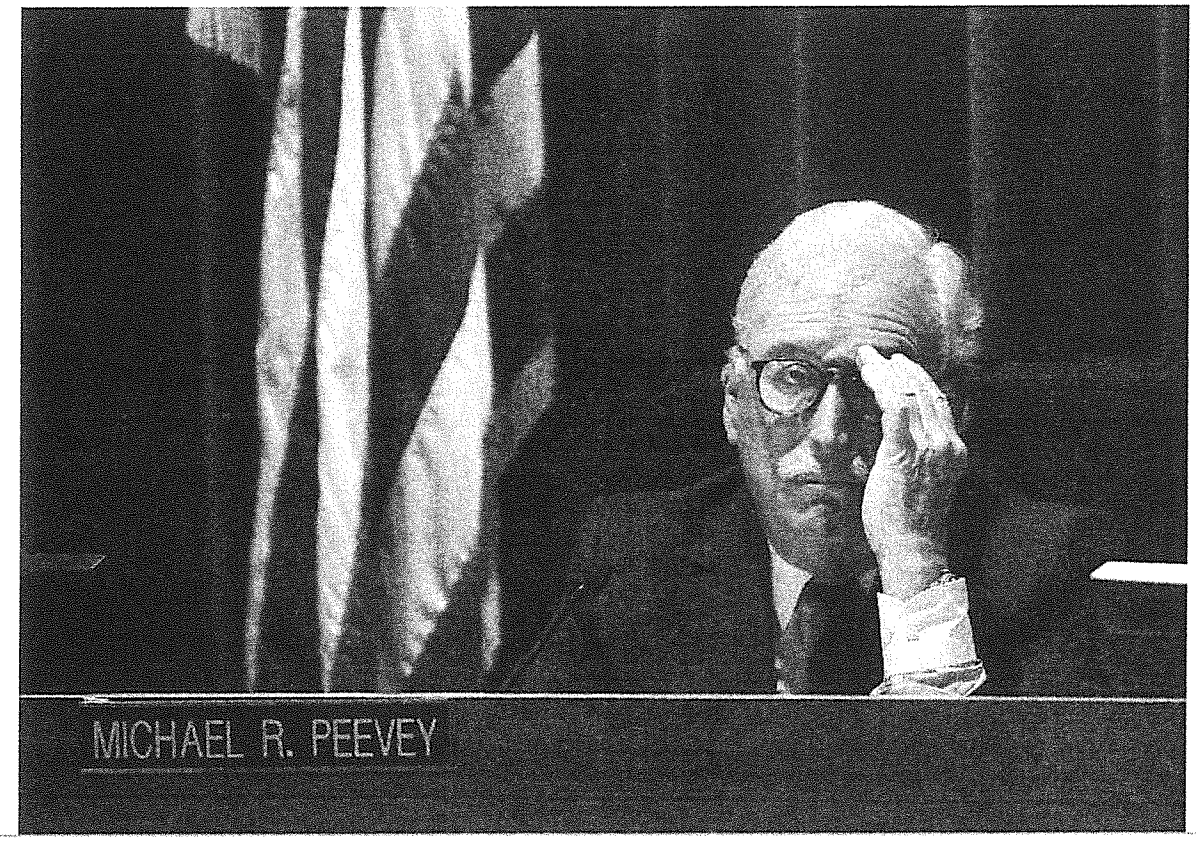
MSB 1089 (rev. 1/00)

EXHIBIT 4

SFGATE http://www.sfgate.com/news/article/Agents-search-Michael-Peevey-s-home-in-PG-E-6047151.php

Agents search Michael Peevey's home in PG&E judge-shopping case

By Jaxon Van Derbeken Updated 9:45 pm, Wednesday, January 28, 2015



California Public Utilities Commission President Michael Peevey listens to public comment during a meeting of the five-member commission in San Francisco, Thursday, Dec. 18, 2014. Peevey, who is retiring at the end of the year after completing two six-year terms, has been under fire in connection with a series of emails describing alleged secret negotiations between him and others at the commission and executives with Pacific Gas & Electric Co. (AP Photo/Jeff Chiu)

Investigators with the attorney general's office executed a search warrant Tuesday at the home Peevey and his wife, Democratic state Sen. Carol Liu, share in La Cañada Flintridge (Los Angeles County), court documents show. The agents seized computers, smartphones and a thumb drive, a small data-storage device, according to the records.

State investigators also seized a computer and other items Tuesday from the Orinda home of former PG&E Vice President Brian Cherry, court documents show. He and two other PG&E executives were fired in September when the utility released e-mails showing that Cherry had negotiated with utilities commission officials, including Peevey's chief of staff, to name a judge the utility preferred to oversee a $1.3 billion rate-setting case.

State Attorney General Kamala Harris and the U.S. attorney's office opened separate investigations into the judge-shopping case to determine whether any laws were broken. The investigations are also looking into e-mails that PG&E later released in which Cherry said Peevey had solicited contributions from the company for a political cause in 2010 and hinted that, in return, the utilities commission would rule in PG&E's favor in a separate rate case.

The search warrant covering Peevey's and Cherry's homes said investigators were looking for evidence of improper "ex parte communications, judge-shopping, bribery, obstruction of justice or due administration of laws, favors or preferential treatment" related to matters coming before the utilities commission from December 2009 on.

Offices searched

Peevey, a former Southern California Edison president who joined the commission in 2002 and became its president later that year, opted not to seek a new six-year term from Gov. Jerry Brown in December.

Efforts to reach him were unsuccessful. Cherry has previously declined to comment.

The search warrant was at least the second that state investigators have executed in the probe. In November, agents went through offices at the utilities commission's headquarters on Van Ness Avenue, including the one belonging to the agency's then-executive director, Paul Clanon.

Agents were seen leaving the building with cases of material. Clanon has since retired from the agency to study music.

Willing to cut deals

The e-mails released by PG&E, most sent either by or to Cherry, depict a utilities commission willing to cut deals with the company in return for rulings in rate cases that would result in customers paying more money, critics say.

Several concern Cherry's effort to have a particular judge assigned to the $1.3 billion rate case, which will determine how much customers should pay for gas-pipeline improvements PG&E undertook after the San Bruno explosion in 2010 that killed eight people and destroyed 38 homes.

Peevey's then-chief of staff, Carol Brown, tried to help Cherry, the e-mails showed. Brown resigned when the e-mails were released.

In an e-mail to Brown in January 2014, Cherry dangled PG&E's backing for Peevey's pet project — a $4 billion coal-gasification plant planned in Kern County — as a possible reward for the company getting its preferred judge. The commission eventually assigned a judge

Cherry wanted to hear the rate case, but the matter was given to another judge after the e-mails became public. It has not been resolved.

'Step up big and early'

In another e-mail, this one from 2010, Cherry told his then-boss, Senior Vice President Tom Bottorff, that Peevey appeared to be leaning on PG&E to "step up big and early" with at least $1 million to fight a ballot measure that would have put a hold on a California law limiting greenhouse gas emissions.

"I jokingly suggested that if he gave us $26 million" in compensation for PG&E's energy conservation efforts, "we could come up with $3 million or so" to oppose the ballot measure, Cherry wrote. "He said that is a deal he could live with."

PG&E eventually spent $650,000 against the measure, which state voters defeated in November 2010. Two weeks after the election, Peevey got the commission to vote to override a judge's ruling and give $29 million to PG&E for energy conservation.

In another 2010 communication with his superior at PG&E that the company released last year, Cherry said Peevey had sought PG&E's $100,000 contribution to a fundraising dinner marking the commission's 100-year anniversary and suggested PG&E would be rewarded in a pending rate-setting case.

'I got the message'

Cherry wrote that Peevey was "aware that we are looking for a good" decision in the case. "He said to expect a decision in January — around the time of the PUC's 100th anniversary celebration. I told him I got the message."

PG&E eventually bought a table at the celebration for $20,000.

The rate case was ultimately settled without a commission hearing, but Peevey helped PG&E on another matter that was related to the case, involving how much money the utility would get for swapping out old electric meters for smart meters.

Peevey proposed paying PG&E $6 million for the decommissioned meters, which consumer advocates said amounted to a gift to the company. Unable to gain support for that sum, Peevey compromised and the commission approved $3.24 million for PG&E.

Taking issue

Peevey has never directly commented on Cherry's e-mails. In a statement last year, the utilities commission said they were "based on an interpretation of events from the perspective of a PG&E employee, and President Peevey disagrees with the characterizations."

In the search warrant executed Tuesday, state agents said they were looking for evidence related to the $1.3 billion rate case, the coal-gasification plant, the 100th anniversary dinner and unspecified "other matters."

State Sen. Jerry Hill, D-San Mateo, a frequent critic of the utilities commission, said he was pleased that Harris "is properly investigating what appears to illegal activity. I'm looking forward to the results of her investigation."

Jaxon Van Derbeken is a San Francisco Chronicle staff writer. E-mail: jvanderbeken@sfchronicle.com

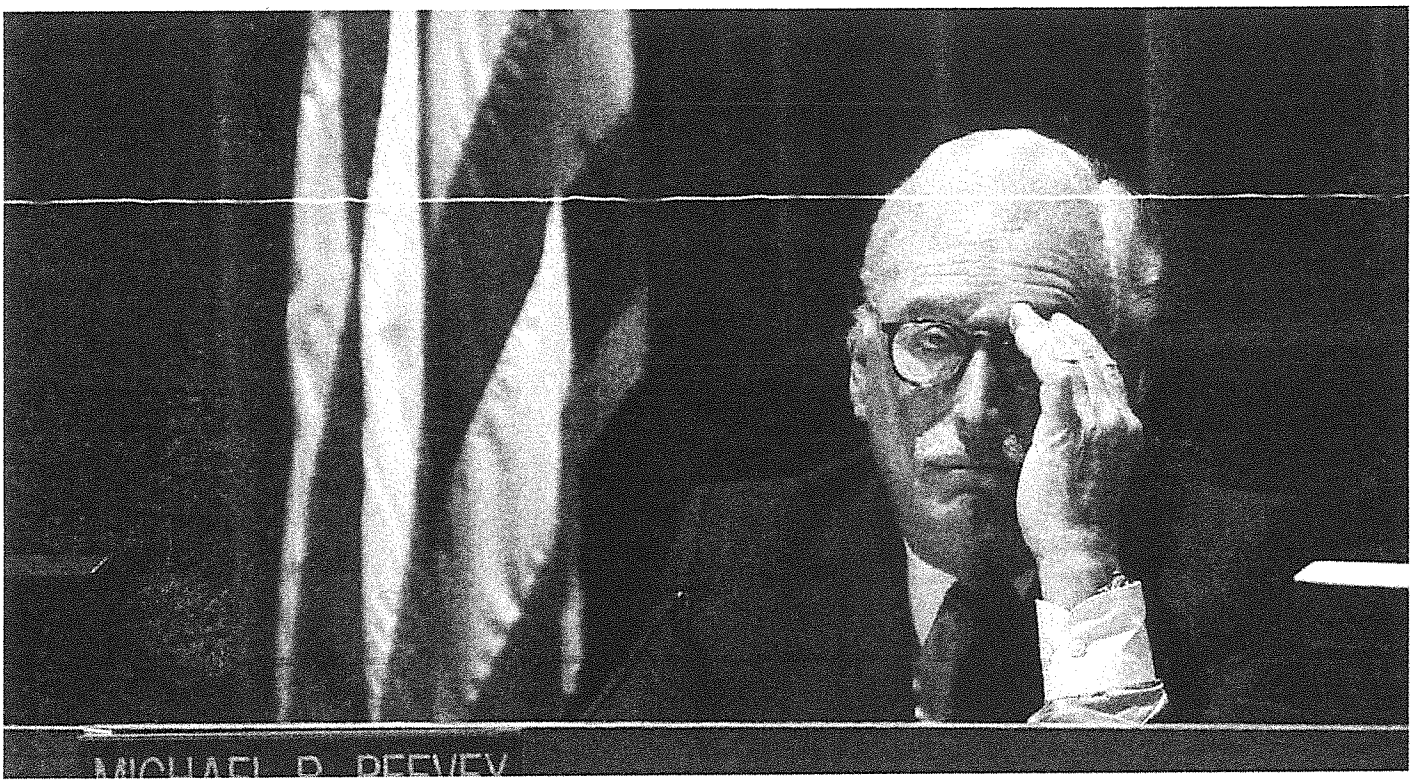
EXHIBIT 5

AG cites possible felony crime in raid on ex-utility boss

Warrant indicates notes involving San Onofre may have been among items seized


(/staff/jeff-mcdonald/)

By Jeff McDonald (/staff/jeff-mcdonald/) | 12:05 p.m. Jan. 30, 2015



Michael Peevey, when he was at the helm of the California Public Utilities Commission *AP*

State agents seized bank statements, computers. miscellaneous files and a host of other materials from the Los Angeles area home of former California Public Utilities Commission President Michael Peevey this week, indicating a public-corruption case is growing more serious.

According to the search warrant and an inventory of materials seized by Attorney General's office investigators, Peevey is suspected of committing at least one felony offense.

The 13-page document, obtained by U-T Watchdog on Friday, shows state agents executed a search warrant Tuesday at the La Cañada Flintridge home Peevey shares with his wife, state Sen. Carol Liu.

"It is further ordered that affiant be allowed to share information with federal and state and criminal and civil law enforcement authorities who are also investigating this matter," the records state.

The records show agents took an iMac computer, a MacBook Pro, three Dell computers, a thumb drive and six day planners.

They also seized "RSG notes on Hotel Bristol stationery," which may be a reference to replacement steam generators — the fatally flawed project that led to the premature decommissioning of the San Onofre nuclear power plant on San Diego County's north coast.

Also, they took a roster of utilities commission employees as of Dec. 2, 2014, which Peevey had at his home for some reason as he neared departure from his post.

Ratepayers in San Diego County and Southern California are covering $3.3 billion out of $4.7 billion in shutdown costs as a result of faulty steam generators that leaked in 2012 and prompted the plant to close for good in 2013.

Agents also searched the Northern California home of former Pacific Gas & Electric executive Brian Cherry, who was fired last year

after a series of incriminating emails were released publicly.

Agents seized an iPhone, iPad and Verizon tablet computer from Cherry's home in Orinda, east of San Francisco, on Tuesday.

They also took control of personal notebooks, four floppy discs, 14 miscellaneous compact discs or DVDs and one thumb drive, the records show.

Last summer, emails released to the city of San Bruno under the California Public Records Act appeared to show Peevey maintained unusually close ties to executives from companies he was in charge of regulating.

San Bruno sought the emails after a PG&E gas pipeline exploded within its borders, leveling an entire neighborhood and killing eight people.

Since then, additional emails have surfaced between Peevey and executives at Southern California Edison, the majority owner of the failed San Onofre power plant.

U-T Watchdog reported in January (http://www.utsandiego.com/news/2015/jan/10/regulators-hobnobbing-with-utilities-questioned/) that Peevey regularly traded emails and accepted private meeting invitations from Edison executives and other utility officials, and acceded to requests they made to him privately. One called him "such a dear" and "a great friend."

Peevey, who worked as president of Edison before he was named president of the California Public Utilities Commission in 2002, stepped down as the state's top utility regulator Dec. 31.

Neither he or Cherry has commented publicly on the search warrants.

Sen. Liu issued a press release Wednesday urging her colleagues in the Legislature to stand up for environmental justice.

EXHIBIT 6

Regulator was 'dear friend' of Edison

Emails show CPUC chief had meetings at bars, restaurants, across the globe


(/staff/jeff-mcdonald/)

By Jeff McDonald (/staff/jeff-mcdonald/) | 3:47 p.m. Jan. 10, 2015

Newly obtained emails suggest that improper contacts between the former California Public Utilities Commission president and utility executives were more extensive than previously known.

Consumer advocates and at least one lawmaker are worried the behavior may not be limited to Michael Peevey, whose 12-year stint as the top state utility regulator ended Dec. 31 amid criticism.

"This is the tip of the iceberg," state Sen. Jerry Hill, D-San Bruno, said after reading some of the correspondence. "It is very unethical and illegal, in my opinion. We need full disclosure of all email communications between sitting commissioners and the utilities they regulate."

Dozens of emails to and from Peevey indicate he communicated regularly with senior officials at Southern California Edison, a public utility he was supposed to keep unbiased watch over.

He scheduled private meetings at bars, accepted dinner invitations at restaurants stocked with caviar, spoke to utility executives in weekend telephone calls and met up with others while traveling abroad.

"London?" Peevey wrote to Edison attorney Stephen Pickett in 2013, the year the commission faced multibillion dollar decisions about the company's broken San Onofre nuclear power plant. "If coming, meet us at Stafford Hotel at 6 today."

The Edison lawyer quickly accepted.

"I'm meeting some friends for dinner at 8:30," Pickett added.

Separate emails released last year showed Peevey had been in close contact with Pacific Gas & Electric officials while the utility was under investigation for a deadly pipeline explosion in 2010.

After those emails were disclosed, PG&E fired three executives. Peevey and Commissioner Mike Florio, who also traded emails with PG&E, said they would recuse themselves from future votes concerning the company.

State regulators are not supposed to be in contact with the utilities they oversee in advance of issues coming before the commission.

The companies are permitted to contact all five commissioners jointly, but emails show Peevey was routinely in communication with Edison and PG&E officials apart from his fellow commissioners.

Peevey did not respond to messages seeking comment for this story.

Edison said the regulatory process calls for exchanges of ideas and viewpoints between the commission, staff and interested parties.

"These exchanges, which involve many community stakeholders in addition to regulated utilities, help to ensure that the regulatory decision making process is appropriately well-informed," the company said.

Peevey, 76, the top Edison executive before he was named commission president in 2002, announced in October he would not seek a third six-year term. Dozens of speakers at Peevey's final meeting last month toasted his years of service.

The emails were released in response to a California Public Records Act request filed in September by San Diego attorney Maria Severson, who is suing the commission and Edison over the failed San Onofre plant.

Severson, who noted the commission put off her request until after Peevey left office, said ratepayers should be alarmed.

"The emails produced by the CPUC show the utilities have direct, private access to the judges that determine how deep the utilities can reach into the pockets of Californians," she said. "Going forward, it is a corroded spigot running filthy with greed and lies."

Peevey swore at Severson's law partner, former San Diego City Attorney Michael Aguirre, when Aguirre asked him at a hearing in May if he had any improper contact with Edison officials.

"I'm not here to answer your goddamned questions," Peevey shouted at the time. "Now shut up — shut up!"

The emails show Peevey was willing to forsake his commission colleagues in favor of spending time with utility officials.

"OK," Peevey wrote to Edison executive Bruce Foster in 2011. "I will skip the commissioners-only lunch tomorrow and instead have lunch with you outside the hotel. You pick."

Foster called Peevey "such a dear" and "a great friend" in one of their many email exchanges.

In some cases, Peevey agreed to delay action to benefit Edison and its leaders.

"Tomorrow afternoon is bonus day at Edison," Foster wrote to Peevey in February 2011. "Are you holding bonus depreciation?"

Within the same minute, Peevey responded, "Yes, holding."

The two-week commission delay allowed Edison to award the bonuses before the commission adopted new federal tax requirements that would limit how much of the cost could be billed to ratepayers.

U-T Watchdog reported in November that Peevey similarly delayed an investigation into what caused the San Onofre Nuclear Generating Station failure after Edison made the request to him via email in June 2012.

On other occasions, according to the latest emails, Peevey offered public-relations advice to Edison. He provided similar guidance to PG&E, according to previously released emails.

Also see: Whose utilities commission is it, anyway? (http://www.utsandiego.com/news/2014/nov/15/cpuc-regulator-contacts-utility-executives-san-ono/)

"I am not at all sure your approach, which is a brush-off, is right," Peevey wrote Edison in 2013 about the company's response to a woman who complained about a tower next to her home. "Showing some compassion and compensation in individual cases may be the better approach."

Three years ago, when Edison's Les Stark emailed Peevey to ask for a private dinner, the commission president accepted 41 minutes later.

"Could do the 7th," he wrote. "I'm in SCal and Sac all of the following week."

"Thanks Mike. March 7 will work. Are you good with Jardinere?" Stark answered, an apparent reference to Jardiniere, a San Francisco restaurant that offers truffles, abalone and diver scallops, in addition to caviar.

Severson is not the only consumer advocate concerned about the emails, and what they might mean for consumer safety and costs.

Mindy Spatt of The Utility Reform Network said policing companies like Edison, PG&E and San Diego Gas & Electric is too important to leave to political appointees.

"Former President Peevey's tenure illustrates all too clearly why we need independent CPUC commissioners," said Mindy Spatt of The Utility Reform Network. "His bias was obvious in numerous cases, but our protests fell on deaf ears."

Donna Gilmore of SanOnofreSafety.org (http://SanOnofreSafety.org), a nonprofit group monitoring the nuclear plant's decommissioning process, said regulators have a history of doing what the governor wants.

"Jerry Brown appoints all of these commissioners and they're not going to do anything their boss doesn't want them to do," she said.

A spokesman for Gov. Brown declined to discuss the emails or respond to questions about how strictly the governor regulates utilities given that his sister, former state treasurer Kathleen Brown, serves as a Sempra Energy board director. Sempra owns SDG&E, and 20 percent of the closed San Onofre plant.

"If we have anything to say on that, we'll let you know," deputy press secretary Jim Evans wrote in an email.

Last month, Brown appointed Commissioner Michael Picker president of the commission. Environmental law attorney Liane Randolph was selected to assume Picker's seat.

Picker told the U-T on Friday that he was bothered by the emails between Peevey and utility executives, but they were not indicative of how most commissioners do business.

"They're troubling and very painful, but given the fact there are these investigations, it's important for me to stay out of the way," he said. "As far as I can tell, that's not taking place" any longer.

Picker, a former political consultant and Sacramento Municipal Utility District board member, said he does not favor utilities over consumers. He said he speaks with all groups but not about business facing the commisison.

"The issue is how do we stay fair," he said. "Everybody is supposed to have equal access to us on issues we are discussing."

Hill, the state senator from San Bruno, where a PG&E pipeline exploded in 2010 and killed eight people, is not convinced Picker is as forthcoming as he could be.

He said he personally asked several commissioners — including Picker — to disclose any emails they sent or received from utility executives.

"We haven't seen the release as of yet," he said. "That indicates their response."

Picker said Friday he wouldn't know how to comply with such a request because his computer erases emails after 90 days, but the commission is reviewing five years of emails to comply with various records requests.

Sen. Ben Hueso, the San Diego Democrat and chairman of the Senate Committee on Energy, Utilities and Communications, issued a statement for this story saying transparency is essential to protecting the public interest.

"All public officials need to endeavor to achieve greater transparency," he wrote. "I am hopeful that the new CPUC chair and the commissioners will stay true to the mission, vision, and values of the agency."

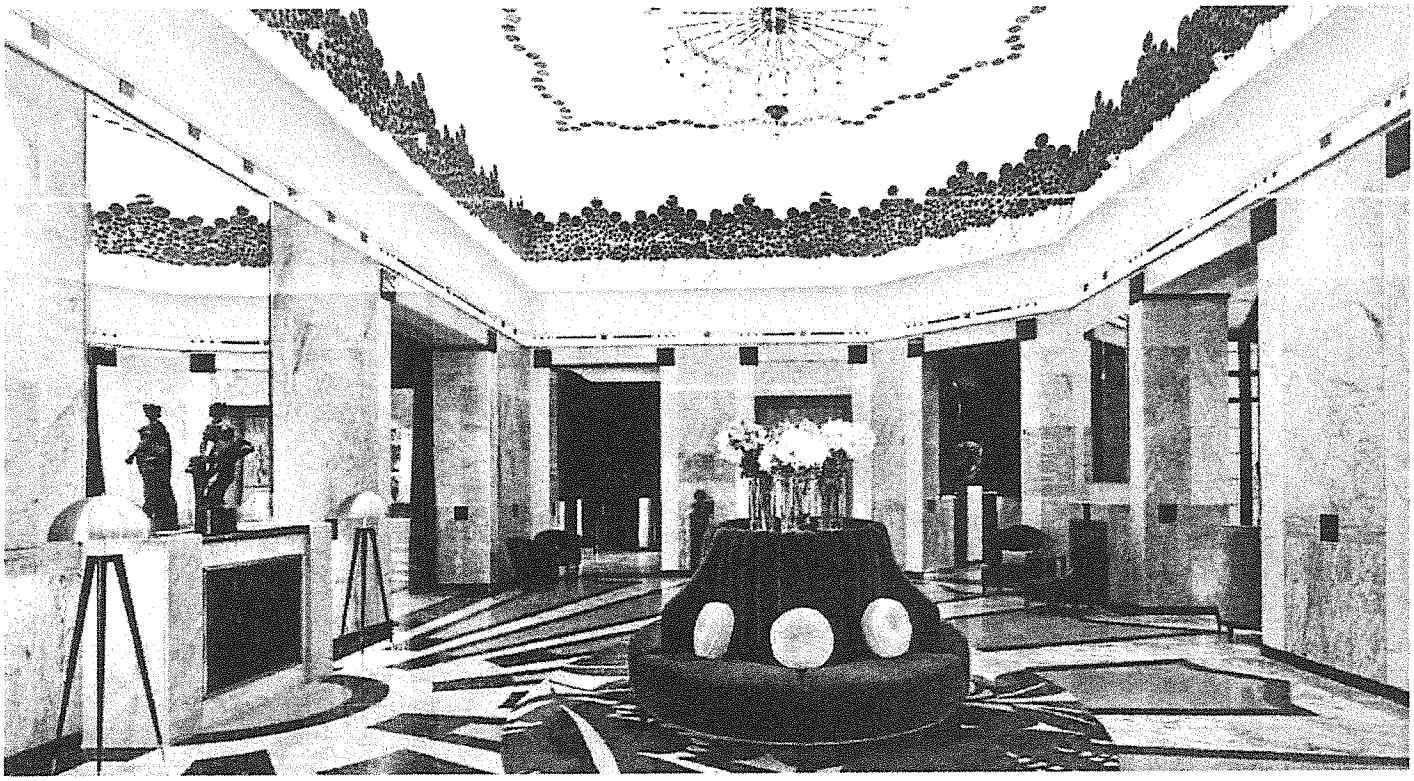
EXHIBIT 7

Meeting links CPUC probe to San Onofre

Edison discloses it met at luxury hotel in Poland with former regulator


(/staff/jeff-mcdonald/)

By Jeff McDonald (/staff/jeff-mcdonald/) | 5:44 p.m. Feb. 9, 2015



Hotel Bristol, Warsaw

Southern California Edison belatedly disclosed on Monday that a company executive met privately with former regulator Michael Peevey in Poland two years ago to discuss the San Onofre nuclear power plant and the resulting investigation into its failure.

The meeting took place in March 2013 in Warsaw at the luxury Bristol Hotel, where Peevey and former Edison executive Stephen Pickett talked for about 30 minutes about ways to resolve shutdown issues.

The Bristol Hotel is the same hotel referenced in notes seized from Peevey's home last month (http://www.utsandiego.com/news/2015/jan/30/peevey-house-raid-search-warrant-cpuc/) by state agents investigating corruption within the California Public Utilities Commission, of which he was president until Dec. 31.

The disclosure indicates that Edison and its San Onofre plant in north San Diego County have a role in the influence-peddling scandal that has confronted the commission for months.

Until now, the investigation appeared to be focused on Peevey's dealings with Pacific Gas & Electric, which fired several executives last year after publicly released emails exposed close ties to Peevey during an investigation of a pipeline blast that killed eight people in San Bruno.

U-T San Diego reported last month that materials seized in the raid (http://www.utsandiego.com/documents/2015/jan/30/peevey-affidavit/) of Peevey's Los Angeles area home on Jan. 27 included "RSG notes on Hotel Bristol stationary," an apparent reference to replacement steam generators — the fatally flawed project that led to the plant's early closure.

It was not clear which of the many Bristol hotels across the world might have been involved, but the new Edison disclosure identifies Warsaw.

The notes taken from Peevey's house may have been Pickett's summary of his meeting with Peevey. According to Edison's

disclosure, Pickett took notes from the meeting in Warsaw, and Peevey kept them.

Pickett "took notes at Mr. Peevey's direction," Edison spokeswoman Maureen Brown said Monday. "He gave the notes to Mr Peevey at Mr. Peevey's direction."

Communication between utilities and the commission that regulates them, if it takes place outside the normal public process, is supposed to be reported within three days to a list of all interested parties. In this case, Edison made the disclosure 686 days after the meeting.

Peevey did not disclose the meeting at the time it happened either. Utilities commission spokeswoman Terrie Prosper said he was not required to.

Edison said in a statement that Peevey approached Pickett during an industry event in Poland, not the other way around.

The company said it did not report the conversation initially because it did not rise to a level of substantive communication. But that determination changed last week, after U-T Watchdog published the search warrants and noted that the hotel notes were among the items seized.

Edison said it decided to report the conversation "based on further information received from Pickett."

"While Mr. Pickett does not recall exactly what he communicated to Mr. Peevey, it now appears that he may have crossed into a substantive communication," the company wrote. "Based on Mr. Pickett's recounting of the conversation, the substantive communication on a framework for a possible resolution ... was made by Mr. Peevey to Mr. Pickett, and not from Mr. Pickett to Mr. Peevey."

The company also cited a spirit of reform from new commission President Michael Picker, in explaining why the disclosure is now being made.

The Edison filing Monday confirms that Peevey discussed the project months before settlement discussions between Edison, minority owners San Diego Gas & Electric and several consumer groups began. Peevey was the top executive of Edison before taking over the commission.

The settlement negotiations culminated with a proposal that utility customers pay more than $3.3 billion of the $4.7 billion in costs for premature closure of the plant, which was shut down after leaking radioactive water.

The utilities commission approved the settlement proposal in November, a few weeks before Peevey resigned.

Consumer groups who were excluded from the settlement talks between 2013 and 2014 have opposed the settlement as a bad deal for ratepayers. They seized on the Edison filing Monday, saying it suggests that the deal was reached in secret long before the public knew anything about it.

"This shows that Peevey was involved in the settlement, contrary to his representations," said former San Diego City Attorney Mike Aguirre, who is now suing to overturn the multibillion-dollar agreement.

"This undermines the settlement approval of the CPUC and necessitates an investigation by the criminal authorities into whether an illegal agreement was made to settle to the case," he said.

"And they did it in Poland."

Aguirre tried to confront Peevey about improper communications with Edison executives at a public hearing last year, and Peevey grew angry and refused to answer the question.

"I'm not here to answer your goddamned questions," Peevey shouted. "Now shut up — shut up!"

Matthew Freedman of The Utility Reform Network, one of the consumer groups that agreed to the settlement deal last April, said Monday he was bothered by the Edison filing but defended the agreement he helped negotiate.

"It was a long process to get to a place we felt was reasonable," he said. "I'm very unhappy to hear about this (but) nobody forced me to agree to anything.

"I don't take orders from Mr. Peevey's office and I didn't make any deals with him."

Peevey, who is married to state Sen. Carol Liu, served 12 years as commission president.

The utilities commission has been the subject of intense criticism since last summer, when thousands of publicly released emails showed that Peevey regularly communicated with utility executives he was in charge of regulating.

U-T Watchdog reported last month (http://www.utsandiego.com/news/2015/jan/10/regulators-hobnobbing-with-utilities-questioned/) that the communications were far more extensive than previously understood, publishing a series of emails Peevey exchanged with Edison executives.

The emails showed Peevey regularly communicated with Edison officials, arranged agenda items for them and met them for dinner and drinks. In one particular email, an Edison executive called Peevey "such a dear" and "a great friend."

State and federal authorities have launched separate investigations into possible criminal conduct.

In addition to the hotel meeting notes seized from Peevey's home last month, agents took multiple computers, notes, a thumb drive and six years' worth of day planners.

Peevey is to be the guest of honor at a dinner in San Francisco on Thursday, as reported last week by U-T Watchdog (http://www.utsandiego.com/news/2015/jan/30/peevey-gala-invitations-amid-probe/). Scores of utility industry leaders and political appointees of Gov. Jerry Brown will celebrate his years of public service.

The $250 per plate fee for the event at San Francisco's Julia Morgan Ballroom will benefit the University of California.

EXHIBIT 8

Ralph, James

From:	Ralph, James
Sent:	Friday, April 10, 2015 5:07 PM
To:	'maguirre@amslawyers.com'
Cc:	Alviar, Janet
Subject:	PRA Requests #1414 and 1460 - Amended Response

This message has been archived. View the original item

Mr. Aguirre,

I attach the California Public Utilities Commission's Amended Response to PRA Requests #1414 and #1460 and a responsive document to those requests.

Sincerely,

James M. Ralph

Attorney

California Public Utilities Commission

505 Van Ness Avenue

San Francisco, CA 94102

Phone: (415) 703-4673

Email: James.Ralph@cpuc.ca.gov

Attachments:

Amended Response to Records Request (PRA #1414 and 1460).pdf	(91 KB)
PRA 1414, 1460 Responsive Document.pdf	(745 KB)

STATE OF CALIFORNIA EDMUND G. BROWN, JR. *Governor*

PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 10, 2015

VIA ELECTRONIC MAIL

Mike Aguirre
Aguirre & Severson
501 West Broadway
Suite 1050
San Diego, CA 92101
maguirre@amslawyers.com

Re: Public Records Request
CPUC Reference No.: PRA #1414 and 1460

Dear Mr. Aguirre:

On February 9, 2015, the California Public Utilities Commission (Commission) received your request to provide copies of the following records:

> Any and all records showing when any Commission or staff of any Commissioner first was informed of the meeting in Poland at which Mr. Peevey discussed a settlement of the OII, as described in the attached late filed ex parte notice from Southern California Edison.

In a letter dated March 6, 2015, the Commission assigned PRA #1414 to this request and responded that "its search of its records to date has not located any records responsive to your request...Should it locate any non-exempt responsive records, it will provide them to you as soon as possible."

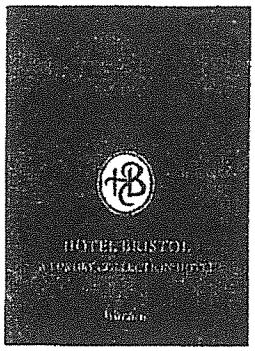
On March 18, 2015, the Commission received your request to provide copies of the following records:

> Greetings: Please provide any and all emails related to any discussions or understandings held or reached at the Bristol Hotel meeting in Warsaw, Poland amongst Peevey, and Pickett. Please provide any emails sent or received by Ed Randolph following the March 2013 Warsaw meeting to Florio, Picker, or Peevey related to San Onofre. Please provide any emails sent or received by Ed Randolph before the March 2013 Warsaw meeting to or from Florio, Picker or Peevey. Thank You, Mike Aguirre 501 West Broadway, Suite 1050, San Diego, 92101

This request was assigned PRA #1460. Today, the Commission obtained the attached responsive document and amends our previous responses to PRA requests #1414 and #1460.

Sincerely,

/s/James Ralph
James M. Ralph
Staff Counsel



1. Pre-RSG investment: recover w/ debt-level return through 2022.
2. RSG and post-RSG investment: disallow "retroactively out of rate base" effective ~~2/1/2012~~
3. Replacement power responsibility: customer
4. NEIL/insurance recoveries: to customers
5. MHI recovery: 1st to SCE to the extent of the disallowance
   2d to customers

Next pg

6. Decommissioning costs: remain in rates through time of decommissioning -- periodic redetermination in CPUC proceedings as before
7. O&M: a) Already approved GRC amounts through shutdown + 6 months
   b) OII to determine shutdown O&M through end of 2017 (i.e., not in GRC)
   c) shutdown O&M 2018 and beyond determined in GRC's
   d) Shutdown O&M to include reasonable severance for SONGS employees - A pool of $50 million

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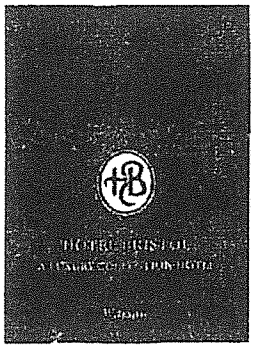
+48 22 625 25 77 facsimile / fax
KRAKOWSKIE PRZEDMIEŚCIE 42/44
00-325 WARSZAWA, POLAND
luxurycollection.com/bristolwarsaw



8. Environmental offset: SCE to donate ~~$5~~ 10 million per year 2014-2022 to _____ {an agreed upon GHG, climate, or environmental academic research fund, institution, etc.}

9. Process a) settlement agreement approved in OII
b) balance of OII closed except for shutdown O&M phase
c) new OII phase for shutdown O&M per 7(b) and 7(d) above
d) 2018 GRC for shutdown O&M 2018 and beyond
e) Usual CPUC proceedings for review of decommissioning costs

Mkt Reform

1- First $200 million — 50% cost
— 50% SCE
2- Next $200 million — 70% s
— 30% cost
3- Any above $400 million — 80% to s.
— 20% to c
up to disallowance
4- Above disallowance — 25% SCE
— 75% cost

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00-325 WARSZAWA, POLAND
luxurycollection.com/bristolwarsaw

EXHIBIT 9

Ralph, James

From:	Ralph, James
Sent:	Friday, April 10, 2015 5:35 PM
To:	'Jeff.Mcdonald@utsandiego.com'
Cc:	Alviar, Janet
Subject:	PRA Request #1440 - Amended Response

This message has been archived. View the original item

Mr. McDonald,

I attach the California Public Utilities Commission's Amended Response to PRA Request #1440 and a responsive document to that request.

Sincerely,

James M. Ralph

Attorney

California Public Utilities Commission

505 Van Ness Avenue

San Francisco, CA 94102

Phone: (415) 703-4673

Email: James.Ralph@cpuc.ca.gov

Attachments

Amended Response to Records Request (PRA #1440).pdf	(84 KB)
PRA Request 1440 Responsive Document.pdf	(745 KB)

STATE OF CALIFORNIA EDMUND G. BROWN, JR, *Governor*

PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 10, 2015

VIA ELECTRONIC MAIL

Jeff McDonald
San Diego Union Tribune
350 Camino de la Reina
San Diego, CA 92108
Jeff.Mcdonald@utsandiego.com

Re: Public Records Request
CPUC Reference No.: PRA #1440

Dear Mr. McDonald:

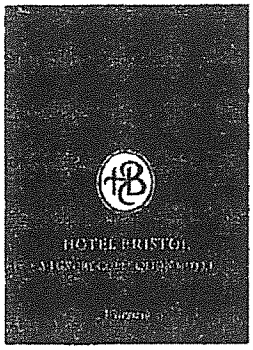
On February 27, 2015, the California Public Utilities Commission (Commission) received your request to provide copies of the following records:

> Hi,
> Please consider this a fresh CPRA for all the materials released to Severson/Aguirre and other law firms and nonprofits that have received records form the CPUC since Jan. 1, 2014. That shouldn't be too difficult or timely since they have already been compiled.
> Thanks and all best,
> Jeff

In a letter dated March 9, 2015, the Commission assigned PRA #1440 to this request. Today, the Commission obtained the attached responsive document and amends our previous response to PRA request #1440.

Sincerely,

/s/James Ralph
James M. Ralph
Staff Counsel



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   c) shutdown O&M 2018 and beyond determined in GRC's
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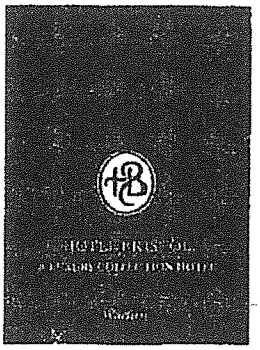

8. Environmental offset: SCE to donate ~~$5.0~~ 10 million per year 2019-2022 to _____ {an agreed upon GHG, climate, or environmental academic research fund, institution, etc.}

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d) 2018 GRC for shutdown O&M 2018 and beyond
e) Usual CPUC proceedings for review of decommissioning costs

MHI Refund

1- First $200 million — 50% cust. / 50% SCE
2- Next $200 million — 70% s / 30% cust.
3- Any above $400 million up to disallowance — 80% to s. / 20% to c
4- Above disallowance — 25% SCE / 75% cust.

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EXHIBIT 10

From: Raymond Marshall <RMarshall@sheppardmullin.com>
Sent: Friday, February 13, 2015 4:54 PM
To: Aguilar, Arocles; Reiger, J. Jason; Clay, Christopher
Cc: Pamela Naughton; Krystal Bowen
Subject: FW: Request for Peevey's Notes

REDACTED

Raymond C. Marshall
415.774.3167 | direct
415.403.6230 | direct fax
RMarshall@sheppardmullin.com | Bio

SheppardMullin
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109
415.434.9100 | main
www.sheppardmullin.com

From: Brett Morris [mailto:Brett.Morris@doj.ca.gov]
Sent: Friday, February 13, 2015 4:28 PM
To: Raymond Marshall
Cc: Morris, Harvey Y.
Subject: Re: Request for Peevey's Notes

Mr. Marshall-

I have been in a meeting this afternoon on another enforcement matter. I believe my previous points still hold - evidence obtained during the execution of a search warrant cannot be released, and all indications surrounding the document to which you refer are that no recognizable privilege could be asserted by the CPUC. I would be happy to review any legal or factual basis you could provide on Tuesday but my office and the San Francisco Superior Courts are closed on Monday.

Brett J. Morris
Deputy Attorney General
(510) 622-2176

Sent from my iPhone

On Feb 13, 2015, at 11:59 AM, Raymond Marshall <RMarshall@sheppardmullin.com> wrote:

> Brett,
>
> Thanks for your response. Not yet having seen the document in question it is difficult to respond to many of the points raised in your email. What I can say however is that it is the CPUC's position that any handwritten notes by Commissioner Peevey acting in his capacity as President of the CPUC, reflecting CPUC business and internal deliberations of

the CPUC are CPUC documents, wherever located or seized, and subject to a claim of privilege.

As described to us there is the possibility that the document may be privilege. This determination can't be made without viewing the document. Accordingly, we ask again that we be provided with a copy of the document for use in defense of ongoing litigation against the CPUC, and ask that the document be treated as confidential and privileged CPUC material until such a determination can be made.

We further ask that you provide us with advance written notice of any decision to share the document with any other person to allow the CPUC us to pursue legal remedies to prevent such disclosure.

Ray

Raymond C. Marshall
415.774.3167 | direct
415.403.6230 | direct fax
RMarshall@sheppardmullin.com | Bio

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Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109
415.434.9100 | main
www.sheppardmullin.com

From: Brett Morris [mailto:Brett.Morris@doj.ca.gov]
Sent: Friday, February 13, 2015 11:35 AM
To: Raymond Marshall
Subject: RE: Request for Peevey's Notes

Mr. Marshall-

I write in response to your request, on behalf of your client the CPUC, to obtain a copy of a document that you claim: may exist, may be written by a third party, may involve a CPUC proceeding, may contain information relating to a discussion between a party to a CPUC proceeding with a CPUC officer, and may be important to a third party law suit. While you may have some awareness that a search warrant was executed in Los Angeles, you have not set forth any legal basis to receive a "copy" of evidence seized in a separate criminal investigation (evidence which must be retained in the custody of the officer pursuant to the warrant). Following the laws relating to California search warrants, we typically do not release evidence obtained in confidential criminal investigations.

Based on your description below, the Late-Filed Notice of Ex Parte Communication filed on February 9, 2015 with the CPUC by Southern California Edison Company (SCE), and information or public statements concerning the notes about which you "are not clear,"

I fail to grasp the factual or legal basis for a claim of privilege. In addition, based on your description and all other available information, there actually may exist the clear consequence that confidentiality or privilege has been waived. Unless you can provide some legal authority defining a privilege under the known facts involving this purported sharing of information, I must deny your request. I sincerely hope during your analysis of the search warrant evidence seized from the CPUC, some of which we are still waiting for you to produce, you are not asserting a similar "privilege" over documents, materials, or other information that has been discussed or shared with non-CPUC members.

One issue of note, now presented by the Late-Filed Notice of Ex Parte Communication filed by SCE, any Public Records Act requests previously made to the CPUC, or any other informal sharing of information, is that this document may have been subject to previous disclosure requirements by both the CPUC and SCE. For that reason, we are considering whether this document should be released to other parties that may claim an interest in this document or the information, as that document or the information appears to have been shared between multiple parties already.

Brett J. Morris
Deputy Attorney General
(510) 622-2176

From: Raymond Marshall [mailto:RMarshall@sheppardmullin.com]
Sent: Thursday, February 12, 2015 6:56 PM
To: Brett Morris
Cc: Morris, Harvey Y.
Subject: Request for Peevey's Notes

Brett,

As we discussed yesterday, I understand that in executing the search warrant on Commissioner Peevey's (Peevey) home, your office obtained a copy of Peevey's handwritten notes of a discussion between Peevey and Stephen Pickett (Pickett) regarding the status of the San Onofre Nuclear Generating Station (SONGS) OII proceeding.

Not yet having seen the notes, at this time we are not clear whether Mr. Peevey's notes were written on a document originally authored by Pickett, or on a separate document authored by Peevey. Nevertheless, our request remains the same: the CPUC would like a copy of Peevey's and Pickett's notes by tomorrow to review to determine whether a privilege exists as to the notes and, if so, whether to waive that privilege in pending litigation involving the SONGS OII.

The urgency of this request is that the documents have been identified as important evidence in defense of a suit filed against the CPUC in the Southern District of California, being managed in-house by Harvey Morris (whom I understand you know from the San Bruno Fire proceedings). Please call me tonight at work or on my cell (415-279-5579) to discuss or answer any questions you may have regarding this request. In the meantime,

and upon review by us, we ask that the notes at issue be treated as confidential privileged CPUC documents.

Thank you for your cooperation and assistance in this matter.

Ray

Raymond C. Marshall
415.774.3167 | direct
415.403.6230 | direct fax
RMarshall@sheppardmullin.com | Bio

SheppardMullin
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109
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Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

EXHIBIT 11

From: Reiger, J. Jason <Jonathan.Reiger@cpuc.ca.gov>
Sent: Monday, July 11, 2016 5:10 PM
To: Naughton, Pamela; Roberts, Rebecca
Cc: Aguilar, Arocles
Subject: FW: Monday

REDACTED

-----Original Message-----
From: Raymond Marshall
Sent: Friday, February 27, 2015 12:55 PM
To: 'Maggy Krell'
Cc: Brett Morris
Subject: RE: Monday

Thanks Maggy. Both Mr. Randolph and President Picker (I assume you meant Picker, not Pickett) are confirmed.

Please consider that in addition to the reasons previously given for a copy of Mr. Pickett's notes, I would now add that it would help refresh Mr. Randolph's recollection of the matters discussed in Poland if he had a chance to review the document before he is interviewed. I think this would make the interview better for everyone. If you agree, I'll get it to him over the weekend.

Again, thanks and I'll see you Monday.

EXHIBIT 12

San Onofre plan details under scrutiny

Investigators have focused on two last-minute additions to settlement


(/staff/jeff-mcdonald/)

By Jeff McDonald (/staff/jeff-mcdonald/) | 7:50 a.m. March 14, 2015

The criminal investigation into the California Public Utilities Commission is focusing on two key revisions to the plan for dividing up $4.7 billion in costs for premature shutdown of the failed San Onofre nuclear power plant.

The changes boosted the amount of money that would go to customers if recovered from insurers or in litigation and called for the plant's owners to donate $25 million to the University of California for research on greenhouse gases.

According to two witnesses questioned in the case, investigators are asking how those provisions came to be added to the final settlement.

Based on inquiries from investigators, it appears that those aspects of the plan — portrayed as last-minute additions — were jotted down in notes taken at a secret meeting at a Warsaw hotel long before any public process began.

That would raise the question of whether the original settlement — and subsequent revisions — were orchestrated to follow the framework set in Poland by Michael Peevey, then president of the public commission, and a Southern California Edison executive.

"The questions made me wonder how much of the settlement terms were contrived by Peevey," said one witness who has been interviewed by investigators. "If it was conceived in Warsaw, that means the whole investigative proceeding was a sham."

The final settlement deal approved in November assigned to ratepayers 70 percent of closure costs, with a lesser share for power companies. The deal had the effect of cutting short a probe by the commission of who was at fault.

The U.S. Department of Justice and the California Attorney General's office are reviewing allegations of backchannel communications and favoritism that may have helped utility executives at the expense of the public during the San Onofre response and other matters.

Shortly after the Warsaw meeting, settlement plans were negotiated in private by utility lawyers and two consumer groups over 10 months. San Onofre was also discussed at a key meeting among state officials at the exclusive California Club in Los Angeles.

The settlement was announced publicly in March 2014 and was supposed to get an up-or-down vote from the commission, strictly as proposed.

Six months later, Commissioner Michel Florio and two administrative law judges announced the two amendments, which they said would make the proposal better serve the public interest.

The revised deal was approved in November at one of Peevey's last meetings.

Peevey resigned from the commission at the end of 2014 after a spate of emails released under the state open-records law showed that he and other regulators communicated and met privately with utility executives routinely, and accommodated their behind-the-scenes requests about commission matters.

Two weeks before regulators approved the San Onofre deal in November with almost no public debate, state investigators executed a search warrant at the commission's San Francisco headquarters.

Agents searched (http://www.utsandiego.com/news/2015/jan/30/peevey-house-raid-search-warrant-cpuc/) Peevey's Los Angeles area home in January, seizing bank records, computers, day planners and "RSG notes on Hotel Bristol stationary."

The abbreviation stands for replacement steam generators, the flawed project that caused the premature shutdown of San Onofre in 2012, and the Hotel Bristol is where the Warsaw meeting took place.

The handwritten notes were the first evidence to connect the broken San Diego County power plant to the corruption investigation, which had been limited to commission dealings with Pacific Gas & Electric in Northern California.

Days after U-T San Diego reported the connection, Southern California Edison formally disclosed — almost two years late — that then-executive Stephen Pickett had participated in the private meeting with Peevey in Poland in March 2013.

It remains to be seen how closely the publicly approved settlement deal hews to the notes taken in secret half a world away.

Investigation stopped

Even before the meeting in Warsaw was revealed, certain advocacy groups felt that the public proceedings to investigate the plant failure and assign costs became a done deal too quickly and too easily.

The way Edison described the meeting in Poland, when it filed its belated disclosure notice (http://www.utsandiego.com/news/2015/feb/09/cpuc-warsaw-hotel-bristol-peevey-edison/), it was clear that all parties would not be on board.

"Mr. Peevey initiated a communication on a framework for a possible resolution of the Order Instituting Investigation that he would consider acceptable but would nonetheless require agreement among at least some of the parties to the OII," the company wrote (http://media.utsandiego.com/news/documents/2015/02/09/Ex-ParteNotice020915.pdf).

Efforts to enlist "at least some of the parties" began almost immediately.

Not long after the Warsaw meeting between Peevey and Pickett, Edison lawyer Henry Weissmann contacted The Utility Reform Network, a San Francisco advocacy group, to talk about a deal.

By June 2013, as Edison announced it would no longer seek to restart San Onofre and instead shut the plant for good, utility and TURN lawyers were knee-deep in settlement negotiations.

Meanwhile, Peevey and other state officials convened in July at the California Club (https://www.google.com/search?q=california+club&source=lnms&tbm=isch&sa=X&ei=qUkEVZLvKZHWoASEgoKgBQ&ved=0CAgQ_AUoAg&biw=1152&bih=737), an exclusive meeting place in downtown Los Angeles where the gourmet food is reserved for members, "privilege holders" and their guests.

Records show the officials gathered in a private dining room on the third floor of the historic building for a three-hour post-San Onofre "strategy dinner." Peevey's successor, Michael Picker, was there too.

The state Office of Ratepayer Advocates, which reports to Gov. Jerry Brown and not utilities commissioners, joined the settlement discussions later in 2013, as did the Friends of the Earth environmental group.

The San Onofre case had 10 intervenor groups, or formally recognized third parties to the commission's decisions on the matter.

Eight of the 10 stakeholders — mostly modest nonprofit organizations like Citizens Oversight, Women's Energy Matters and the Alliance for Nuclear Responsibility — were not part of the settlement.

"None of us were informed of those negotiations," said Jean Merrigan of Women's Energy Matters. "We were invited to attend the so-called settlement conference on March 27, 2014, but at that meeting the proposed settlement agreement was announced as a done deal."

The settlement halted an investigation into the plant's failure, which might have highlighted some uncomfortable issues for the company and the commission.

Edison's own experts had warned in 2004 and 2005 that designs for the $680 million steam generator replacement project could fail. The utilities commission allowed the upgrade to proceed anyway, and without a federal license amendment.

Also, the project was never formally placed into the customer rate base. Peevey nonetheless allowed Edison to start recouping millions of dollars from ratepayers without a required finding that the project was useful and the cost reasonable.

"They knew if they went through an actual full investigation, all this would come out and they would not get any of the costs charged to consumers for the steam generators," said Ray Lutz of Citizens Oversight, the San Diego nonprofit suing to overturn the settlement. "The commission went along with the deal, apparently inked at the Warsaw, Poland, meeting."

Greenhouse gas research

When TURN and Edison announced the San Onofre settlement a year ago this month, it was portrayed as a money-saver for ratepayers.

"Agreement Over San Onofre Would Save Customers $1.4 Billion," TURN said in its news release.

As it turned out, ratepayers would pay $3.3 billion, and utility companies would pay the remainder of the estimated $4.7 billion in premature shutdown costs.

The plan was to fly or sink as proposed — no changes, the negotiators said last spring.

In opposition briefs filed in May, however, the Alliance for Nuclear Responsibility complained that possible insurance payments and legal settlements arising from the failed steam generator replacement project were too favorable to the utilities.

Alliance attorney John Geesman also noted there was no money set aside to pay for studying the impact of burning so much extra fossil fuels to make up for the lost San Onofre output.

"The proposed settlement ignores core CPUC priorities," Geesman wrote.

Two months later, Peevey called Geesman out of the blue, according to a disclosure filed by the Alliance for Nuclear Responsibility lawyer in July. The two men talked about setting up a research group to examine impacts of greenhouse gas on the environment.

Peevey "did not mention any UC connection in his call to me," Geesman told U-T San Diego. "Let me add that he did not mention any dollar amount or how he intended to address CO2 concerns."

In September, when Florio and the administrative judges brought forth their proposed changes to the settlement plan released in March, the amendments included five years of $5 million donations to the University of California for a greenhouse-gas research effort.

The terms suggested the research be done at the University of California Energy Institute, based at Berkeley, which is Peevey's alma mater.

They also changed terms of any recovery from Mitsubishi Heavy Industries, the steam-generators manufacturer Edison is now suing, so ratepayers and stockholders would share the funds equally.

Peevey stepped down at the end of 2014, as the investigations heated up. The same interest groups whose easy access to Peevey has raised scrutiny threw him a $250-a-plate farewell party (http://www.utsandiego.com/news/2015/jan/30/peevey-gala-invitations-amid-probe/) last month at San Francisco's Julia Morgan ballroom.

Proceeds went to the University of California, Berkeley (http://www.utsandiego.com/news/2015/feb/12/peevey-party-senator-berkeley/).

EXHIBIT 13

From: Raymond Marshall <RMarshall@sheppardmullin.com>
Sent: Friday, April 10, 2015 1:55 PM
To: Aguilar, Arocles; Clay, Christopher; Reiger, J. Jason
Cc: Pamela Naughton
Subject: FW: Hello

REDACTED

Raymond C. Marshall
415.774.3167 | direct
415.403.6230 | direct fax
RMarshall@sheppardmullin.com | Bio

SheppardMullin
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109
415.434.9100 | main
www.sheppardmullin.com

From: Reye Diaz [mailto:Reye.Diaz@doj.ca.gov]
Sent: Friday, April 10, 2015 1:51 PM
To: Raymond Marshall
Subject: RE: Hello

Ray, we are playing telephone tag. I have to go into a meeting and will be out in 30 minutes. On another note, I just telephoned a Ed Moldavasky with the Office of Rate Payers Advocates (ORA), as he was one of the people involved with the settlement process on SONGS. Prior to the telephone call, I didn't realize ORA technically falls under CPUC? He referred me to Jason Reiger. I told him that I would advise you that I called him. His phone number is 213-620-2635. I will call you in 30 minutes.

Reye

From: Raymond Marshall [mailto:RMarshall@sheppardmullin.com]
Sent: Friday, April 10, 2015 1:38 PM
To: Reye Diaz
Subject: RE: Hello

Reye,

That sounds good. I just left you a voice message. Give me a call back and we can discuss next steps. Would be great to get a copy of the notes today. Thanks.

Ray

Raymond C. Marshall
415.774.3167 | direct

415.403.6230 | direct fax
RMarshall@sheppardmullin.com | Bio

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415.434.9100 | main
www.sheppardmullin.com

From: Reye Diaz [mailto:Reye.Diaz@doj.ca.gov]
Sent: Friday, April 10, 2015 1:13 PM
To: Raymond Marshall
Subject: Hello

Mr. Marshall, I also left you a message at your office. I would like to talk to Mr. Randolph again about the meeting in Poland. Prior to the meeting, I have no problem sharing the notes with you to go over with him. In fact, to make it convenient for me, we can even schedule a conference call to go over the basic questions I have. I can also email the notes to you today but would like to talk to you first before doing that.

Reye
916-997-5396

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.
Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

EXHIBIT 14

U.S. District Court

Southern District of California

Notice of Electronic Filing

The following transaction was entered by Aguirre, Michael on 4/10/2015 at 4:14 PM PDT and filed on 4/10/2015

Case Name: Citizens Oversight, Inc. et al v. California Public Utilities Commission et al
Case Number: 3:14-cv-02703-CAB-NLS
Filer: Citizens Oversight, Inc.
Ruth Henricks
Francis Karl Holtzman
Roger Johnson
David Keeler
Neil Lynch
Hugh Moore
Nicole Murray Ramirez
Document Number: 24

Docket Text:
RESPONSE in Opposition re [12] MOTION to Dismiss *Plaintiffs' Complaint for Declaratory and Injunctive Relief*, [11] MOTION to Dismiss for Lack of Jurisdiction *Filing of "RSG" Hotel Bristol Notes Filed in Opposition to Defendant Southern California Edison Company's Motion to Dismiss* filed by Citizens Oversight, Inc., Ruth Henricks, Francis Karl Holtzman, Roger Johnson, David Keeler, Neil Lynch, Hugh Moore, Nicole Murray Ramirez. (Attachments: # (1) Proof of Service)(Aguirre, Michael)

3:14-cv-02703-CAB-NLS Notice has been electronically mailed to:

Harvey Yale Morris hym@cpuc.ca.gov

Henry Weissmann henry.weissmann@mto.com, karen.easton@mto.com, vivian.rodriguez@mto.com

James McIntosh Ralph james.ralph@cpuc.ca.gov

Maria C Severson mseverson@amslawyers.com, mbyrnes@amslawyers.com

Nathan M. Rehn thane.rehn@mto.com, maureen.lechwar@mto.com

3:14-cv-02703-CAB-NLS Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1106146653 [Date=4/10/2015] [FileNumber=8954039-0
] [28bcd39c13a94855edde493bc2c106a357e8c020a143ae22e12ac187240f1c85fda
82c9f41fb4522c275cd5b6bb16756a7feb4cada1779263e78c7e4283c75a0]]
Document description: Proof of Service
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1106146653 [Date=4/10/2015] [FileNumber=8954039-1
] [8eab96e69908e2a0e0901a30e89443774dd8db1a6b4b6cc038855f41996efe415f6
c59915353008b254d14798c4f78331eb21a458a52f7cc2a44f3d977b32de2]]

EXHIBIT 15

Hotel notes show San Onofre deal hatched early

Framework was set in Poland, before public process began

 (/staff/jeff-mcdonald/)

By Jeff McDonald (/staff/jeff-mcdonald/) | 5:29 p.m. April 10, 2015 | Updated , 9 p.m.

Notes of a March 2013 secret meeting at a luxury hotel in Warsaw show that a $4.7 billion deal to divide shutdown costs for the failed San Onofre nuclear plant was largely in place a year before any provisions were made known to the public.

The notes were entered into the case file on Friday in a lawsuit challenging the deal as unfair because it assigns 70 percent of closure costs to customers, and the rest to shareholders in the utility companies that own the plant and installed flawed equipment.

Notes of the meeting in Poland between then-California Public Utilities Commission President Michael Peevey and a Southern California Edison executive were seized in January by criminal investigators probing backchannel communications and possible favoritism by regulators. An Edison spokeswoman noted (https://media.utsandiego.com/news/documents/2015/04/10/scestatementapril10.pdf) that some elements of the final plan differed from the notes.

Commission business is supposed to be conducted in public, so notes showing billions of dollars of decision-making taking shape 6,000 miles away has serious implications.

Related: NRC says nuclear plant failure not our fault (http://www.utsandiego.com/news/2015/apr/10/nrc-stands-by-process-at-onofre/)

The two-page handwritten hotel notes were submitted to U.S. District Court Judge Cathy Ann Bencivengo, who earlier this week scheduled oral arguments in a lawsuit filed by Citizens Oversight, the San Diego consumer group that sued the commission and Edison late last year. The hearing will be held Thursday afternoon.

The notes were also released to U-T San Diego on Friday in response to a Feb. 27 request under the California Public Records Act.

Sketched out during the secret meeting two years ago between Peevey and Edison's Stephen Pickett, the notes show several deal points that became key pieces of the San Onofre settlement.

Both the notes and the official agreement adopted in November call for ratepayers to absorb the entire cost of replacement power, an expense that has added hundreds of millions of dollars to the monthly bills sent to Southern California consumers.

They also call for the commission to disallow billing of ratepayers for costs related to the $680 million faulty replacement steam generator project after Feb. 1, 2012, the day after a radiation leak resulted in the plant closure.

Perhaps most telling are two amendments Commissioner Michel Florio proposed this past September — 18 months after Peevey and then-Edison executive Stephen Pickett discussed them during their meeting at the Hotel Bristol.

The first change called for Edison to split with ratepayers any money it recovers from its lawsuit against the steam-generator manufacturer, Mitsubishi Heavy Industries Inc. The second called on plant owners to pay $5 million per year for a center to study greenhouse gas emissions.

Both proposals are bullet points in the "RSG notes," as they are known in search warrant documents filed by criminal investigators. The abbreviation stands for replacement steam generators.

The lead agreement point reads: "Pre-RSG investment: recover w/ debt level return through 2022," meaning Edison will recoup its investment in San Onofre other than the steam generator project.

That provision is important for two reasons.

First, it matches what commissioners agreed to in November. Second, the notes were drafted in March 2013, months before Edison announced that San Onofre would be shut down for good. Until June 2013, the company's public position was that it was committed to restarting the plant.

The deal point regarding long-term cost recovery is not the only indication that Edison and minority owner San Diego Gas & Electric did not intend to reopen San Onofre back in March 2013.

"Shutdown O + M to include reasonable severance for SONGS employees," say the Warsaw notes, written down primarily by Pickett. "A pool of $50 million" is jotted nearby in what appears to be someone else's handwriting.

Edison spokeswoman Maureen Brown noted the eventual settlement contained differences, such as the number of years for funding greenhouse gas research and the percentage distribution of any litigation proceeds against Mitsubishi.

"The settlement was subject to extensive review, hearings and comment in a public process," Brown said. "It's important to note the settlement was reached a year later after many months of give-and-take."

The commission did not immediately respond to questions about the notes. San Diego attorney Michael Aguirre, who represents Citizens Oversight, declined to comment.

Under a section titled "Process," the notes spell out how the agreement will be implemented in five subsections labeled "a" through "e."

The process was critical because five months before Peevey and Pickett met in Poland, the commission opened an internal investigation to examine the chain of decisions that led the steam generators to fail.

A settlement with one or more of the stakeholder groups monitoring the San Onofre case would cut short the investigation, obscuring from the public record what led to the problems that forced the plant closure.

Within weeks of the Warsaw meeting, Edison approached The Utility Reform Network consumer group in San Francisco about initiating settlement talks.

TURN lawyers and the state's Office of Ratepayers Advocates met privately with Edison officials dozens of times over the next 10 months, negotiating how to close the case in a way that was fair to ratepayers and the utilities.

The agreement was promoted by all sides as a good deal for customers. Peevey and Florio both issued news releases supporting the arrangement.

Groups like Citizens Oversight, the Alliance for Nuclear Responsibility and Women's Energy Matters — all of which were unaware of and excluded from the negotiations — have urged the commission to reject the deal.

"This is astonishing," said attorney John Geesman, who represents the Alliance for Nuclear responsibility. "TURN and ORA are both going to have to struggle with whether or not they were simply marionettes in this process.

"I say that as a former president of the TURN board of directors," he added. "It's not something I say lightly."

Neither TURN nor the commission's Office of Ratepayer Advocates immediately responded Friday to questions about the RSG notes.

The commission investigation was suspended nearly as soon as the settlement was announced. In approving the agreement in November, commissioners said it was no longer necessary to determine what led to the breakdown.

The commission has become the subject of multiple criminal investigations opened last year, when emails first surfaced showing commissioners and other regulators engaging in behind-the-scenes communications with Pacific Gas & Electric executives.

U-T San Diego reported the "RSG notes" in January, disclosing for the first time that the criminal investigations into regulators' improper contacts with utilities stretched beyond PG&E.

Days after the U-T San Diego report was published, Edison filed a notice of so-called ex parte communications, reporting the meeting at the Hotel Bristol nearly two years beyond the deadline to disclose such contacts.

"Mr. Peevey initiated a communication on a framework for a possible resolution of the Order Instituting Investigation that he would consider acceptable but would nonetheless require agreement among at least some of the parties," Edison reported.

In explaining the filing in early February, Edison said it did not report the conversation initially because it did not rise to a level of substantive communication.

"While Mr. Pickett does not recall exactly what he communicated to Mr. Peevey, it now appears that he may have crossed into a substantive communication," a company news release said. "Based on Mr. Pickett's recounting of the conversation, the substantive communication on a framework for a possible resolution... was made by Mr. Peevey to Mr. Pickett, and not from Mr. Pickett to Mr. Peevey."

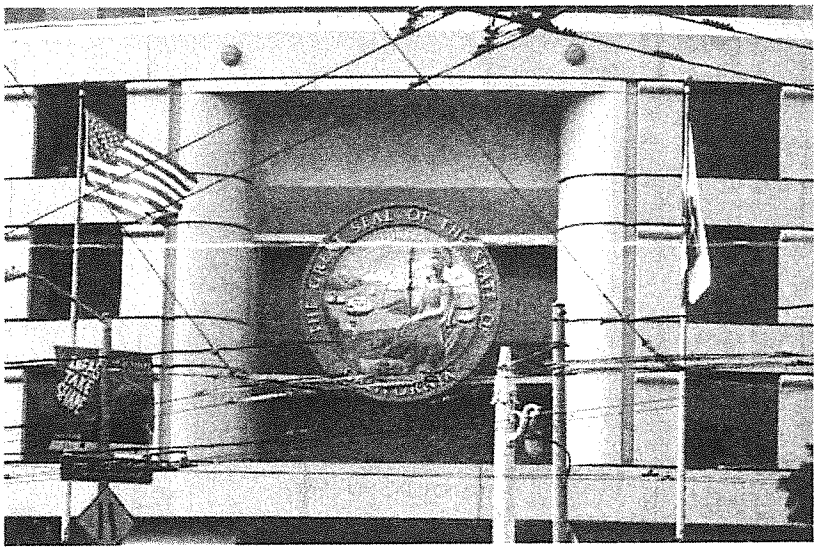
EXHIBIT 16

2 new warrants served in CPUC case

Agents seek documents at headquarters for Edison, utilities commission


(/staff/jeff-mcdonald/)

By Jeff McDonald (/staff/jeff-mcdonald/) | 6 a.m. July 6, 2015



California Public Utilities Commission headquarters in San Francisco has been served with a new set of search warrants. [Mel/Flickr]

The criminal investigation of the California Public Utilities Commission appears to be intensifying, with state agents serving a fresh round of search warrants at the regulators' headquarters in San Francisco and at Southern California Edison offices outside Los Angeles.

The Attorney General's Office wants details about a settlement agreement that assigned Southern California ratepayers to cover $3.3 billion in shutdown costs for the San Onofre nuclear plant, which closed on an emergency basis in January 2012 after Edison installed faulty replacement steam generators that caused a radiation leak.

According to documents obtained by The San Diego Union-Tribune, investigators executed a warrant at the commission offices on June 5, seeking "any and all records" pertaining to the San Onofre settlement between the day of the leak — Jan. 31, 2012 — and January 2015.

They also requested records of any communications about the commission's internal investigation of the San Onofre closure and any correspondence regulators had with two consumer groups that negotiated the settlement with Edison.

"With respect to the categories of documents specified in the search warrant, CPUC will search for, review and produce responsive documents," the warrant orders.

It was not the first search warrant served on the commission, a quasi-judicial agency charged with ensuring "just and reasonable" utility rates for tens of millions of Californians.

Agents seized computers, files and other materials from its San Francisco office in November, focused at that time on the commission's relationships with Pacific Gas & Electric after a deadly pipeline blast in 2010. The latest warrants show a more recent focus on Edison, majority owner of the San Onofre plant north of Oceanside.

The San Onofre search warrant lists almost two dozen people whose emails and other communications investigators want to review, including the highest levels of leadership at both the commission and the utility.

A 20-page affidavit that lays out the agent's case for seeking the warrant was sealed by Los Angeles Superior Court. The documents that are publicly available discuss delays in obtaining records needed by investigators.

"CPUC legal counsel advises that due to limited resources, and the concurrent demands of federal subpoenas and public records act requests, the evidence is not currently available," the records state. "Despite requests, CPUC has still not provided a specific time frame as to when documents will be provided as ordered by the court."

The utilities commission said it has received and complied with numerous subpoenas, search warrants and public records requests calling for millions of documents covering many different subject areas and time spans.

"To date, the CPUC has produced to prosecutors many documents in response to their requests," spokeswoman Terrie Prosper said. "We continue to cooperate with the investigations by locating, processing and producing responsive documents as quickly and efficiently as our resources allow."

The commission is spending up to $5 million of ratepayer money on criminal-defense attorneys earning up to $882 per hour each.

In addition to details about the San Onofre settlement and the negotiation process, agents requested information related to a meeting in Poland two years ago between then-commission President Michael Peevey and Edison executive Stephen Pickett.

The meeting was undisclosed until The San Diego Union-Tribune reported in January that notes from the meeting at the luxury Hotel Bristol Warsaw had been seized at Peevey's home by criminal investigators. Edison then filed a two-years-late disclosure notice saying that the men had discussed a framework for settling the San Onofre shutdown costs.

The agreement approved by the commission in November assigned 70 percent of the $4.7 billion in costs to ratepayers, as opposed to shareholders in Edison and minority owner San Diego Gas & Electric. Many of the deal points followed the framework set in Warsaw, although certain details changed during negotiations.

One idea in the Poland meeting notes that became part of the plan was that tens of millions of dollars in utility money be set aside for greenhouse gas research at the University of California.

In the June warrant, investigators specifically requested any correspondence that mentions UCLA, where Peevey accepted a seat on a prestigious advisory board after repeatedly pressuring Edison to approve the $25 million donation.

The Union-Tribune reported in April that UCLA was drafting proposals for how to spend the grant money months before other institutions knew what was coming.

The warrant covers 20 separate current and former officials at the commission and Edison besides Peevey and Pickett. They include Commissioner Michel Florio and his chief of staff, Sepideh Khosrowjah; former Executive Director Paul Clanon; and Melanie Darling, the administrative judge overseeing the San Onofre case.

Former Peevey aide Audrey Lee is named in the warrant. Lee now works for former utilities commissioner Susan Kennedy, whose company is in business with Edison and awaiting approval from regulators for contracts worth up to $100 million.

The request also covers Ted Craver, chairman of Edison International, which owns Southern California Edison, as well as Edison executives Ronald Litzinger, Russ Worden, Michael Hoover and Gaddi Vasquez, also a former U.S. ambassador and Orange County supervisor.

Edison issued a statement Friday saying it has done nothing improper and is complying with the demand.

"SCE has been cooperating fully with the AG's office to provide the documents requested, and the AG's office has allowed SCE the time necessary to search for and produce responsive documents," the statement said.

The company was served at its Rosemead headquarters on May 19 after Special Agent Reye Diaz filed an 18-page affidavit outlining his case for why the offices should be searched. The affidavit also was sealed, but the records show Edison supplied "numerous emails and records" by June 2, and that more will be forthcoming.

Jonah Valdez contributed to this report.

EXHIBIT 17

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 322-0896
Facsimile:
E-Mail: Deborah.Halberstadt@doj.ca.gov

December 22, 2015

Ms. Rebecca Roberts
DLA Piper, LLP
401 B Street, Suite 1700
San Diego, California 92101-4297

RE: California Public Utilities Commission

Dear Ms. Roberts:

Thank you for your recent productions of 1) documents responsive to the November 5, 2014 search warrant (CPUC CALAG 02130833-02144600) and 2) the reproduction of documents in response to the June 5, 2015 search warrant (CPUC CALAG 00001781-2122826, though not consecutive). I appreciate your quick turnaround on these items.

In our December 14, 2015 conversation, we also discussed the search terms CPUC is employing to identify responsive documents. As I understood from our conversation, CPUC is currently using Exhibit A to identify documents responsive to the November warrant. Exhibit A includes some terms related to SONGS, and some terms related primarily to the judge-shopping issue with PG&E. In discussing the use of this list of terms further with my office, we have concluded that these limited search terms are insufficient for purposes of response to the November warrant. We respectfully request that you provide all non-privileged documents in response to the November warrant, not just those captured by searching the terms found in Exhibit A. We understand that as of October 16, 2015, you had approximately 103,000 emails left to review for privilege, and on December 21, you produced 13,767 documents. We recognize that this request will require additional time for you to respond, and we will so note in the return to the court.

Furthermore, in our conversation, you explained that the terms found in Exhibit A related to SONGS are the same terms you are using to respond to the June warrant. We respectfully ask you to search for the following additional terms in responding to the June warrant:

Unit3*
"Unit 3"
Bristol
Pincetl
Aguirre

Geesman
Mitsubishi
Japan
TURN
ORA
"$25 million"
"25 million"
"$20 million"
"20 million"

Please do not hesitate to contact me with any questions.

Sincerely,

DEBORAH R. HALBERSTADT
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

DRH:

LA2014118251

EXHIBIT 18

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 56W

Date: 3/24/16			
Honorable: WILLIAM C. RYAN	Judge	S. HUMBER #282371	J.A.
D. PALAU	Bailiff	A.BLANCO, CSR #10775	Reporter

(Parties and Counsel checked if present)

SW-70763
IN RE SEARCH WARRANT FOR
CALIFORNIA PUBLIC UTILITIES
COMMISSION

Counsel for People: NOT PRESENT

Counsel for Defendant: NOT PRESENT

NO LEGAL FILE

Nature of Proceedings: (1) MOTION TO VIEW SEARCH WARRANT AFFIDAVIT IN CAMERA,

(2) MOTION TO SEAL PLEADINGS AND RECORDS (FILED BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION)

****

NO LEGAL FILE-RED JACKET ONLY

MATTER IS CALLED FOR HEARING IN A CLOSED PROCEEDING.

PAMELA NAUGHTON AND REBECCA S. ROBERTS ARE PRESENT ON BEHALF OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION.

DEPUTY ATTORNEY GENERAL, AMANDA PLISNER IS PRESENT ON BEHALF OF THE DEPARTMENT OF JUSTICE.

1) THE MATTER IS OFF CALENDAR AS MOOT.
2) MOTION IS GRANTED AS PRAYED.

COUNSEL ARE DIRECTED TO WORK OUT DISLOSURE.

MS. NAUGHTON INFORMS THE COURT THAT SHE INTENDS TO FILE A MOTION. SUCH MOTION WILL BE HEARD ON 4/18/16 IN THIS DEPARTMENT. COUNSEL FOR THE ATTORNEY GENERAL AGREES TO ACCEPT SERVICE VIA ELECTRONIC MAIL.

THE PETITION FOR ORDER COMPELLING COMPLIANCE WITH THE SEARCH WARRANT, FILED BY THE ATTORNEY GENERAL IS SET FOR HEARING ON APRIL 18, 2016 AT 11:00 A.M. IN THIS DEPARTMENT.

EXHIBIT 19

Public Record Requests

(/requests/16-31)

Request #16-32

(/requests/16-34)

Closed

Greetings, please provide to me under the Cal Public Records Act and the Art I, Sec 3 of the Cal State Constitution any and all pleadings or court filings made with any court in connection witht the search warrant served on the CPUC in connection with the San Onofre matter including with regard to search warrant number 70763. Thank You

Mike Aguirre

Read more

Received

June 3, 2016 via web

Department

Legal -- Public Records Act

Documents

(none)

Staff

Point of Contact

Public Records

Request Closed

No Responsive Documents Released

The Commission does not possess responsive documents or cannot release the responsive records.

about 1 month ago

Request Published
about 1 month ago

Department assigned
Legal -- Public Records Act
about 1 month ago

Request Opened
Request received via web on June 3, 2016
about 1 month ago

EXHIBIT 20

From Morris, Harvey Y. **Date** Friday, April 10, 2015 6:11:44 PM

To Commissioners; Sullivan, Timothy J.; Aguilar, Arocles; Clopton, Karen

Cc dkelly@ucan.org; jnmwem@gmail.com; matthew@turn.org; tam.hunt@gmail.com; EApfelbach@ZBBenergy.com; Megan.Hey@doj.ca.gov; MThorp@SempraUtilities.com; npedersen@hanmor.com; douglass@energyattorney.com; walker.matthews@sce.com; thomaspcorr@gmail.com; raylutz@CitizensOversight.org; ESalustro@SempraUtilities.com; MSeverson@AMSlawyers.com; SWilson@RiversideCa.Gov; venskus@lawsv.com; mtierney-lloyd@enernoc.com; alewis@naac.org; RobertGnaizda@gmail.com; mdjoseph@adamsbroadwell.com; chome@enervault.com; Heiden, Gregory; Shapson, Mitchell; ek@a-klaw.com; nes@a-klaw.com; BCragg@GoodinMacbride.com; ssmyers@att.net; John.Cummins@navy.mil; LUPSF@igc.org; Timothy.Hennessy@ImergyPower.com; tom.stepien@primuspower.com; John@DicksonGeesman.com; LChaset@KeyesAndFox.com; tomb@crossborderenergy.com; m.dorsi@d-e-c-a.org; dkates@sonic.net; blaising@braunlegal.com; russ.weed@UETechnologies.com; ESelmon@Jemzar.com; Abigail.Sewell@latimes.com; abb@eslawfirm.com; barbara@barkovichandyap.com; cyamasaki@naac.org; CFaber@SempraUtilities.com; david.a.peffer@gmail.com; Peck, David B.; dmarcus2@sbcglobal.net; dpaz@wolferesearch.com; David@a4nr.org; gregg.orrill@barclays.com; klatt@energyattorney.com; JNMwem@gmail.com; jbbrown@gate.net; JTam@NAACoalition.org; JLeslie@McKennaLong.com; klr@a-klaw.com; lauren.duke@db.com; matt.fallon@timewavecapital.com; matt@worldbusiness.org; mpf@stateside.com; wmc@a-klaw.com; ppatterson2@nyc.rr.com; Rachel@ConsciousVenturesGroup.com; rajeev.lalwani@morganstanley.com; Rinaldo@worldbusiness.org; sean.beatty@nrg.com; Sxpg@pge.com; mrw@mrwassoc.com; filings@a-klaw.com; erin.grizard@bloomenergy.com; kfallon@sirfunds.com; agay@carlsoncapital.com; julien.dumoulin-smith@ubs.com; bnaeve@levincap.com; NStein@LevinCap.com; pfremont@jefferies.com; mxl@teilinger.com; John.Apgar@baml.com; Gregory.Reiss@mlp.com; kevin.prior@evercoreisi.com; scott.senchak@decade-llc.com; ali.agha@suntrust.com; roger.song@suntrust.com; akania@wolferesearch.com; dpaz@wolferesearch.com; NKhumawala@WolfeTrahan.com; sfleishman@wolferesearch.com; ReidM@AmerinetCentral.org; AHellreich@AndrewsKurth.com; WRappolt@AndrewsKurth.com; DMoglen@foe.org; KUlrich@foe.org; KWiseman@AndrewsKurth.com; LPurdy@AndrewsKurth.com; MSundback@AndrewsKurth.com; greencowboysdf@gmail.com; WRappolt@AndrewsKurth.com; khojasteh.davoodi@navy.mil; Priscila.Kasha@ladwp.com; robert.pettinato@ladwp.com; rodney.luck@ladwp.com; aspino@lawsv.com; bette@FirstChoiceDistributors.com; Emily.Viglietta@mto.com; henry.weissmann@mto.com; Rob.Howard@UWUA246.com; anadelia.chavarria@edisonintl.com; case.admin@sce.com; derek.matsushima@edisonintl.com; felicia.williams@edisonintl.com; matthew.dwyer@sce.com; paul.hunt@sce.com; Russell.Archer@SCE.com; Russell.Worden@sce.com; CarlWood@uwua.net; Dan.Dominguez@UWUA246.com; mary@solutionsforutilities.com; gbass@noblesolutions.com; SVanGoor@SempraUtilities.com; maguirre@amslawyers.com; liddell@EnergyAttorney.com; Morgan.Lee@UTSanDiego.com; JWasito@MagisCapital.com; cbursaw@CapitalPower.com; CentralFiles@SempraUtilities.com; jpierce@semprautilities.com; WKellani@SempraUtilities.com; lisam@socalte.com; rochellea4nr@gmail.com; CalConsumersAlliance@gmail.com; BenDavis54@Gmail.com; kcadena@naacoalition.org; dhkorn@earthlink.net; sue.mara@RTOadvisors.com; jmauldin@adamsbroadwell.com; DonE7777@sbcGlobal.net; bfinkelstein@turn.org; norman.furuta@navy.mil; dsullivan@nrdc.org; wvm3@pge.com; steven@moss.net; golding@communitychoicepartners.com; michael.hindus@pillsburylaw.com; peter.richmond@pillsburylaw.com; john.eastly@lw.com; cem@newsdata.com; cem@newsdata.com; Paul@DeltaGreens.org; lwisland@ucsusa.org; cathy@barkovichandyap.com; tculley@kfwlaw.com; TLindl@kfwlaw.com; clamasbabbini@comverge.com; philm@scdenergy.com; marybeth@eon3.net; henrypielage@comcast.net; janreid@coastecon.com; martinhomec@gmail.com; cmkehrein@ems-ca.com; kdw@woodruff-expert-services.com; sue.kateley@asm.ca.gov; RL@eslawfirm.com; sgp@eslawfirm.com; jjg@eslawfirm.com; kmills@cfbf.com; Brown, Carol A.; Hammond, Christine J.; Tran, Lana; AppRhg; McKenna, Lilly (Intern); Monbouquette, Marc; Colvin, Michael; Moldavsky, Edward;

Baker, Amy C.; Kotch, Andrew; Lukins, Chloe; Kersten, Colette; Franz, Damon A.; Gamson, David M.; Lee, Diana; Lafrenz, Donald J.; Randolph, Edward F.; Greene, Eric; Wong, John S.; Fitch, Julie A.; Dudney, Kevin; Darling, Melanie; Yeo, Michael; Kito, Michele; Rogers, Nika; Haga, Robert; Pocta, Robert M.; Thomas, Sarah R.; Logan, Scott; Wilson, Sean; Khosrowjah, Sepideh; Prosper, Terrie D.; Burns, Truman L.; Lasko, Yakov; danielle.mills@energy.ca.gov; Katague, Ditas; MPryor@energy.state.ca.us; shy.forbes@sen.ca.gov?

Subject R.12-10-013, SONGS Settlement - RSG Notes from the Hotel Bristol , Warsaw, Poland

Hotel Bristol Notes.pdf (745 KB HTML)

Attached hereto is a copy of the Hotel Bristol Notes that the California Attorney General provided to the California Public Utilities Commission after 3:00 p.m. today.

ORIGINAL

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Attorneys for Movant
California Public Utilities Commission

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

In re June 5, 2015 Search Warrant No. 70763 issued to California Public Utilities Commission	CASE NO. SW-70763 **PROOF OF SERVICE** **FILED UNDER SEAL**

I, Maria E. Valentino, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is DLA Piper LLP (US), 401 B Street, Suite 1700, San Diego, California 92101-4297. On June 21, 2016, I served a copy of the foregoing document(s):

CPUC REPLY TO DOJ OPPOSITION TO MOTION FOR RETURN OF PROPERTY

☒ **BY EMAIL** – [CRC 2060(c)] I personally transmitted via electronic means to the electronic mail address(es) noted below a true and correct copy of the aforementioned document(s) from maria.valentino@dlapiper.com on the date ascribed below. The transmission was reported as complete without error. I am aware that the form of original signature must be maintained and must be available for review and copying on the request of the court or any party to this action.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 21, 2016, at San Diego, California.

Maria E. Valentino

ORIGINAL

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

In re June 5, 2015 Search Warrant No. 70763 issued to California Public Utilities Commission	CASE NO. SW-70763 **UNDER SEAL FILING**

EXHIBIT A

DECLARATION OF STEPHEN PICKETT

I, Stephen Pickett, do hereby declare as follows:

1. I retired from Southern California Edison ("SCE") on November 30, 2013, after working thirty-five years for the company. I held many positions at SCE over time, including General Counsel of SCE. As of March 2013 and until my retirement, I was Executive Vice President of External Relations.

2. In March 2013, I traveled to Poland as part of a study tour organized by the California Foundation on the Environment and Economy ("CFEE"). Approximately twenty to thirty individuals took part in this CFEE study tour. Michael Peevey, who at the time was the President of the California Public Utilities Commission ("CPUC" or the "Commission"), was one of those individuals. No other SCE employees traveled to Poland with the CFEE group.

3. Prior to my departure to Poland, President Peevey asked SCE for a briefing about the status of its efforts to restart SONGS, and SCE management assigned me the task of updating President Peevey on this issue at some point during the Poland trip. I did not expect to discuss settlement of the SONGS Order Instituting Investigation ("OII"), or a resolution of any of the issues in the OII, with President Peevey in Poland. I did not have any settlement authority from SCE, and I did not reach or attempt to reach any agreement, tentative or otherwise, with President Peevey about the SONGS OII.

4. On March 26, 2013, I met with President Peevey for approximately half an hour in the Bristol Hotel in Warsaw, Poland, in order to give President Peevey the update about SCE's efforts to restart SONGS. My recollection is that Ed Randolph, Director of the Energy Division at the CPUC, was also present for some or all of the meeting.

5. I provided President Peevey with an update about the status of SCE's efforts to restart SONGS, including SCE's efforts with the Nuclear Regulatory Commission ("NRC") to get approval to restart SONGS Unit 2. I told President Peevey that it appeared that the NRC was going down the path of requiring a license amendment in order to restart SONGS. I indicated that if the NRC required a license amendment that could result in a significant delay before SCE could restart Unit 2.

6. President Peevey expressed concern that such a delay in the restart of SONGS would potentially have a negative impact on the power grid and SCE's ability to serve its customers in the summer of 2013. He noted that the CPUC and possibly other government agencies would have to continue the efforts they had undertaken in the summer of 2012 to help avoid this possibility. I recall President Peevey noting that at some point SCE would have to consider the possibility of permanently shutting down SONGS. I agreed that was a possibility, but noted that SCE was still continuing to make every effort possible to restart SONGS.

7. President Peevey pursued his line of thought about a possible permanent shut down of SONGS and began to consider the many ramifications if SONGS were to be shut down, noting that it would be a long and difficult proceeding before the Commission. He stated his views on how to resolve some of these issues, including the various areas of costs that would

have to be addressed, referring at times to how the CPUC had dealt with these issues in the past, including in the resolution of the SONGS 1 shutdown, the PG&E bankruptcy proceeding, and the SCE energy crisis settlement.

8. President Peevey's comments on these issues were stated in broad terms. I recall that he made a statement to the effect that the cost of the replacement steam generators ("RSGs") should be written off, and the remaining investment recovered in a manner similar to SONGS 1. I was familiar with the SONGS 1 settlement, and I understood that comment to mean that SCE would recover the non-RSG investment with a rate of return on the entire undepreciated balance equal to its authorized cost of debt. President Peevey did not address this issue more specifically. I do not recall him mentioning, for example, certain other specific categories of investment of which I was aware, such as the recovery of construction work in progress and nuclear fuel.

9. With regard to operations and maintenance ("O&M") costs, I recall President Peevey stating that employees should be treated fairly and receive reasonable severance payments. He stated that O&M expenses had already been approved in SCE's general rate cases. I also recall him stating that the amounts authorized in the general rate case for SONGS O&M could continue through a future shut-down date plus another period of time of about 6 months. I also recall President Peevey saying that he wanted to address the greenhouse gas impacts of the shutdown of SONGS. He mentioned a charitable contribution for greenhouse gas research as a possible way to address this issue.

10. I did not understand President Peevey's comments to be a directive on how a settlement should be structured, nor did they appear to me to reflect a prejudgment as to the outcome of the OII. Instead, I understood them as President Peevey's general thoughts on how, based on prior commission decisions, he thought the cost responsibility for SONGS might ultimately be sorted out.

11. At some point well into the meeting, I obtained a pad of paper from the hotel and began taking notes in an effort to organize President Peevey's comments for my own benefit. As noted, President Peevey's remarks were quite general, and my notes reflect my interpretation of President Peevey's statements. My notes are not a verbatim record of President Peevey's comments, do not reflect the order of the conversation, and were not a term sheet. I do not know if President Peevey agreed with my characterization of his comments. At some point near the end of the meeting, President Peevey asked me to give him the notes, and he wrote on the notes. I did not see what he wrote. President Peevey kept the notes after the meeting.

12. I did not engage in settlement negotiations with President Peevey. President Peevey made it clear, however, that in the event of a permanent shutdown of SONGS he thought it would be best for SCE to engage in settlement negotiations with appropriate consumer groups and other interested parties, and bring a settlement proposal to the CPUC for consideration. President Peevey specifically mentioned John Geesman, who represents the Alliance for Nuclear Responsibility, as one possible party. I did not understand President Peevey's comments on cost responsibility, as outlined above, to constitute a direction to SCE to settle on those terms.

13. The substance of the communication about the resolution of the issues involved if SONGS were to shutdown was, in the main, from President Peevey to me. To the best of my recollection, I did not react or respond to President Peevey's comments, with one exception: at one point, President Peevey stated that there should be a disallowance of both replacement power costs and replacement steam generator investment costs. I do not recall exactly what I said in response, but I believe I very briefly expressed disagreement. I did not consider my reaction to have risen to the level of a substantive communication to President Peevey.

14. After this meeting with President Peevey, I went to dinner with the CFEE group. There was no discussion about SONGS at that dinner.

15. On March 27, 2013, I attended another dinner with the CFEE group. President Peevey was also in attendance. I believe President Peevey may have mentioned SONGS during the dinner, but I do not recall anything of substance relating to the SONGS OII being discussed. To the best of my recollection, settlement of the OII was not mentioned.

16. When I returned to the United States, I briefed senior executives on April 1, 2013, about what President Peevey had said to me about SONGS in Poland. These executives were SCE President Ron Litzinger, Edison International CEO Ted Craver, Edison International CFO Jim Scilacci, and Edison International General Counsel Robert Adler. At some point during the meeting, the issue was raised of whether my meeting with President Peevey constituted a reportable ex parte communication. I did not believe it was reportable, based on my general understanding of the ex parte rules. After the April 1 meeting I consulted with SCE's counsel on the ex parte reporting issue, and no ex parte notice was filed at that time.

17. After my meeting with the executives, I summarized the points raised by President Peevey in a document that I titled "Elements of a SONGS Deal," which I sent to the executives whom I had briefed that day. The title of the document was not meant to convey that I had entered into any "deal" with President Peevey. Rather, the document reflected President Peevey's comments about the framework of a possible resolution of SONGS issues with parties to the OII. The document was intended to be an internal outline that could serve as a basis for discussing a potential settlement in a deal with consumer and other groups should SCE's efforts to restart SONGS prove unsuccessful. I also asked several SCE employees to take these ideas and work on them further.

18. After the trip to Poland, I did not speak with President Peevey about a SONGS settlement, nor did I speak with any other CPUC decision maker regarding a SONGS settlement, prior to its being publicly announced. I have seen and spoken to President Peevey a number of times at social and other occasions since the Poland trip. However, the only other communication I had with President Peevey or any other CPUC decision maker about settlement of the OII was at a social dinner with President Peevey and others in the summer of 2014, in which President Peevey made a passing comment to the effect that he liked the settlement (which had by that time been filed with the Commission), but that an element was missing – specifically something to address greenhouse gas issues – and he was going to work to get it added. I did not respond to President Peevey's comment on the SONGS settlement. I was retired from SCE at that point. I did not convey President Peevey's comment to anyone at SCE.

19. I was not a part of the group of executives who oversaw settlement discussions relating to the SONGS OII. I understand that Edison International General Counsel Robert Adler oversaw those settlement negotiations. I was not involved in, and do not have any knowledge about, the settlement discussions that eventually resulted in the SONGS settlement.

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

Executed at La Cañada, California on April 28, 2015.

Stephen Pickett

Stephen Pickett

EXHIBIT B

FILED
7-14-14
04:59 PM

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3	I.12-10-013 (Issued October 25, 2012)
And Related Matters.	A.13-01-016 A.13-03-005 A.13-03-013 A.13-03-014

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S NOTICE OF EX PARTE COMMUNICATIONS

JOHN L. GEESMAN

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Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

Date: July 14, 2014

NOTICE OF EX PARTE COMMUNICATION

Pursuant to Rule 8.4 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, the Alliance for Nuclear Responsibility ("A4NR") hereby provides notice of the following ex parte communication:

On July 9, 2014 at 3:01 p.m., I initiated a telephone call previously invited by Commission President Michael Peevey. The call concluded at 3:08 p.m. The conversation was conducted from my office in Oakland and President Peevey's office in San Francisco, and we were the only persons on the call. I emphasized the Proposed Settlement's arbitrary split of mythical recoveries from Mitsubishi and NEIL, and suggested increasing the utility share in exchange for more tangible and immediate ratepayer benefit. I also encouraged Commission attentiveness to the greenhouse gas impacts of SCE's mismanagement of SONGS. When discussion turned to SCE's interest in resolving the matter during a period of low interest rates and high stock valuation, I stated that A4NR would not file a frivolous appeal but would seek redress of the several legal infirmities in the Proposed Settlement unless they are removed. No written, audiovisual, or other material was used for or during the communication.

Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN
DICKSON GEESMAN LLP

Date: July 14, 2014

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

BEFORE THE PUBLIC UTILITIES COMMISSION OF

THE STATE OF CALIFORNIA

FILED
4-11-14
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Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3	Investigation 12-10-013 (Filed October 25, 2012)
And Related Matters	Application 13-01-016 Application 13-03-005 Application 13-03-013 Application 13-03-014

NOTICE OF EX PARTE COMMUNICATION

TURN
THE UTILITY REFORM NETWORK
Lower bills. Livable planet.

Matthew Freedman
The Utility Reform Network
785 Market Street, 14th floor
San Francisco, CA 94103
415-929-8876 x304
matthew@turn.org
April 11, 2014

NOTICE OF EX PARTE COMMUNICATION

Pursuant to Rule 8.3 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) hereby gives notice of the following *ex parte* communication. On April 10, 2014, TURN attorney Matthew Freedman met with Commissioner Michael Peevey and Carol Brown, Chief of Staff to Commissioner Peevey. The meeting was initiated by Commissioner Peevey, occurred in the office of Commissioner Peevey at 505 Van Ness Avenue in San Francisco, began shortly after 10:00am and lasted 30 minutes.

Mr. Freedman urged the Commission to adopt the settlement reached by TURN, the Office of Ratepayer Advocates, Southern California Edison and San Diego Gas & Electric. The settlement resolves all key issues of dispute between these parties and represents a fair resolution of the contested claims. Mr. Freedman explained that it is appropriate to cease collections of all costs relating to the steam generators on February 1, 2012 and to allow the utilities to amortize their base plant investments over 10 years earning a return only on the cost of debt and 50% of the cost of preferred stock. Mr. Freedman further noted the benefit of avoiding extended litigation over steam generator issues in Phase 3.

To obtain a copy of this notice, please contact Jessica German at (415) 929-8876.

Respectfully submitted,

_____/s/_____

MATTHEW FREEDMAN
Attorney for
The Utility Reform Network
785 Market Street, 14th floor
San Francisco, CA 94103
Phone: 415-929-8876

Dated: April 11, 2014

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
08-15-13
04:59 PM

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas & Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.	I.12-10-013 (Filed October 25, 2012)
And related matters	A.13-01-016 A.13-03-005 A.13-03-013 A.13-03-014

NOTICE OF EX PARTE COMMUNICATION

Billy Blattner
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August 15, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas & Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.	I.12-10-013 (Filed October 25, 2012)
And related matters	A.13-01-016 A.13-03-005 A.13-03-013 A.13-03-014

NOTICE OF EX PARTE COMMUNICATION

In accordance with Rule 8.4 of the Commission's Rules of Practice and Procedure, San Diego Gas & Electric Company (SDG&E) hereby gives notice of the following *Ex Parte* communications in the above proceeding.

On Monday, August 12, 2013 at 3:00 p.m. in the Commission's offices in San Francisco, Lee Schavrien, Senior Vice President of Regulatory and Legislative Affairs, and Billy Blattner, Manager of Regulatory Relations for SDG&E, met with Commissioner Michel Florio. Also in attendance were Sepideh Khosrowjah, Chief of Staff, and Rachel Peterson, Advisor to Commissioner Florio; and Mike Hoover and Laura Genao of the Southern California Edison Company. The meeting was initiated by SDG&E to discuss SDG&E's 2013 Energy Resource Recovery Account (ERRA) forecast and trigger applications and SDG&E's motion in the San

Onofre Nuclear Generating Station (SONGS) investigation. Communication was oral and lasted approximately 15 minutes.

Mr. Schavrien explained that delays in approving SDG&E's ERRA decisions are contrary to statute and Commission decisions requiring timely recovery of costs of power procured on behalf of customers. He stated that continued delays will exacerbate rate increases and create rate instability for customers. He approximated the undercollected account balances pending in the ERRA forecast and trigger applications and other accounts.

Dated this 15th day of August, 2013 in San Francisco, CA.

Respectfully submitted,

/s/ BILLY BLATTNER
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ORIGINAL

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Attorneys for
California Public Utilities Commission

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

In re June 5, 2015 Search Warrant issued to California Public Utilities Commission	CASE NO. SW-70763 **CPUC REPLY TO DOJ OPPOSITION TO MOTION FOR RETURN OF PROPERTY** Date: June 23, 2016 Time: 1:30 p.m. Place: Department 56 Judge: Hon. William C. Ryan **FILED UNDER SEAL PURSUANT TO COURT ORDER MARCH 24, 2016**

The CPUC responds to the Attorney General's ("DOJ") Opposition as follows:

- The DOJ's factual representations directly contradict statements in the affidavits and contain statements that are simply false and unsupported by evidence. Moreover, the issuing judge was never told of critical information relevant to the warrants.
- There is no probable cause because the *ex parte* communications do not amount to criminal conduct. There is also no basis for a conspiracy charge since the underlying conduct cannot be criminal, and there is no evidence of an agreement or of specific criminal intent.
- The DOJ concedes the warrants were never executed but instead served on the CPUC and essentially used as limitless subpoenas. It has not provided any authority supporting trans-morphing a search warrant into a subpoena. The DOJ wrongly claims that it chose this mechanism because the CPUC insisted upon it, yet offers no evidence at all to substantiate this allegation.
- The DOJ claims, for the first time, in its opposition to the CPUC's motion for return of property, **not in its motion to compel** or through an appropriate motion, that the CPUC cannot assert the deliberative process privilege as a basis withholding documents. This last minute "gotcha" approach should not be condoned and is frankly emblematic of the DOJ's conduct throughout these proceedings.[1] Should it wish to raise this issue, it must

[1] The Attorney General previously ignored the filing deadline concerning the CPUC's prior motion. More importantly, the CPUC is concerned with the media leaks in this case. Television cameras accompanied agents to the

bring it through an appropriate motion. Regardless, documents subject to the deliberative process privilege may be withheld from production in criminal cases. SONGS OII is an ongoing adversarial rate-making proceeding and CPUC decision makers must be able to discuss pending proceedings in candor and confidence, just as a court of law does.

A. Factual Inconsistencies and Omissions

There are serious factual inconsistencies and omissions in the search warrants, supporting affidavits, and the DOJ's brief. For example, the affidavits failed to inform the issuing judge that Pickett publically filed a declaration on or about April 29, 2015 in SONGS OII. Under oath, Pickett explains, that what Peevey and he discussed was very general in nature, acknowledges that **he** (Pickett) wrote the notes, which reflect his own interpretation of what he thought Peevey meant, and that Peevey added to the notes and kept them. Pickett also made clear that he had no role in the settlement negotiations. (*See* attached Exhibit A.) The DOJ did not inform the issuing magistrate of the statements contained in this declaration, and now, amazingly its Opposition, claims that **Peevey** wrote the notes, even though there is **no evidence** that indicates this is true. The CPUC implores the Court to review the Warsaw notes themselves, which clearly contain two different sets of handwriting and are very general in nature.

Search Warrant Affidavit	DOJ Opposition Brief	Pickett Declaration
"According to handwritten notes memorialized on stationery from Warsaw's Bristol Hotel, PICKETT and PEEVEY, discussed settlement terms related to the closure of SONGS . . . " Section III(A)(1) "SCE also reported that PICKETT took notes during the meeting, and PEEVEY kept the notes." (Section III(A)(2).)	"PEEVEY recorded notes from the meeting on hotel stationary which he brought home with him." DOJ Opp. at p. 7, lns. 2-4. "It is also clear that Peevey, took, and kept, a single page of handwritten notes . . . ." DOJ Opp. at p. 8 lns. 1-2.	"At some point well into the meeting, I obtained a pad of paper from the hotel and began taking notes . . .My notes are not a verbatim record of President Peevey's comments, do not reflect the order of the conversation and were not a term sheet. . . . At some point near the end of the meeting, President Peevey asked me to give him the notes, and he wrote on the notes. I did not see what he wrote. President Peevey kept the notes after the meeting." Pickett Declaration filed April 29, 2015.

CPUC offices during the execution of the first search warrant. Press reporters have been alerted to court locations where the SONGS Search Warrants issued. AG investigators gave private attorney Michael Aguirre and a newspaper reporter a copy of the Warsaw notes that were seized from Peevey's house. This was **before** any other party or the CPUC were given them. Most recently, the CPUC received a Public Records Act demand from Michael Aguirre for all pleadings pertaining to **these** proceedings before **this** Court specifically concerning Search Warrant SW-70763 even though the entire file is sealed by Court order. How did Aguirre know that any pleadings were filed by the CPUC if the DOJ did not tell him?

The DOJ's Opposition erroneously claims one of the settling parties represented by John Geesman, an attorney for Alliance for Nuclear Responsibility ("A4NR"), asserts that ratepayers received far less in the settlement because of SCE's knowledge of the Warsaw notes. This is the only evidence the DOJ relies on in support of its theory that justice was obstructed. This is wrong. Geesman did **not** represent a settling party to the SONGS OII. Furthermore, the DOJ failed to point out that the settling parties **actually** representing ratepayers (ORA and TURN) both stated that the final terms of the settlement were **better** for ratepayers than the terms of the Warsaw notes. (*See* Ex. 5 to CPUC Mot. for Return of Property). How then, was SCE "advantaged" by the Warsaw meeting, since it ended up paying ratepayers a billion dollars more?

The DOJ is also now claiming for the first time that the conspiracy was "not to report" the *ex parte* communications. But this theory was **never presented** to the issuing magistrate. Rather, the affidavits allege that Peevey and Pickett conspired **to engage** in *ex parte* communications.

Furthermore, it is questionable whether in seeking the second SONGS warrant the DOJ informed the magistrate that the first SONGS Search Warrant contained materially false statements claiming the OII proceedings were adjudicatory.

The warrant is not supported by probable cause when the DOJ withheld material exculpating information from the issuing magistrate.

B. Since the Agency Responsible for Administrating Its Rules Does Not Believe Them to Have Been Violated, There Can Be No Criminal Specific Intent

The DOJ alleges that Peevey and Pickett conspired to have unlawful communications, even though the new affidavit in support of the March 2016 SONGS search warrant does not cite any CPUC rule, much less a criminal statute, that was violated. Regardless, there was nothing unlawful about the communication itself, it just needed to be reported. The Public Utilities Code makes clear that proceedings before the CPUC are governed by it **and** the CPUC Rules of Practice and Procedure. Cal. Pub. Util. Code § 1701(a).[2] The CPUC rules acknowledge

[2] California Public Utilities Code section 1701(a) provides: "All hearings, investigations, and proceedings shall be governed by this part **and by rules of practice and procedure adopted by the commission**, and in the conduct thereof the technical rules of evidence need not be applied ... .

different scenarios in which *ex parte* communications may arise in ratesetting proceedings: (1) all party meetings (PUC §1701.3.(c); CPUC Rule 8.3(c)(1)); (2) individual oral communications (PUC §1701.3(c); CPUC Rule 8.3(c)(2)); (3) written *ex parte* communications (PUC §1071.3(c); CPUC Rule 8.3(3); and (4) unscheduled meetings/communications (CPUC Rule 8.4)). *Ex parte* communications in ratesetting proceedings are a common occurrence and **rules and practice** have been developed to accommodate the different scenarios in which they arise, they are not simply limited to all party meetings, where all parties must be invited and given notice ex ante. If it were true that *ex parte* communications could only occur when all parties were invited and the communication was noticed ahead of time, then Rule 8.4 would be redundant of Rule 8.3.

Although they are not condoned, unplanned *ex parte* communications occur due to the fact-finding and policy making roles of the Commissioners. Rule 8.4 was developed to address them. To the extent parties anticipate *ex parte* communications, they are to provide notice ahead of time so that other parties can have equal time per CPUC Rule 8.3. However, to the extent the unplanned communications occur, they are to be reported *ex post facto*. CPUC Rule 8.4. That is how the agency which wrote, interprets, and enforces its rules, applies them. Unnoticed *ex parte* communications **have been** allowed in rate-setting proceedings, including SONGS OII. Examples of such unplanned communications in SONGS OII are attached as Exhibit B. The first one, which was previously attached to the CPUC's underlying motion, is a notice of an **unplanned** *ex parte* communication between AN4R and Commissioner Peevey in SONGS OII, one that occurred over the telephone, which AN4R filed per Rule 8.4, not Rule 8.3. The second one was filed by TURN, a settling party, which addresses a meeting its attorney, Mr. Freeman, had with Peevey concerning the settlement agreement. Similarly, the CPUC penalized SCE for violating Rule 8.4, e.g., for not reporting the *ex parte* communications, not for violating Rule 8.3. These notices and rulings aptly demonstrate that unplanned/unscheduled *ex parte* communications occur in ratesetting proceedings and there is nothing "unlawful" about them. If they are not unlawful, any intent to have such a conversation **cannot** amount to specific intent to

commit a crime.[3]

While the DOJ acknowledges that Peevey could not be charged under section 2110 and that the reporting onus is on the party, not the Commissioner, the DOJ maintains that Peevey could still be charged with conspiracy. However, the DOJ misses the point. Neither Peevey nor Pickett can be charged with conspiracy to engage in unlawful communications because there was nothing unlawful about the communications. A party can only be liable for criminal conspiracy if there is **criminal specific intent** to: (1) agree; and (2) commit the crime. *People v. Johnson*, 47 Cal. 4th 250 (2013); *People v. Jones*, 228 Cal. App. 2d 74 (1964). There cannot be specific intent when the underlying conduct is lawful. *See Fleming v. Superior Court*, 191 Cal. App. 4th 73, 101 (2010) ("All criminal conspiracies require at least a criminal objective, even if all the specific actions taken to implement that criminal objective are otherwise not criminal . . . it is fundamental that no one can be held criminally liable for conspiracy to do acts that are perfectly lawful to do.")

It is not disputed that conspiracies do not require any criminal acts actually be committed. However, even in the cases cited by the DOJ, there still must be a criminal objective to commit an act that is a crime. *See, e.g.*, *People v. Lee*, 136 Cal. App. 4th 522, 529 (2006) (prison inmate who could not be charged of underlying crime for distribution of a controlled substance because of statutory exception, could be charged with conspiracy); *People v. Biane*, 58 Cal. 4th 381 (2013) (offeror of a bribe is not categorically exempt from conspiracy to cause receipt of a bribe if there is evidence of the requisite intent). Here, there can be no criminal objective because the communications were lawful.

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[3] In its Opposition, the DOJ also attempts to resurrect its argument that the "unlawful" *ex parte* communications constitute a misdemeanor of PUC section 2110, even though the operating affidavit contains **no reference whatsoever** to this section. Regardless, the DOJ omits key language in section 2110, which states that it only applies "**in a case in which a penalty has not otherwise been provided**." This language indicates that Section 2110 is essentially a catch all provision, should no other PUC provision or CPUC Rule apply. CPUC Rule 8.3(j) expressly provides penalties for violations:

> When the Commission determines that there has been a violation of [Rule 8.3] or of Rule 8.4, the Commission **may impose penalties and sanctions**, or make any other order, as it deems appropriate to ensure the integrity of the record and to protect the public interest.

The CPUC rules **do** provide a penalty, and, in fact, it **was** imposed. Since CPUC rules provide for a penalty, there can be no misdemeanor prosecution under section 2110.

Unplanned *ex parte* communications happen all the time at industry conferences or other forums. They are not planned and there is no criminal intent to break the law by having them. If a Commissioner thought what he was doing was lawful and certainly not aware that it could constitute criminal conduct, how can he or she have had specific intent? For the search warrant to state adequate probable cause it must demonstrate facts showing both Pickett and Peevey: (1) had the **specific intent** to agree; and (2) **specifically intended** to commit a criminal offense. What specific crime did Peevey specifically intend to commit? Where is the evidence that he believed anything he did was unlawful – let alone a crime?

If the DOJ's position is correct, Commissioners or other decision makers could be subject to criminal prosecution for merely attending an industry conference and overhearing a presentation from a party on a panel who made a point that somehow concerned a matter before the Commission. If the speaker did not later report the communication, then, under the DOJ's theory, the Commissioner could be charged with a crime. This is certainly not, and cannot be, the law, as it would chill the free exchange of important information provided to and received by CPUC decision makers. It also constitutes impermissible judicial overreaching because there is no fair warning that a party can be criminally charged for the underlying conduct. Due process is violated when a criminal statute does not give fair warning of the conduct it intends to punish or when it is expanded to an interpretation beyond what it says on its face. *Rogers v. Tennessee*, 532 U.S. 451, 457 (2001) ("A criminal statute must give fair warning of the conduct it makes a crime.") (*citing Bouie v. City of Columbia*, 378 U.S. 347, 350 (1964)). *Marks v. United States*, 430 U.S. 188, 191-92 (1977) ("Deprivation of the right to fair warning can result both from vague statutory language and from an unforeseeable and retroactive judicial expansion of statutory language that appears narrow and precise on its face. That persons have a right to fair warning of that conduct which will give rise to criminal penalties is fundamental to our concept of constitutional liberty. As such, that right is protected against judicial action by the Due Process Clause of the Fifth Amendment."); *Rathert v. Galaza*, 203 F. App'x 97, 99 (9th Cir. 2006).

Lastly, the affidavits do not even support the theory that Peevey and Pickett "conspired" to have *ex parte* communications. They allege that the two met at a hotel bar, with a third party,

Ed Randolph, and had a general discussion about the plant closing and categories of costs a settlement agreement would contain. Pickett took notes of the meeting and later drafted a version, which he shared with his colleagues at SCE. Pickett failed to report the communication. Peevey kept Pickett's notes of the meeting and waived them around his office at a later meeting with SCE. Later, after searching Peevey's home and seizing all of his computers and documents, the DOJ discovered the Warsaw notes and promptly leaked them to the press and a private attorney. SCE filed a belated notice of the *ex parte* communication, for which the CPUC later penalized it. What evidence supports the theory that Pickett and Peevey conspired to engage in the communication, before it occurred, or even conspired afterwards, not to report it? Ed Randolph testified that he assumed the communication **would** be reported, further undermining any notion that the individuals thought the meeting was unlawful or that they agreed not to report the communication. The DOJ's baseless conclusions are not even supported by any facts in the affidavit.

C. There is No Probable Cause For Obstruction of Justice

The DOJ claims that even if there is no basis for a charge under section 2110 or conspiracy, Peevey and/or Pickett could be charged with obstruction of justice under Penal Code section 182(a)(5), which includes "malfeasance" or "nonfeasance" by an officer of his/her duties. Only Peevey is an "officer." Yet, even the DOJ concedes he did not violate any *ex parte* reporting rules because they do not apply to him. Nothing in the PUC prevents a Commissioner from discussing settlement with a party.

Moreover, what evidence is there that Peevey and Pickett met "in an effort to influence the outcome of the proceedings?" There is no evidence that Pickett and Peevey had the conversation to afford SCE an advantage over the ratepayers in SONGS OII, as opposed to simply "kick-starting" the settlement process. On the contrary, as the settling parties have acknowledged, the terms of the settlement were **more favorable to ratepayers** than the general terms identified in the Warsaw notes. Moreover, the greenhouse gas provision add-on required the utilities, not the ratepayers, to pay for the research. In makes no sense that Pickett and Peevey conspired to obstruct the administration of law by pursuing a provision that benefited the

ratepayers at the expense of the utilities, e.g., Pickett's employer.

The DOJ argues that the fact the CPUC has recently reopened SONGS OII proves that the CPUC's process was obstructed. For clarification, the CPUC has instructed the parties to submit briefing and evidence addressing whether the terms of the settlement agreement met its standard for approving such agreements in light of the *ex parte* communications and party estimates that the actual settlement obtained between $780 million and $1.06 billion **more** for ratepayers than the terms of the Warsaw notes. The Commission may rescind or amend the Decision approving the settlement if it finds that the settlement was not "reasonable in light of the whole record, consistent with law, and in the public interest." CPUC Rule 12.1(d). Thus, the issue of whether the settlement was reasonable is being (as it should be) addressed by the CPUC. It has not been established at all, even under a lesser civil standard of proof, that the Warsaw conversation gave SCE any advantage in the settlement process, which the DOJ alleges in a very conclusory fashion.

D. The Attorney General's Challenge to the CPUC's Deliberative Process Designation Should be Heard by Noticed Motion

The Attorney General raises, for the first time, one week before the hearing, an objection to the CPUC's assertion of the deliberative process privilege over a discreet number of documents. This is clearly improper. If this is an argument the Attorney General wishes the Court to decide, it should raise it in a noticed motion, not at the eleventh hour in an opposition brief to an unrelated motion.

The deliberative process privilege is a common law privilege that "allows the government to withhold documents and other materials that would reveal 'advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.'" *See In re Sealed Case,* 121 F.3d 729, 737-38 (D.C. Cir. 1997). Courts recognize that it is a valid basis for withholding documents in response to demands for records in both criminal and civil cases. *Id.* (In course of grand jury investigation of the former Secretary of Agriculture, White House withheld documents on grounds of deliberative process privilege and presidential communications privilege); *United States v. Nixon*, 418 U.S. 683, 705-713 (1974) (recognizing the appropriateness of asserting executive privilege in response

to a criminal investigation). "The key question in every case is 'whether the disclosure of materials would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.'" *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325, 1342 (1991).

Indeed, the CPUC has routinely withheld documents in response to federal grand jury subpoenas on grounds of deliberative process privilege without objection and has not even been required to prepare a privilege log. Indeed, the Attorney General routinely cites the deliberative process privilege as a basis for withholding documents. *See Prime Healthcare Services, Inc. v. Office of Attorney General*, No. 5, 15-cv-019340 GHK-DTB (C.D. Cal. Sept. 21, 2015.) Whether or not the PRA requires production of certain documents simply has no bearing on whether an agency is entitled to withhold documents from civil litigation or criminal demands. *See* Cal. Evid. Code §6260; *Marylander v. Sup. Ct.*, 81 Cal. App. 4th 1119 (2000) ("[t]he exemptions contained in the Public Records Act simply do not apply to the issue of whether records are privileged so as to defeat a party's right to discovery.") Section 6260 simply clarifies that the exceptions to the PRA do not provide a greater right to refrain from disclosure in response to a discovery demand, whether criminal or civil, than what already exists under the law.

SONGS OII is an ongoing adversarial rate-setting proceeding. The Commissioners, the Administrative Law Judges, their advisors and researchers need to be able to discuss the facts, law, and parties' positions in candor and confidence, just as a court judge does. There is a long tradition for recognizing this judicial privilege and it applies in this context as well. It would be detrimental to the integrity of the CPUC's proceedings if these documents were publically released, as other documents obtained via DOJ search warrants have been. Moreover, there is authority holding that if privileged material is produced in response to a grand jury subpoena, the privilege is deemed waived as to productions in related civil cases. *See In re Pac. Pictures Corp.*, 679 F.3d 1121, 1130 (9th Cir. 2012).

The Attorney General's complaint that "large swaths" of documents have been withheld is

fundamentally false. The CPUC has produced over 1.1 million records to the Attorney General.[4] Notably, the only CPUC conspirator named in the affidavit is President Peevey. The DOJ already seized **all of Peevey's emails, both from his work and home**, pursuant to the November 2014 search warrant and the search conducted at his residence, long before the first SONGS Search Warrant issued. As to the November 2014 search warrant (pursuant to which the Attorney General actually seized property), the CPUC was only allowed identify documents that triggered attorney-client privileged terms, e.g., names of in house counsel, privileged words, etc., and immediately produced back all documents that did not trigger terms. So, to the extent there were any communications between Peevey and Pickett concerning their alleged conspiracy to engage in *ex parte* communications or not to report them, the DOJ **already has them** (and presumably would have submitted them in support of their search warrants, which they did not – probably because they do not exist.) The CPUC has repeatedly emphasized to the Attorney General that a substantial portion of the documents called for by the SONGS Search Warrants were already seized by it and has identified over 20,000 documents which triggered SONGs terms that the DOJ already had in its possession, before the first warrant issued.

E. The CPUC's Property Should be Returned Because the Search Warrants Were Defective

The CPUC's property should also be returned because the SONGS search warrants are defective. The Attorney General concedes that it did not seize the property but instead instructed the CPUC **to investigate** and produce documents and provides no authority authorizing it conduct a search in this matter, which is apparently limitless. The Attorney General claims that the CPUC insisted it be served in this manner but provides no evidence of this assertion, which is contradicted by the parties' correspondence. (*See generally*, Roberts Decl. and attached exhibits.)

The Attorney General claims that it sought to alleviate the CPUC workload by appointing a "special master." Courts may appoint special masters. However, all expenses must be borne **by**

[4] It should be noted that the CPUC has already produced thousands of confidential documents which are arguably subject to the deliberative process privilege to the Attorney General to foster transparency has so informed it in written correspondence accompanying the production. *See generally* Roberts Decl. Exs. 12-16, 19-22, 23-25.

the court. *People v. Superior Court (Laff),* 25 Cal.4th 703 (2001) (In the absence of an applicable statute, the services of a special master, appointed (pursuant to the court's inherent authority) to perform subordinate judicial duties in this type of proceeding, constitute an aspect of the court's operations that must be paid by the court from public funds). In this case, the CPUC has borne the extremely burdensome costs of review and production.

For the reasons discussed above and its prior pleadings, the CPUC requests that the Court find that the search warrants are not supported by probable cause and the property of the CPUC be returned.

Dated: June 21, 2016

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

In re June 5, 2015 Search Warrant issued to California Public Utilities Commission	CASE NO. SW-70763 **SUPPLEMENTAL OPPOSITION TO PETITION FOR AN ORDER COMPELLING CALIFORNIA PUBLIC UTILITIES COMMISSION TO COMPLY WITH SEARCH WARRANT** Date: June 23, 2016 Time: 1:30 p.m. Place: Department 56 Judge: Hon. William C. Ryan **FILED UNDER SEAL PURSUANT TO COURT ORDER MARCH 24, 2016**

CPUC herein files a supplemental opposition to the Attorney General's "Petition for An Order" compelling the CPUC to comply with the search warrants. The Attorney General's "Petition" should be denied because it is not brought under any specific authority allowing it to "petition" the Court to compel a third party to "comply" with a search warrant. The fact that the Attorney General is seeking to compel a third party to produce yet more documents **over a year** after the issuance of the initial search warrant demonstrates how the underlying orders are really de facto subpoenas and thus defective. Unlike a typical search warrant, the orders here were not executed by police officers who seized identified property within 10 days of issuance but instead require a third party to investigate and identify documents and witnesses and review and produce

tens of thousands of documents over a lengthy period of time. There is no provision in the Penal Code for a "Petition" to "compel" a third party to comply with a search warrant because typically there is nothing to "compel"; a proper search warrant is executed by government authorities shortly after it is issued and there is no onus on the third party. The problem here is that the underlying orders require the CPUC to do all of the work and assume all of the expense. Yet, the Court previously ruled that the CPUC does not have standing to move to quash the search warrants (even though it clearly could move to quash a grand jury subpoena.) If the CPUC cannot move to quash the search warrants because no Penal Code provision applies, then by the same rationale, the Attorney General cannot bring a "Petition" to "compel" the CPUC to comply when no Penal Code provision applies.

The Attorney General filed its "Petition" to compel when the CPUC refused to search for and review over one hundred thousand additional documents that potentially trigger search terms the Attorney General identified on or about December 22, 2015 – **over six months after the initial search warrant issued**, and which are not called for by the orders. The lifespan of the Attorney General's search warrants are thus apparently limitless. If Court were to grant the "Petition", it would affirm the radical notion that a government authority can limitlessly continue to demand evidence from a third party under an expired search warrant. This cannot be the law.

Dated: June 16, 2016

DLA PIPER LLP (US)

By _____
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MEMORANDUM OF POINTS OF AUTHORITIES

I. BACKGROUND

The background facts concerning the 6 demands by the Attorney General and the CPUC's compliance are outlined in the April 11, 2016 opposition. Additionally, it should be noted that the demands and means of "execution" for the June 5, 2015 and March 9, 2016 search warrants ("SONGS Search Warrants") are highly unusual and also contrary to the Attorney General's representations in its March 21, 2016 "Petition." Even though the Attorney General had already executed a broad search warrant at the San Francisco headquarters of the CPUC in November 2014, and had convened a grand jury which issued 3 subpoenas to the CPUC for documents, the Attorney General strategically chose to seek more documents related to SONGS via **search warrants** issued out of Los Angeles, rather than by grand jury subpoena. Perhaps the Attorney General chose to seek search warrants because the warrants and returns would be publically available to the press[1] while grand jury subpoenas are not. Perhaps they did so to cut off the CPUC's opportunity to challenge the issuance since the CPUC would not have standing to quash a search warrant – but **would** have had standing to quash and challenge a **subpoena** prior to any production.

By definition, a search warrant is an order in writing signed by a magistrate, **directed to a peace officer**, not a third party, **commanding him or her** to search for persons, things or personal property, and seize them as appropriate. *See* Cal. Penal Code §1523 (a "search warrant is an order in writing . . . signed by a magistrate, directed to a peace officer, commanding him or her to search for . . . a thing or things, or personal property, and . . . bring the same before the magistrate.") In contrast, a subpoena duces tecum is served on a third party commanding him or her to appear as a witness or produce documents. *See* Cal. Penal Code §1326 *et seq.*

Unlike a typical search warrant, the SONGS Search Warrants do not identify property, items, devices, etc. that a peace officer is to seize from a specified location but rather instruct the CPUC to search for emails and documents, identify witnesses, and design a "plan for collection

[1] Indeed, at least one reporter in San Diego somehow knew to search Los Angeles County court records for the search warrant and returns.

and review" of any such documents. Specifically, the search warrants require the CPUC "**to search emails** to or from" 22 identified custodians and "**identify employees** who were involved in the implementation of the greenhouse gas research provisions of the SONGS OII settlement . . . ." (Sections 1 and 2 of SONGS Search Warrants.) The CPUC is required to "**propose to the Attorney General's Office additional employees** whose email they will collect for this purpose" and "**collect and review** emails from the above 22 custodians, plus any other custodians" it identifies. It is also required to "**advise the Attorney General's Office of its progress** and plan for collection and review of any such documents." The orders in effect deputize the CPUC to conduct the Attorney General's search for evidence (and assume the expense) and function as criminal interrogatories, contemplating a protracted and ongoing production.

The Attorney General did not have a peace officer execute the search warrant, it merely provided a copy of the orders to the CPUC's outside counsel. Moreover, contrary to the Attorney General's representation in its "Petition" (Pet. at p. 2, lns. 6-8), the CPUC did not claim the materials sought by the SONGS Search Warrants were protected by the attorney client and deliberative process privileges or propose a screening process to produce screened evidence on a rolling basis. As explained in the CPUC's initial opposition, this was the process used for the first search warrant, which was actually executed, in November 2014. However, the 2015 SONGS Search Warrant was different. A copy of the warrant was given to counsel. Counsel responded by asking the Attorney General to specify its priorities as to which of the **5 document demands** already served on the CPUC had priority over the others so that the CPUC could adjust its resources accordingly. (*See* attached Exhibit 1; *see also generally* Roberts Decl.) The Attorney General refused to set priorities on the productions, despite repeated requests. Further, in this same communication and in later ones with the Attorney General, counsel for the CPUC requested clarification of vague and ambiguous requests in the warrant. A response was promised but never came. (*See* attached Exhibits 2-3; *see also* Roberts Decl. ¶9, Exs. 17-19.)

The Attorney General readily acknowledges that it is bringing its "Petition" to compel the CPUC to search for and review documents that trigger search terms that it submitted in "**December of 2015**", over **6 months after the initial search warrant issued** and months after

the CPUC informed the Attorney General how it would complete its review. (Pet. to Compel at p. 2 ("Based on its investigation, DOJ submitted additional search terms to CPUC in December 2015."); *see also* attached Exhibits 2-4; Roberts Decl. ¶¶9-11; Exs. 16-22.)

II. ARGUMENT

A. There Is No Legal Basis for the Attorney General's "Petition" to Compel the CPUC to "Comply"

The Attorney General has filed a "Petition" with the Court "**to compel CPUC to allow the DOJ to complete its search of property** described in the warrant" yet it fails to cite any Penal Code provision or case that allows for such a "Petition" or for the Court to grant such a remedy. The only statutory provision referenced in the "Petition" is Penal Code section 1523, which merely defines what a search warrant is. (Pet. at p. 3.) Without further clarification from the Attorney General, the CPUC cannot determine the statutory authority upon which to oppose the "Petition" or whether it has a right to appeal any decision rendered by the Court. The "Petition" should thus be denied because the Attorney General has not cited any authority for the relief that it seeks.

Furthermore, the "Petition" wrongly states that the CPUC must be compelled "to allow the DOJ to complete its search of property". The Attorney General chose not to execute the search warrants and search the CPUC or its records. This is not a matter of the CPUC "allowing" the DOJ to search. It should also be noted that the search warrants are orders **directed to the peace officer** and not the recipient, who is thus not subject to an order to comply. How can the CPUC be compelled to comply with orders that were never directed to it?

The fact that there does not appear to be any specific Penal Code provision which allows a government authority to file a "Petition" to compel compliance with a search warrant aptly demonstrates the inherent defects of the SONGS Search Warrants. In typical situations, search warrants are immediately executed by peace officers after they are issued; there is no need to compel anyone to do anything because the action is taken by the enforcement officer. However, in the situation here, the onus here is on the CPUC to investigate, search for and identify both witnesses and documents and then review and produce thousands of documents. The orders are

far more akin to broad grand jury subpoenas than search warrants.

Had the Attorney General issued grand jury subpoenas, which it could have done since a grand jury was empaneled in San Francisco, the CPUC clearly could have moved to quash the subpoenas. *See, e.g., People v. Superior Court (Barrett)*, 80 Cal. App. 4th 1305, 1320 (2000) (holding that a third party who is subpoenaed by defendant in a criminal matter "of course, could move to quash the subpoena and would have the opportunity, through its legal representative, to lodge objections"); *Alford v. Superior Court*, 29 Cal. 4th 1033, 1045 (2003) (recognizing that a custodian of records may object to disclosure of information sought pursuant to a subpoena under Penal Code section 1326, requiring the party seeking the information to make a "plausible justification or a good cause showing of need therefor").[2] However, since the orders were issued as search warrants, this Court found that the CPUC did not have standing to move to quash, since no Penal Code provision provided for such a remedy, but instead must file a motion for return of property. If the CPUC does not have statutory standing to quash the search warrants, as opposed to subpoenas, then it stands to reason that the Attorney General also cannot bring a "Petition" to "compel" a third party to "comply" with a search warrant when there is no statutory basis for doing so. It would be a fundamental denial of due process to allow one party a vehicle for a remedy but not the other.

B. <u>The Search Warrants Were Not Properly Executed</u>

Search warrants are orders to peace officers commanding them to search particular persons or places for specified items and to retain those items in their possession. Cal. Penal Code §1528(a) ("If the magistrate is thereupon satisfied of the existence of the grounds of the application . . . he or she must issue a search warrant . . . to a peace officer . . . commanding him

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[2] Federal courts have criticized government authorities who use search warrants as a means to circumvent a third party's right to object to a grand jury subpoena. *See U.S. v. Comprehensive Drug Testing, Inc.*, 513 F.3d 1085, 1131-32 (9th Cir. 2008) ("Documents held in the possession of third parties are appropriately obtained through use of grand jury subpoena, not search warrant. The record is quite clear that the government used the vehicle of a search warrant only because it thought its grand jury subpoenas might be contested. As the DOJ Guidelines recognize, that is an inappropriate use of a search warrant."); *Stanford Daily v. Zurcher*, 353 F. Supp. 124 (N.D. Cal. 1972) ("A subpoena duces tecum ... is much less intrusive than a search warrant: the police do not go rummaging through one's home, office, or desk if armed with only a subpoena. And, perhaps equally important, there is no opportunity to challenge the search warrant, whereas one can always move to quash the subpoena before producing the sought-after materials.")

or her forthwith to search the person or place named for the property or things or person or persons specified, and to retain the property or things in his or her custody subject to order of the court . . . .") **The CPUC is not aware of any authority that allows a peace officer to require a third party to search for and identify evidence**. The Attorney General has not cited any such authority. Indeed, other sections of the Penal Code addressing execution of a search warrant mention only peace officers and make no reference to unsworn persons. *See. e.g.*, Cal. Penal Code §1530 ("A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution"); Cal. Penal Code §1535 ("When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property").

Search warrants must also be executed within 10 days or they are void. Cal. Penal Code §1534(a) ("A search warrant shall be executed and returned within 10 days after date of issuance. . . . After the expiration of 10 days, the warrant, unless executed, is void."); *People v. Herandez*, 43 Cal. App. 3d 581, 587-588 (1974) (statutory requirement to ensure probable cause between the time of issuance of the warrant and the time of execution to avoid staleness problem).

Here, the search warrants were neither executed by a peace officer nor within the requisite 10 days. While the SONGS Search Warrants were issued to Special Agent Diaz, he did not in fact "execute" the search warrant, e.g., seize the identified property. Instead, the Attorney General's office served the CPUC's outside counsel and instructed the CPUC to search for and identify responsive witnesses and documents, effectively deputizing the CPUC to carry out its criminal investigation and incur the expense. Similarly, Agent Diaz did not seize the property or even instruct the CPUC to turn over the documents within the requisite 10 days. The search warrants themselves contemplate a protracted and ongoing production. (*See, e.g.*, SONGS Search Warrants ¶4 (" . . .CPUC will advise the Attorney General's Office of its progress and plan for collection and review of any such documents.") The Attorney General can point to no authority which holds that it can continue to demand documents six months after the search

warrant was served.

At the time it received the first SONGS Search Warrant, the CPUC had no grounds or means to object. Since it was not served as a subpoena, as discussed above, the CPUC had no standing to move to quash or void the search warrant. Moreover, the affidavit supporting the warrant was filed under seal. The CPUC thus had no knowledge of the factual or legal basis for the warrant. Several months later, in late December 2015, an affidavit in a related search warrant became public and the CPUC was able to view the errors in the factual recitations and legal analysis, concluding that the SONGS Search Warrant lacked probable cause. The CPUC filed its first motion challenging the search warrant affidavit in February 2016. Shortly after the motion was filed, the Attorney General secured the second SONGS Search Warrant without making it clear as to whether it was withdrawing or superseding the first one. From the time it received the first SONGS Search Warrant, the CPUC did everything in its power to try to comply and avoid contempt, while still reserving its rights to challenge it.

C. The Search Warrants Are Stale, Overbroad and Lack Particularity

The Attorney General's "Petition" seeks to compel the CPUC to run search terms which it **demanded on December 22, 2015, over six months after the June 5, 2015 search warrant** issued and over two months after the CPUC informed the Attorney General of the terms used to identify relevant documents. (*See* attached Exhibit 4; Diaz Decl. ¶12, Ex. H.) This demand raises substantial staleness and constitutional concerns. The Attorney General advocates a radical notion that a prosecutor may continuously demand production from a third party, months and even possibly years, after the search warrant issued.

As discussed in the CPUC's April 11 Opposition (*see* CPUC Opp. at pp. 9-10), the proposed additional search terms exceed the scope of the SONGS Search Warrants and trigger a substantial volume of documents that likely have nothing to do with the underlying investigation or even SONGS OII. (*See* Exhibit 4.) For example, the term "TURN", a reference to "The Utility Reform Network", one of the settling parties in SONGS OII, alone triggers over 95,000 documents, over 71,000 of which are unique hits, meaning the search triggers the term "turn" and no other SONGS related terms, e.g., "Songs", "San Onofre", "Poland", etc.. Documents that have

unique hits, i.e., they only hit on one of multiple search terms, are likely not relevant. For example, the "Turn" search is likely pulling in documents that contain any iteration of the word "turn" such as "turn around" or "turn left" as well as any other of a myriad of proceedings before the CPUC to which TURN was a party. The term "ORA", a reference to the "Office of Ratepayer Advocates", a division of the CPUC which represents ratepayers and appears in a substantial number of proceedings before the CPUC, triggers over 15,000 hits, over 8,000 of which are unique. Similarly, the terms "Japan" and "Mitsubishi" trigger over 10,000 hits each. The December 2015 terms collectively trigger over 152,000 additional documents, over 88,000 of which are unique hits.[3]

Thus, the Attorney General's "Petition" seeks to compel the CPUC to review hundreds of thousands of additional documents, which are likely not relevant to its investigation, one year after the search warrant issued. Moreover, assuming that the Attorney General's "Petition" is granted, then there is nothing stopping it from demanding that the CPUC search for and produce even more documents in the future, even though now **over a year has passed**. These apparently limitless search warrants are certainly not what was contemplated by the Legislature or allowed under the Penal Code. Accordingly, the Attorney General's "Petition" should be denied because the SONGS Search Warrants were not properly executed and seek to compel production well outside the 10 day limit.

D. The Search Warrants Are Overly Burdensome

As discussed above and in its April 11 Opposition, the most recent search demands by the Attorney General vastly exceed the scope of the terms of the Search Warrants and require the CPUC to review thousands of documents, the majority of which are likely not relevant to SONGS OII or the Attorney General's investigation. Therefore, the CPUC requests that the Court deny the Attorney General's "Petition" and issue a protective order deeming the CPUC's production complete and instructing the Attorney General that it cannot demand any further searches or production under the current search warrants without approval of this Court.

[3] These searches were run in the database which contains over 4 million records and filtered by the identified custodian and date range specified in the search warrants.

Conversely, should the Court determine that the Attorney General is entitled to additional documents triggered by the December 2015 search terms, the CPUC requests that the review of the documents which trigger the terms be limited to those which are non-unique, i.e., documents which trigger multiple search terms.

Additionally, the SONGS Search Warrants are **the last in time** of a total of 11 demands presented to the CPUC from the U.S. Attorney's Office and the California Attorney General. Indeed, for many months now the CPUC has held the **federal** searches and production in abeyance while trying to satisfy the Attorney General. The CPUC therefore requests that if the Court grants the Petition to Compel, the CPUC will be allowed to respond to the demands *seriatim,* in the order received.

III. CONCLUSION

For the reasons discussed above and in the CPUC's April 11 Opposition, the CPUC respectfully requests that the Court deny the Attorney General's "Petition" to Compel and issue a Protective Order:

- Deeming the CPUC's production to date complete and no further production is required.
- Instructing the Attorney General that no further demands for documents or other evidence may be made to the CPUC without Court approval.
- Ordering all pleadings and documents filed with this Court, including the privilege logs, remain under seal.

Dated: June 16, 2016

DLA PIPER LLP (US)

By 

PAMELA NAUGHTON
REBECCA ROBERTS
Attorneys for Movant
California Public Utilities Commission

EXHIBIT 1

From: Raymond Marshall <RMarshall@sheppardmullin.com>
Sent: Sunday, June 21, 2015 3:53 PM
To: Maggy Krell; Brett Morris; Reye Diaz; Deborah Halberstadt
Cc: jason.reiger@cpuc.ca.gov; Aguilar, Arocles; Naughton, Pamela; Krystal Bowen
Subject: CPUC Update Status

Counsel,

Per your request, we are writing to provide you an update on our review and production process in response to your office's numerous requests for documents. In doing so, we note the following:

First, as a preliminary matter we feel it important to reiterate our guiding principles for responding to the multiple document requests we have received from you, the U.S. Attorney's Office and tens of Public Record Act Requests. They are simple: (1) review and produce documents as quickly, efficiently and economically as possible; (2) err on the side of transparency and disclosure without unintentionally waiving the CPUC's right to maintain any privileges it is entitled to assert under the law; and (3) communicate and cooperate with all requesting parties in the CPUC's ongoing efforts to timely review and produce documents.

Second, it is important to put into context the CPUC's production to date. As you are aware, following your execution of a search warrant on the CPUC in November 2014, we identified approximately 247,646 documents (of the 1,093,654 that we requested from you from your execution of the search warrant) as potentially privileged. In accordance with our March 13, 2015 email, we made a partial production of the documents (from those which we had previously designated as "potentially privileged") responsive to your 2014 search warrant in May. We will make another production of these materials in late-June/early-July. Unless you direct otherwise, we will then focus efforts on completing that production, begin the review and production of the deleted and recovered files and provide you with a privilege log of all documents currently being withheld on the basis of privilege.

Third, to expedite production we will continue or practice of making "rolling productions", as well as prioritizing for immediate production all documents previously reviewed and produced in response to requests by other parties or already part of the public record. Likewise, we will do a "rolling production" of a privilege log, which we will update as appropriate and called for in connection with future productions by the CPUC.

Fourth, as you are further aware, since the execution of the search warrant, your office has served three subpoenas, and an additional search warrant (served on June 5, 2015) on the CPUC. We are continuing to work diligently on these requests. However, given the large volume of materials sought and the overlapping requested due dates, we are requesting additional guidance from you on your prioritization of these requests. Importantly, we have significant concerns and questions about the breadth and scope of your June 5, 2015 Search Warrant. As we advised Agent Diaz, my former partner, Pam Naughton, will be handling the CPUC's response to the warrant and will contact you directly to discuss the various questions we have about the requests. As it currently stands, the new requests in the June 5 search warrant will delay our review and productions of Grand Jury Subpoenas #1 and #2, as well as the remaining documents that were previously identified as "potentially privileged" from the execution of your 2014 search warrant.

In sum, as stated previously, we are continuing to work diligently to review and produce the materials you are requesting, given limited resources and the concurrent demands of federal subpoenas and Public Records Act requests. However, we would benefit greatly from a dialogue with you about how best to prioritize the requested materials. At that point, we will be in a better position to give you a more detailed timeline regarding our ability to be able to respond to your numerous requests.

Finally, I will be out of the country on vacation the next two weeks, returning to the office July 6. In the interim, Krystal Bowen and Pam McNaughton will be able to address any questions you may have in my absence.

Best regards,

Ray

Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

EXHIBIT 2

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www.dlapiper.com

Pamela Naughton
pamela.naughton@dlapiper.com
T 619.699.2775
F 619.764.6625

September 29, 2015

OUR FILE NO. 393011-000001

VIA EMAIL AND US MAIL

Ms. Maggy Krell
Deputy Attorney General
California Department of Justice
Office of the Attorney General
1300 I Street
Sacramento, CA 95814

Re: California Public Utilities Commission

Dear Ms. Krell:

On behalf of the CPUC, we are providing you with updates of the CPUC's production of documents to your office and our plans to complete the productions.

As you know, your office served 2 search warrants and 3 grand jury subpoenas on the CPUC between November 4, 2014 and June 5, 2015. In addition to these demands, the CPUC has received 5 grand jury subpoenas from the United States Attorney's Office. The SONGS search warrant, served by your office, was the last of no less than 10 formal demands for information from two different prosecuting agencies.

The CPUC is a public agency that is integral to the safe, fair and effective operation of California's utilities. Although, as a state agency, it cannot be criminally charged, the CPUC has nevertheless fully cooperated with the ongoing investigations and will continue doing so. However, the excessive demands by the Attorney General and the US Attorney's Office are impinging on the CPUC's already limited resources and threatening its very ability to carry it out its constitutionally mandated duties.

To date, the CPUC has produced well over **a million** documents to the Attorney General. Since January, the CPUC has continue to produce documents nearly every month, on a rolling basis. We have produced documents in response to each and every demand your office has issued. We have completed our production in response to subpoenas 1 and 3.

Now that you have received, and presumably reviewed, the over 1 million documents produced to date and, no doubt, have a better sense of the types of documents requested and how pertinent they may or may not be, it seems an appropriate time to evaluate the remaining document demands to make sure you truly need more documents and, if so, to explain how we intend to go about review and production in the most efficient way possible.

What follows is a summary of the status as to each document demand.

I. Search Warrant Executed In November 2014

In November 2014 state agents seized computers and hardware containing approximately 1.1 million live documents. Because of the likelihood of some of these documents containing privileged

communications, your office provided us with copies of the seized documents in order to filter through agreed upon search terms to identify potentially privileged documents.

It is well settled that privileged documents may be withheld from a government investigation, even if those documents are subject to a search warrant. People v. Sup. Ct., 25 Cal. 4th 703 (2001) (government not entitled to documents protected by the attorney-client privilege and/or work product doctrine that were seized pursuant to a search warrant). Indeed, the Attorney General's Office itself withholds documents subject to subpoenas on the grounds of deliberative process and attorney-client privilege. Notably, Prime Healthcare Serv. v. Harris, No. 5:15-cv-01934-GHK-DTB (C.D. Cal. Sept. 21, 2015); Coleman v. Schwarzenegger, No. C01-1351 THE 2007, WL 4328476 (E.D. Cal. 2007); Coito v. Sup. Ct., 54 Cal. 4th 480 (2012).

The filtering process identified approximately 255,000 documents containing "potentially privileged" terms. The remaining documents (approximately 845,000) were immediately produced back to you. Since then, approximately 131,186 of the "potentially privileged" documents have been produced to you, leaving approximately 10% of the original 1.1 million yet to be reviewed. The nature of this review is time consuming. Unfortunately, there is no way to streamline line this process unless your office allows us to suspend our review and deem the search warrant to have been complied with. Now that you have seen 90% of the documents from this search warrant, please let us know whether you wish us to continue our review or if you are, at this point, satisfied with the production.

If we need to review this last batch of documents, we estimate completion would require approximately an additional 65 working days. Notably, this estimate assumes current staffing levels, including the contract attorneys working 7 days a week, and working only on this search warrant and no other state or federal subpoenas or search warrants, which, of course, is not currently the case. If budgetary constraints force us to limit the number of hours of reviewers, which appears highly likely, then obviously the time to completion is lengthened.

In addition to the active files which we filtered and are currently reviewing, we were able to recover over 321,000 deleted documents from the copies your office provided to us. A good portion of these documents appear to be spam and/or junk email. However, approximately 60% contained privileged search terms. After a preliminary analysis, only 13% of the total deleted documents triggered key terms covering the subject matter addressed in the warrants (e.g., SONGS, utility domain name addresses, etc.). However, given our limited resources, we have not yet begun any review of them and thus have no estimate for completion. The completion date would obviously depend on whether we have to review all 321,000 or only the 13% which contained subject matter key terms.

II. SONGS Search Warrant

Preliminarily, we wish to point out that the SONGS search warrant is vague and has caused confusion among our reviewers. Although not numbered, the search warrant vaguely identifies 5 broad categories for production. It calls for any and all records between January 31, 2012 through January 31, 2015: (1) involving the SONGS OII settlement agreement, (2) the 2013 meeting between Pickett and Peevey in Poland, (3) communications as to when and why the San Onofre facility would be closed, (4) commitment of monies for greenhouse gas research as a result of the SONGS settlement, and (5) communications with parties to the settlement of SONGS OII.

It also specifies 22 custodians (8 of whom are CPUC employees) and requires the CPUC to further identify additional CPUC custodians who were involved in the implementation of the greenhouse gas research provisions and also gather hard copy documents from the identified custodians, which we are in the process of completing.

Section 5 of the search warrant further details what documents should be provided as to three of the demands:(1), (2) and (4):

Introductory Paragraph	Section 5 Further Specifications
(1) SONGS closure settlement agreement	(5)(a): (1)documents constituting or referring to communications with SCE about the OII prior to the execution of the settlement on March 27, 2014 (excluding on-the-record communications such as SCE pleadings filed with the CPUC); and (2) documents constituting communications with TURN or ORA referencing communications from Peevey regarding SONGS or UC in the context of the settlement negotiations up to March 27, 2014
(2) the 2013 meeting between Stephen PICKETT and Michael PEEVEY in Poland	(5)(b): As to documents pertaining to the Poland trip in March 2013, CPUC will produce documents constituting or referring to communications during that trip that relate to SONGS. These documents will include any communications or materials regarding SONGS made: (1) in anticipation of the trip, (2) any documents or communications regarding SONGS that occurred during the trip, and (3) any communications or material regarding SONGS created after the trip ended.
(4) commitment of monies for research as a result of the closure of SONGS	(5)(c): As to the documents regarding funding of research in connection with the SONGS settlement, CPUC will produce documents and all communications that: (1) constitute or refer to communications with SCE or UCLA regarding greenhouse gas research as part of the SONGS drafts of same; (2) refer to SCE's contributing to the UCLA Luskin Institute at UCLA, the University of California, UCLA's Institute of the Environment and Sustainability, or the California Center for Sustainable Communities at UCLA, in connection with the SONGS settlement; and (3) constitute advocacy directed to the CPUC by local governmental agencies in support of greenhouse gas research as part of the settlement.

However, the search warrant does not provide any further guidance as to demands (3) (communication(s) pertaining to the determination of when and why SONGS would be closed) and (5) (communication(s)

pertaining to the settlement of the SONGS OII), which are very broad and vague. Practically anything produced or created for the OII proceeding could be considered to relate as to why SONGS would be closed or the ultimate settlement of the OII itself. Yet, subsection (5)(a) indicates that the CPUC is not required to produce public filings, at least as to the settlement agreement.

To respond to the search warrant, CPUC pulled emails and documents from its servers from the specified CPUC employees, plus other CPUC employees known to be involved with the SONGS OII settlement or greenhouse gas provisions. We also extracted communications to, from, and/or copying the SoCal Edison employees listed in the search warrant. This data was exported into a larger database. There are currently several million documents in this database.

To efficiently and effectively respond to the search warrant, the CPUC compiled SONGS search terms, based on the demands of the search warrant and the detailed requests of section 5, and applied these terms to the emails and other documents of the 22 identified custodians, plus the additional employees identified by the CPUC. This produced several hundred thousand documents which will be reviewed for relevance. We have also applied the agreed upon privileged terms to identify any potentially privileged documents and will review those documents for privilege. We are still in the process of collecting and processing documents from all possible sources. At this point, we do not have an estimate of the total volume, or anticipated completion date.

Finally, as we explained in our last telephone call with you, at least 20,000 of the documents **already produced** to the Attorney General's office in response to the first search warrant and earlier subpoenas triggered SONGS search terms. Moreover, on September 8, 2015, the CPUC produced approximately 19,335 additional documents to the Attorney General's office that referenced SONGS search terms and had been produced in prior productions to federal authorities. Thus, over 40,000 documents have been produced responsive to this search warrant. Since these facts clearly contradict agent Diaz's statement filed with the return of the search warrant, we ask that his affidavit be corrected and refiled with an errata.

III. Second Grand Jury Subpoena

The CPUC has already produced nearly two thousand documents in response to this subpoena. To fully respond to this subpoena, the CPUC has isolated all correspondence among all ALJs during the relevant time period and searched for all documents that trigger the term "assign" or "assignment". These search parameters encompassed over 17,000 documents, which will need to be reviewed for relevance and privilege.

We are open to discussing any suggestions you have as to how we could further prioritize or downsize the review tasks and get truly pertinent documents to you more quickly. We are happy to meet and confer regarding the scope of your requests and our productions.

Please call me with any questions or concerns.

Very truly yours,

DLA Piper LLP (US)

Pamela Naughton
Partner

PN:mev

WEST\261656856.1

EXHIBIT 3

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October 16, 2015

OUR FILE NO. 393011-000001

CONFIDENTIAL

Ms. Maggy Krell, Deputy Attorney General
Ms. Deborah Halberstadt, Deputy Attorney General
Reye Diaz, Special Agent
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Dear All,

As we discussed with Special Agent Diaz and Ms. Halberstadt on Tuesday, October 13, below is a summary of the CPUC's production to date in response to the SONGS search warrant issued on June 5, 2015. Also below is a summary of our proposal to streamline the review and production of (1) the deleted emails recovered from the data seized pursuant to the first search warrant issued in November 2014 and (2) the approximately 100,000 documents that remain to be reviewed in response to this search warrant.

I. Compliance with the SONGS Search Warrant

First, as we informed you during our call and explained in our September 29, 2014 letter, the California Attorney General has a substantial volume of documents responsive to the SONGS search warrant (by our estimate, over 20,000 documents) already in its possession due to the fact that it initially seized a number of computers and hard drives as a result of the November 5, 2014 warrant. The items seized were computers, hard drives, and other devices of certain custodians such as former Commission President Michael Peevey, Michel Florio, Carol Brown, etc. Since your office seized these documents, it obtained everything on them, including any documents relating to SONGS. Per the CPUC's prior agreement with the Attorney General's office, you provided us with copies of everything initially seized and allowed us to review documents that triggered certain terms which may indicate that a document is privileged. Following this agreed upon protocol, we have produced over a million documents back to your office to date (approximately 845,000 which did not trigger any potentially privileged terms and approximately 131,000 which were reviewed for privilege and then produced.)

Using our document review platform tool, we applied relevant SONGS terms to the documents we had already produced back to you as of July 31, 2015 from the first search warrant. Our term search results identified approximately 20,373 documents. So, even before the CPUC made any production to your office specifically in response to the SONGS search warrant, your office already had a substantial volume of responsive documents in your possession. Please note that this search result does NOT include

additional documents the CPUC produced to you in response to the November 5, 2014 search warrant on September 24, 2015. So, it is highly likely you have even more SONGS responsive documents in your possession.

Second, on September 8, 2015, the CPUC produced approximately 19,335 documents to your office in response to the SONGS search warrant. This production consisted of documents that referenced SONGS search terms that had been produced in prior productions to federal authorities.

Third, the CPUC intends to make another production in response to the SONGS search warrant by the end of the month. In order to respond to the SONGS search warrant, CPUC pulled emails and documents from its servers from the specified CPUC employees, plus other CPUC employees known to be involved with the SONGS OII settlement or greenhouse gas provisions. We also extracted communications to, from, and/or copying the SoCal Edison employees listed in the search warrant. This data was exported into a larger database. There are currently several million documents in this database.

To efficiently and effectively respond to the search warrant, the CPUC applied SONGS search terms to the emails and other documents of the 22 identified custodians, plus the additional employees identified by the CPUC. We have also gathered hard copy documents from the identified custodians and will be producing these documents in the next production.

We will continue to produce documents responsive to the SONGS search warrant on a rolling basis, after we have completed our production in response to the November 2014 search warrant, per your instruction.

II. Streamlining Production on the November 5, 2014 Search Warrant

As we discussed on our call, the CPUC has identified approximately 321,000 deleted and recovered emails from the material initially seized pursuant to the November 5, 2014 search warrant. You agreed that the CPUC may limit its review and production of these documents to only those which trigger terms related to the first search warrant and the SONGS search warrant. Our proposed terms are attached as Exhibit A.

Additionally, we estimate that we have approximately 100,000 documents that remain to be reviewed in response to the November 2014 search warrant. It will greatly streamline the process and reduce expenses to filter those 100,000 documents using the terms in Exhibit A. We are open to discussing any additional search terms with you. In the meantime, we will proceed with the filtering process.

Once we finalize the most recent production on SONGS, our priority will be completing our review of the documents responsive to the first search warrant. Once we have completed that review, we will discuss

our next steps for completing production in response to grand jury subpoena #2 and the SONGS search warrant.

Please let us know if you have any questions, concerns or comments regarding the proposed search terms. Thank you.

Very truly yours,

DLA Piper LLP (US)

Pamela Naughton
Partner

Admitted In California Bar

WEST\262193877.1

EXHIBIT A

SONGS*
"San Onofre"
"12-10-013"
"1210013"
Unit2*
"Unit 2"
Poland
Warsaw
"Bristol Hotel"
"greenhouse"
(green* w/3 house)
"ghg"
(fund* w/3 research)
"UC"
"UCLA"
(University w/3 California)
"Luskin"
"IES"
(Institute w/3 Environment w/3 Sustainability)
((Institute w/3 Environment) w/2 Sustainability)
"CCSC"
(California w/3 Center w/3 Sustainable w/3 Communities)
(((California w/3 Center) w/2 Sustainable) w/3 Communities)
"CFEE"
(California w/3 Foundation w/5 Environment w/5 Economy)
(((California w/3 Foundation) w/2 Environment) w/3 Economy)
HECA
Annual w/3 dinner
Cherry
Judge w/3 Long
Judge w/3 Wong
*sce.com
*edisonintl.com
*sdge.com
*pge.com
*Semprautilities.com

EXHIBIT 4

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

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E-Mail: Deborah.Halberstadt@doj.ca.gov

December 22, 2015

Ms. Rebecca Roberts
DLA Piper, LLP
401 B Street, Suite 1700
San Diego, California 92101-4297

RE: California Public Utilities Commission

Dear Ms. Roberts:

Thank you for your recent productions of 1) documents responsive to the November 5, 2014 search warrant (CPUC CALAG 02130833-02144600) and 2) the reproduction of documents in response to the June 5, 2015 search warrant (CPUC CALAG 00001781-2122826, though not consecutive). I appreciate your quick turnaround on these items.

In our December 14, 2015 conversation, we also discussed the search terms CPUC is employing to identify responsive documents. As I understood from our conversation, CPUC is currently using Exhibit A to identify documents responsive to the November warrant. Exhibit A includes some terms related to SONGS, and some terms related primarily to the judge-shopping issue with PG&E. In discussing the use of this list of terms further with my office, we have concluded that these limited search terms are insufficient for purposes of response to the November warrant. We respectfully request that you provide all non-privileged documents in response to the November warrant, not just those captured by searching the terms found in Exhibit A. We understand that as of October 16, 2015, you had approximately 103,000 emails left to review for privilege, and on December 21, you produced 13,767 documents. We recognize that this request will require additional time for you to respond, and we will so note in the return to the court.

Furthermore, in our conversation, you explained that the terms found in Exhibit A related to SONGS are the same terms you are using to respond to the June warrant. We respectfully ask you to search for the following additional terms in responding to the June warrant:

Unit3*
"Unit 3"
Bristol
Pincetl
Aguirre

Geesman
Mitsubishi
Japan
TURN
ORA
"$25 million"
"25 million"
"$20 million"
"20 million"

Please do not hesitate to contact me with any questions.

Sincerely,

DEBORAH R. HALBERSTADT
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

DRH:

LA2014118251

KAMALA D. HARRIS
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JAMES ROOT
Senior Assistant Attorney General
MAGGY KRELL
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

IN RE JUNE 5, 2015 SEARCH WARRANT NO. 70763 ISSUED TO CALIFORNIA PUBLIC UTILITIES COMMISSION	Case No. SW 70763 **DOJ'S OPPOSITION TO CPUC'S MOTION FOR RETURN OF PROPERTY** Date: June 23, 2016 Time: 1:00 p.m. Dept: 56 **FILED UNDER SEAL**

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TO THE HONORABLE JUDGE OF THE SUPERIOR COURT OF LOS ANGELES, AND TO THE CPUC AND ITS ATTORNEYS OF RECORD:

The Attorney General, representing the People of the State of California, hereby opposes the California Public Utilities Commission's Motion for Return of Property, and respectfully requests the Court order compliance with the search warrants issued by this Court on June 5, 2015, and March 9, 2016.

PROCEDURAL AND FACTUAL BACKGROUND

On June 5, 2015, the Department of Justice (DOJ) served a search warrant (the June warrant) on the California Public Utilities Commission (CPUC) seeking documents relevant to a pending criminal investigation regarding the shutdown of San Onofre Nuclear Generating Station (SONGS). The warrant was signed by the Honorable David V. Herriford of the Los Angeles Superior Court after presentation by DOJ Special Agent Reye Diaz. CPUC was immediately served with the warrant. CPUC claimed that the materials sought were protected by the attorney client and deliberative process privileges. CPUC proposed a screening process whereby they would review evidence for privilege, and submit screened evidence to DOJ on a rolling basis.

CPUC partially complied with the warrant, submitting some responsive records to DOJ in September and December 2015. After being ordered to do so by the Court on April 27, 2016, the CPUC finally provided a partial privilege log to DOJ, detailing which records are being withheld due to privilege claims. However, the privilege log indicates that CPUC has withheld an enormous swath of evidence highly relevant to DOJ's investigation. CPUC has failed to complete the production, failed to adequately substantiate its privilege claims, and instead attempts to challenge the warrant. CPUC initially claimed that an incorrect statement invalidated the June 5, 2015 warrant. DOJ submits that the June 5, 2015 search warrant is legally sufficient despite the misstatement and, therefore, that CPUC is obligated to comply. Nonetheless, DOJ submitted a new search warrant for the same items to the Court, excising the misstatement. On March 9, 2016, the Honorable David V. Herriford signed the new warrant and CPUC was served. Still, CPUC indicated it would not comply with either warrant, instead filing a Motion to Quash – which this Court denied – and then the instant Motion to Return Property. DOJ maintains that

both warrants were supported by adequate probable cause, and opposes CPUC's Motion for Return of Property. Instead, DOJ respectfully requests that this court order CPUC to comply.

ARGUMENT

CPUC's Motion to Return Property relies on Penal Code section 1540. In order to prevail under this statute, CPUC must prove that either no probable cause existed for the warrant, or that the property seized was not that described in the warrant. If a magistrate makes either of these findings, the property must be restored. (See *People v. Butler* (1966) 64 Cal.2d 842.) The "Legislature's purpose in enacting sections [1539 and 1540] was not to regulate the procedure for objecting to the introduction of evidence in criminal trials but to afford the person from whom property was wrongfully seized an expeditious remedy for its recovery." (*Id.* at p. 821 (citing *Aday v. Superior Court* (1961) 55 Cal.2d 789, 800).) Moreover, sections 1539 and 1540 "would not preclude an officer from testifying to what he saw in the course of a search under an invalid warrant or from using information obtained in such a search to secure other evidence." (See *People v. Butler* (1966) 64 Cal.2d 842 (citing *People v. Berger*, *supra*, 44 Cal.2d 459, 462, 282 P.2d 509; *People v. Roberts* (1956) 47 Cal.2d 374, 378-379, 303 P.2d 721).)

Here, the CPUC has failed to show that the property it turned over was not described in the warrant, or that the warrant lacks probable cause. CPUC makes several claims without factual or legal basis. The People will address those that fit within the legal framework of a Motion to Return Property.[1]

A. THE DEPARTMENT OF JUSTICE'S SEARCH WARRANTS ARE NOT FACIALLY DEFECTIVE

CPUC first attempts to claim the warrant is "defective," taking issue with the production process. The clear language of the warrant commands the affiant to seize "any and all records from January 31, 2012 until January 31, 2015, involving San Onofre Nuclear generating Station (SONGS) closure settlement agreement, the 2013 meeting between Stephen Pickett and Michael Peevey in Poland, communication(s) pertaining to the determination of when and why SONGS

[1] CPUC's claims about DOJ's motives for using search warrants are unprofessional, unsupported, and untrue.

would be closed, commitment of monies for research as a result of the closure of SONGS, and communication(s) pertaining to the settlement of the SONGS Order Instituting Investigation (OII)." The warrant goes on to identify with particularity what records to include by listing specific email accounts, individuals, and communications at issue. The evidence described in the warrant is directly related to the affidavit. The property taken was provided by the CPUC as a direct response to this warrant. CPUC can hardly claim that the "property seized" was "not described" in the warrant, as required to prevail on a Motion to Return Property pursuant to section 1540.

Rather than attack the description in the warrant itself, CPUC appears, for the first time since the execution of this warrant over a year ago, to quibble with the method of collecting evidence. This is not a ground for return of property under section 1540. In any event, as laid out in the Declaration of Reye Diaz and accompanying exhibits filed in support of the People's Motion to Compel[2], the CPUC not only agreed to this collection method, but insisted on it. In November 2014, DOJ agents went to CPUC headquarters, with a warrant in hand, seized several hardware items, and downloaded data from CPUC's servers. CPUC attorneys immediately claimed privilege, and insisted that DOJ wait to search any evidence until CPUC had an opportunity to screen for privilege. CPUC promised to provide DOJ with evidence responsive to the warrant, and to do so on a rolling basis as the material was reviewed for privilege. CPUC promised to produce evidence in a timely manner and to provide a privilege log. CPUC also requested that any future warrants be executed in this fashion. Rather than disrupt the important work of a public agency, DOJ agreed to this method, believing at that time that CPUC would comply in good-faith and cooperate with the criminal investigation. DOJ submitted to this process for serving its June 5, 2015 and March 9, 2016 warrants. Faced with continual delays, DOJ sought to alleviate the CPUC's workload by offering to perform its own internal taint review, by suggesting and drafting a confidentiality agreement which would have preserved CPUC's privilege claims, or by assigning a special master. CPUC rejected all of these proposals

[2] The People have not reattached these exhibits to avoid unnecessarily burdening the Court with duplicative documents.

and re-committed to finishing the production. Rather than following through, CPUC now challenges the very process it insisted on. The process does not render DOJ's warrants defective. The warrants meet legal requirements and as described below, are supported by probable cause.

B. THE DEPARTMENT OF JUSTICE'S SEARCH WARRANTS ARE SUPPORTED BY PROBABLE CAUSE

1. The Probable Cause Requirement

Probable cause exists for a search warrant when there is "a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 238-239; see also *id.* at p. 243 ["probable cause requires only a ... substantial chance"]; *Texas v. Brown* (1983) 460 U.S. 730, 742 [Probable cause is a "particularized suspicion"]; *Wimberly v. Superior Court* (1976) 16 Cal.3d 557, 564 [Probable cause is "facts that would lead a man of ordinary caution ... to entertain a strong suspicion that the object of the search is in the particular place to be searched."].) A magistrate reviewing a search warrant affidavit is tasked with making "a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information," the probable cause requirement is met. (*Illinois v. Gates, supra,* 462 U.S. at pp. 238-239.) The search warrant affiant must provide the magistrate, by way of affidavit, with the factual information he or she knows and his or her opinion as a law enforcement officer. Because an affidavit offered in support of the search warrant is normally drafted by nonlawyers in the midst and haste of a criminal investigation, technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. (*U.S. v. Ventresca* (1965) 380 U.S. 102, 108; *People v. Ulloa* (2002) 101 Cal.App.4th 1000, 1006 .)

2. The Court's Standard of Review

Great deference is shown to the issuing magistrate in challenges to a search warrant. (See *U.S. v. Grant* (9th Cir. 2012) 682 F.3d 827, 832.) Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants. (*Jones v. United States, supra*, 362 U.S., at p. 270, 80 S.Ct., at p. 735.)

Therefore, a reviewing court should resolve doubtful or marginal cases in favor of upholding the warrant. (*Caligari v. Superior Court* (1979) 98 Cal.App.3d 725, 729-730.)

3. The Warrant Affidavits Articulate Probable Cause to Believe Peevey and Pickett Conspired to Have Unreported Ex Parte Communications in Violation of Penal Code section 182(a)(1)

Throughout the search warrant affidavits at issue, facts are presented that, in their totality, constitute probable cause that Michael Peevey (Peevey) and Stephen Pickett (Pickett) conspired to have unlawful ex parte communications. In ratesetting matters, the Public Utilities Code prohibits ex parte communications, which it defines as communications between a decisionmaker and a person with an interest in a matter before the commission concerning substantive issues. (Pub. Util. Code, § 1701.3, subd. (c).) However, a commissioner may permit oral ex parte communications "if all interested parties are invited and given not less than three days' notice." (*Ibid.*) Additionally, CPUC Rules, Rule 8.4, requires that, regardless of whether the ex parte communication was initiated by the interested person or the decisionmaker, the communication is reported by the interested person within three working days.

CPUC, in its Motion, manufactures its own set of rules governing ex parte communications that is neither found in nor consistent with the Public Utilities Code or the implementing regulations. Neither authority provides that there are four variations of the ex parte rule governing ratesetting proceeding nor is that a reasonable interpretation of the various provisions when they are read in conjunction with one another. Rather, Rule 8.3(c) says that, "In any ratesetting proceeding, ex parte communications are subject to the reporting requirements set forth in Rule 8.4. In addition, the following restrictions apply… ." Rule 8.3 then goes on to provide that with individual oral communications, "the interested person requesting the initial individual meeting shall notify the parties that its request has granted, and shall file a certificate of service of this notification, at least three days before the meeting or call." The plain language of Rule 8.3 – namely, its use of the phrase "In addition" – indicates that Rule 8.3 *and* 8.4 apply together, not individually in different situations as CPUC suggests. Furthermore, there is no mention in Rule 8.3 or 8.4 of separate requirements for pre-planned and spontaneous ex parte communications, or that Rule 8.3 applies to one and Rule 8.4 to the other. Rather, it seems that

only pre-planned ex parte communications are permitted since that is the only way that the requirements of both rules can be met. The plain language of Pub. Util. Code 1701.3(c) supports this reading of the Rule. Therefore, Pickett and Peevey's ex parte communications were unlawful.

Not only does the Public Utilities Code prohibit ex parte communications unless the proper notice is given, and the proper reporting requirements complied with, but it criminalizes them. Specifically, Public Utilities Code section 2110 provides that "[e]very public utility officer, agent, or employee of any public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the California Constitution or of this part . . . is guilty of a misdemeanor. . . . (Pub. Util. Code, § 2110.)[3] Penal Code section 182(a)(1) makes it a crime to conspire to commit any other crime, including a violation of Public Utilities Code section 2110.

The facts contained in the search warrant affidavits present substantial evidence that Peevey and Picket violated Penal Code section 182(a)(1) by conspiring to have an ex parte communication that Pickett would not report, in violation of Public Utilities Code section 2110. Specifically, the warrant affidavit explains that while the SONGS proceedings were ongoing before the CPUC, Pickett and Peevey met regarding the proceeding while at a hotel in Warsaw, Poland.[4] During this meeting, Peevey and Pickett discussed prospective settlement terms related to the closure of SONGS, including rate payer costs, which is most certainly an issue of "substance." The ex parte communication was witnessed by a Ed Randolph, the current Director of Energy of the CPUC, who corroborated the substantive nature of the conversation and

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[3] Pursuant to Public Utilities Code section 2110, an individual can only be found guilty of a misdemeanor violation of the Public Utilities Code if a penalty has not otherwise been provided. However, this does not preclude Peevey and Pickett charged with, or found guilty of, conspiring to commit a violation of Public Utilities Code section 2110, as the conspiracy charge is an entirely different crime with wholly distinguishable elements. A conspiracy to violate Public Utilities Code section 2110 requires that Peevey and Picket agreed to engage in ex parte communications and committed some overt act toward that end. As discussed in this section, there is a factual basis for a violation of Penal Code section 182(a)(1) and probable cause to believe a violation of that section was committed.

[4] All references in this section to the facts included in the search warrant are from pages six through nine of the affidavit.

confirmed that the nature of the communication was such that it needed be reported. Upon returning home, Pickett provided Southern California Edison (SCE) management with notes based on his recollection of the meeting. Peevey recorded notes from the meeting on hotel stationery which he brought home with him. These notes were recovered during the service of a search warrant at Peevey's house on January 27, 2015. The notes prepared by Pickett and Peevey are nearly identical. The warrant affidavit goes on to explain that SCE did not disclose that the ex parte communications took place, or provide any type of notice regarding their occurrence, until after Peevey's notes were discovered and the fact that the meeting took place was publicly disclosed by the San Diego Union-Tribune. SCE attempted to justify this conduct by indicating that Pickett only remembered that he may have crossed the line by engaging in a substantive conversation, rather than just listening to Mr. Peevey deliver a monologue, after the public disclosure. Mr. Randolph's statement indicating that, to him, the communication would clearly need to be reported yields even greater suspicion regarding the decision not to report the communication.

Peevey also did not give notice of or report the communication. Though CPUC argues that, because it was not CPUC's responsibility to report the communication, Peevey could not have violated the law, this is incorrect. While it is true that the utility is responsible for reporting the communication, and not Peevey or the CPUC, this does not impact both parties' probable culpability in agreeing to have prohibited ex parte communications that would remain unreported and acting on that agreement as members of a conspiracy. Multiple courts have held that an individual can be subject to prosecution for conspiring to commit a crime even when he or she could not be criminally liable for the underlying crime. (See *People v. Lee* (2006) 136 Cal.App.4th 522, 529 (citing *People v. Buffum* (1953) 40 Cal.2d 709, 722, overruled on other grounds in *People v. Morante* (1999) 20 Cal.4th 403; see also *People v. Roberts* (1983) 139 Cal.App.3d 290, 293; *People v. Biane* (2013) 58 Cal.4th 381 [holding that the offeror of a bribe may be charged, along with recipient of the bribe, with conspiring to receive the bribe].)

It is uncontested that Peevey and Pickett met in Poland, discussed the substance of the SONGS proceeding during that meeting, and failed to disclose the meeting as required. These

facts are all detailed in the search warrant affidavit. It is also clear that Peevey took, and kept, a single page of handwritten notes and Pickett, upon being asked about the meeting, suddenly had a limited recollection of what transpired. These facts, too, are laid out in the search warrant affidavit. Together, these facts most certainly give rise to a "particularized suspicion" that Pickett and Peevey conspired to have unlawful ex parte communications. As such, the affidavit establishes sufficient probable cause for a magistrate to find that further evidence of this crime and surrounding circumstances would likely be found at the CPUC.

4. The Warrant Affidavits Articulate Probable Cause to Believe Peevey and Pickett Conspired to Obstruct Justice in Violation of Penal Code section 182(a)(5)

There is probable cause to believe Peevey and Pickett, in their agreement to have unnoticed and unreported ex parte communications, also conspired to obstruct justice in violation of Penal Code section 182(a)(5). An individual violates this section if he or she is one of two or more people who conspire to commit any act injurious to the public health, or public morals, or to pervert or obstruct justice, or the due administration of the laws. (Pen. Code, § 182(a)(5).) An act that perverts or obstructs justice or the due administration of the laws is not limited to the crimes listed in the Penal Code. *(People v. Redd* (2014) 228 Cal.App.4th 449, 462; see *Davis v. Superior Court* (1959) 175 Cal.App.2d 8.) Rather, this conduct includes "malfeasance and nonfeasance by an officer in connection with the administration of his public duties, and also anything done by a person in hindering or obstructing an officer in the performance of his official obligations." (*Lorenson v. Superior Court of Los Angeles County* (1950) 35 Cal.2d 49, 59.)

The search warrant affidavit lays out facts sufficient to yield particularized suspicion that Peevey and Pickett conspired to obstruct justice by agreeing to have ex parte communications without providing notice or reporting that the communications took place. As detailed in the warrant, at the time of the ex parte communication at issue, Peevey was an officer with official obligations: he was the President of the CPUC. In this role, his duties included assuring that CPUC achieved its stated mission of "serv[ing] the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates. . . ." (*CPUC Website*, http://www.cpuc.ca.gov/general.aspx?id=1034 (as of April 11, 2016).) and acted

consistent with its "commit[ment] to transparency in its work to serve the people of California." (*CPUC Website*, http://www.cpuc.ca.gov/transparency/ (as of April 11, 2016.) Presumably, Peevey's duties as President also included following the provision of the Public Utilities Code – the statutory authority intended to govern his agency - and facilitating others doing so as well. Nonetheless, while ostensibly open and fair ratesetting proceedings were pending before the CPUC in Sacramento, California, Peevey and Pickett were engaged in ex parte communications half-way across the globe, without any notice to or input from ratepayers' settlement parties.

The evidence points to the fact that Peevey and Pickett agreed to have the unreported ex parte communication in Poland in an effort to influence the outcome of the SONGS proceeding, which was pending before a different CPUC Commissioner, and provide each of them respective benefits. During the meeting, Peevey attempted to influence the outcome of the SONGS ratesetting proceeding by discussing the terms of a potential settlement with Pickett "off the record." By participating in the ex parte communications, Pickett was able to help SCE achieve an optimal outcome in the SONGS negotiations.[5] A ratepayers' settlement party, upon learning of the ex parte communications, issued a statement concluding that Peevey's handwritten hotel notes appear to have been the framework for the final settlement and that, because Pickett had obtained knowledge regarding Peevey's position, it was likely that SCE was able to steer the settlement accordingly to achieve the favorable outcome. This attorney also indicated that it appeared that SCE managed to improve its position by at least $919 million, and arguably $1.522 billion, as a result of the ex parte communications. Additionally, Peevey insisted that any settlement include a 25 million dollar commitment to UCLA. As detailed in the search warrant affidavit, the original SONGS settlement, which was filed on April 4, 2014, did not include this term. Peevey made several back door attempts, including the initiation of multiple private communications with other SCE employees and conversations with the Commissioner presiding over the proceeding, to demand that the UCLA term would be included in the settlement. Finally, on September 5, 2014, the assigned Commissioner rejected the parties' proposed settlement. The

[5] All references in this section to the facts included in the search warrant are from pages ten through fifteen of the affidavit.

UCLA term was ultimately added and on November 25, 2014, a SONGS settlement was approved.

These facts lead to a particularized suspicion that Peevey and Pickett conspired to obstruct justice by agreeing to have unreported ex parte communications that would influence the outcome of the SONGS proceeding. By having the unreported ex parte communications, Peevey and Pickett were able to circumvent the statutes and regulations intended to assure the fairness and transparency of ratesetting proceedings and just outcomes for rate payers, thereby obstructing the just resolution of the SONGS proceedings. They undermined the sanctity of the proceeding before the CPUC, as well as CPUC's commitment to transparency, and put the rate payers CPUC is intended to protect in a disadvantaged position. The conspiracy fundamentally compromised the rights of other parties who were not included in the ex parte communications. CPUC itself has recognized the magnitude of this potential harm by recently reopening the tainted settlement proceedings. Peevey and Pickett's agreement to have unreported ex parte communications demonstrated malfeasance in Peevey's administration of his public duties, and constitutes a violation of Penal Code section 182(a)(5). This is laid out in the search warrant affidavit which, in its presentation of the facts supporting a violation of Penal Code section 182(a)(5), provides probable cause to believe the crime was committed and further evidence would be found at the CPUC.

C. THE SONGS WARRANT IS A VALID SEARCH WARRANT SUPPORTED BY PROBABLE CAUSE; THEREFORE, THE COURT SHOULD ORDER CPUC TO COMPLY WITH THE WARRANT

CPUC has avoided complying with DOJ's search warrants for many months. Most recently, CPUC has ignored not only DOJ's warrant, but also this Court's order that it provide a privilege log by May 25, 2016. CPUC has provided only a partial privilege log and, even in the incomplete log provided, attempted to avoid compliance with DOJ's warrant by asserting an inapplicable privilege.

The deliberative process privilege, which CPUC asserts as the reason for not turning over most of the documents listed in its privilege log, is governed by Government Code section 6250 et seq. and is part of the California Public Records Act. Government Code section 6260 states:

> The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

(Gov. Code, § 6260.)

In addition, the California Court of Appeal has explained that because the Evidence Code does not refer to the deliberative process privilege, it is not free to expand the scope of the privilege to protect documents unrelated to an administrative decision that is currently subject to judicial review. (*RLI Ins. Co. Group v. Superior Court* (1996) 51 Cal.App.4th 415, 437-438 (citing *In re California Public Utilities Com'n* (9th Cir. 1989) 892 F.2d 778, 781-82).) The statutory language of Government Code section 6260, along with the case law related to the application of the deliberative process privilege, makes it clear that the privilege cannot be expanded to apply to criminal proceedings.

Similarly, Evidence Code section 1040 outlines a privilege for "official information" in limited circumstances when it is "in the public interest," however, CPUC has failed to properly assert that privilege or explain how it could be applicable. "[B]efore the privilege can be exercised, the public entity claiming that privilege must show the necessity for preserving the confidentiality of the information and that it outweighs the necessity of disclosure." (*Gill v. Manuel* (9th Cir. 1973) 488 F.2d 799, 803.) CPUC has not and cannot meet this burden. The essence of DOJ's investigation is an inquiry into CPUC's process, lack of transparency, and potential conspiracy to violate its own rules and obstruct justice. Withholding key information to hamper a criminal investigation thwarts the goal of the statute and is clearly not within the "public interest." Moreover, sharing information with another state agency would not have forfeited CPUC's claims under the Public Records Act. (*County of Los Angeles v. Union of American Physicians and Dentists* (2005) 130 Cal.App.4th 1099.) Because the documents listed in CPUC's privilege log claimed to be protected by the deliberative process privilege are in fact not privileged at all, the Court should order CPUC to produce the documents to DOJ.

CONCLUSION

DOJ's March and June search warrants are both supported by probable cause. The affidavits supporting each warrant present facts that generate a particularized suspicion that Peevey and Pickett unlawfully conspired to have ex parte communications. Therefore, the Court should deny CPUC's Motion to Return Property and order CPUC to comply with the search warrants.

Dated: June 16, 2016

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES ROOT
Senior Assistant Attorney General
MAGGY KRELL
Supervising Deputy Attorney General

AMANDA G. PLISNER
Deputy Attorney General

DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **CPUC/PG&E**
No.:

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 16, 2016, I served the attached **DOJ'S OPPOSITION TO CPUC'S MOTION FOR RETURN OF PROPERTY, Filed Under Seal** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 16, 2016, at Los Angeles, California.

M. Moore
Declarant

M. Moore
Signature

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

In re June 5, 2015 Search Warrant issued to California Public Utilities Commission	CASE NO. SW-70763 **CPUC NOTICE OF MOTION AND MOTION FOR RETURN OF SEIZED PROPERTY; MEMORANDUM OF POINTS AND AUTHORITIES** Date: June 23, 2016 Time: 1:30 p.m. Place: Department 56 Judge: Hon. William C. Ryan **FILED UNDER SEAL PURSUANT TO COURT ORDER MARCH 24, 2016**

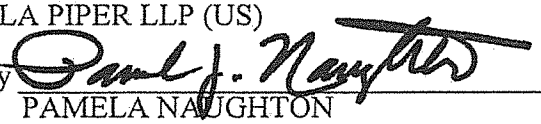
PLEASE TAKE NOTICE that on June 23, 2016 at 1:30 p.m. or as soon thereafter as counsel may be heard, the California Public Utilities Commission ("the CPUC" or "the Commission") will move the Court for an order finding the search warrants directed at CPUC proceedings centering on the failure of the San Onofre Nuclear Generating Station ("SONGS") issued on June 5, 2015 and March 9, 2016 ("SONGS Search Warrants") invalid and lacking probable cause, and to restore the property back to the CPUC pursuant to California Penal Code sections 1539 and 1540. The search warrants are defective because, rather than ordering a peace officer to seize specified items, they require a third party, the CPUC, to investigate, search for relevant documents, identify witnesses, and produce thousands of documents over an unlimited period of time, well beyond the 10-day limit for search warrants. The search warrants also lack probable cause.

The first SONGS search warrant, issued on June 5, 2015, contained materially false statements claiming that the CPUC proceedings were adjudicatory in nature and thus *ex parte* communications were prohibited. The Attorney General attempted to circumvent this problem by obtaining a second SONGS search warrant, based on a revised affidavit, issued on March 9, 2016, which allegedly excised the "misstatements" from the prior one. However, the new affidavit is even weaker than the prior one because it does not allege that the *ex parte* communications violated any rule, much less a criminal statute. Since there is no alleged criminal violation, there can be no basis for a misdemeanor or for a felony conspiracy. There is also no probable cause for an obstruction of justice charge when the alleged conduct was lawful and certainly did not amount to criminal activity. The Attorney General's efforts to criminally investigate conduct that is administratively lawful raises substantial due process concerns. Since the affidavits point to no rule, order, statute, investigation, or other proceeding that was allegedly violated or obstructed, there exists no probable cause to support a search warrant.

This motion will be based on this notice of motion and supporting memorandum of points and authorities, all the papers and records on file in this action including but not limited the prior papers filed in support of its February 17, 2016 motion to view the affidavit *in camera* and April 4, 2016 motion to quash, and on such oral and documentary evidence as may be presented at any hearing on this motion.

Dated: June 9, 2016

DLA PIPER LLP (US)

By 

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I.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Background[1]

In 2012, SONGS experienced leaks of contaminated steam. The facility was temporarily shut down and the CPUC filed an Order Instituting Investigation ("SONGS OII"), which was categorized as a ratesetting proceeding. Under this categorization, *ex parte* discussions were **permitted** (subject to requirements for notice, equal time, and timely reporting by the party).

On March 26, 2013 at an energy conference in Warsaw, Poland, Stephen Pickett ("Pickett"), an executive of Southern California Edison ("SCE"), majority owner of SONGS, had a drink at the hotel bar with CPUC President/Commissioner Peevey ("Peevey") and the Director of CPUC's Energy Division, Ed Randolph ("Randolph"). Peevey was **not** the Assigned Commissioner for the SONGS OII. Noting that replacement energy costs were getting very expensive, President Peevey asked Pickett whether SCE intended to permanently shut down SONGS, and if so, when. Pickett acknowledged that closure was being considered and then went on to describe the various categories of costs associated with the shutdown which would need to be addressed in any settlement of the SONGS OII. Notes of this conversation were later recorded on a sheet of hotel stationery, although reports differ on who actually wrote which notes. (*See* Ex. 1 ("Warsaw Notes"); Ex. 2 ("Randolph Declaration").) Pickett failed to report this *ex parte* conference within the three-day period required under the rules. The obligation to report an *ex parte* conversation rests with the party. The Commissioner is under no obligation to report. Rule 8.4 of the CPUC Rules of Practice and Procedure ("Rule" or "Rules").

SONGS was permanently shut down in June 2013 and SCE and minority owner SDG&E negotiated a complex settlement agreement of the SONGS OII with ratepayer advocate groups and other interested parties. The settlement agreement was approved by the Commission on November 25, 2014. In early February 2015, the Warsaw discussion was reported in the media. On February 9, 2015, SCE filed a notice of the *ex parte* communication regarding the Warsaw

[1] The background of this case is discussed in detail in the CPUC's initial motion to view the affidavit issued in support of the original SONGS search warrant, filed on February 17, 2016 and incorporated herein.

meeting.

On June 5, 2015, CPUC counsel was given the first SONGS search warrant. The supporting affidavit for this search warrant was filed under seal. The SONGS search warrant, which is very broad and vague, requires the CPUC, not the executing officer, to identify possible witnesses, search for, select, review, and produce documents concerning records from 2012-2015 involving the SONGS settlement agreement, the 2013 Poland meeting, the determination of when and why SONGS would be closed, commitment of monies for research as a result of the closure of SONGS, and communications pertaining to the settlement of the SONGS OII.

In December 2015, the San Diego Union Tribune published an affidavit written by Agent Diaz in support of a similar search warrant for Pickett's personal emails. This affidavit contained material misstatements that SONGS OII was adjudicatory, not ratesetting, and that *ex parte* communications were prohibited under the CPUC's Rules.

Upon learning of these material misstatements, the CPUC filed a motion for *in camera* review of the affidavit supporting the original SONGS search warrant. The court granted the motion. As expected, the original SONGS affidavit contained those false statements.

Meanwhile, before the Court heard the CPUC's motion for *in camera* review, the Attorney General obtained a second SONGS search warrant on March 9, 2016 based on a revised affidavit that excised the misstatements. The search warrant and affidavit are virtually identical except for the removal of the misstatements, although now the affidavit does not provide any legal authority for its assertion that the communications between Peevey and Pickett are illegal. It reads:

> **B. Public Utilities Code Prohibitions on Ex Part Communications:**[2]
>
> Ex parte communications are defined in the Public Utilities Code as "any oral or written communication between a decision maker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter." (Pub. Util. Code § 1701.1(c)(4)).

[2] The CPUC was not given a copy of the affidavits in support of either SONGS search warrant, so they are not attached hereto.

The revised affidavit only defines what an *ex parte* communication is; it does not cite any authority indicating that such communications were prohibited, much less criminal. Thereafter, the CPUC filed its initial motion to quash the search warrants for lack of probable cause. On May 20, 2016, this Court ruled that the CPUC does not have standing to quash the search warrants under Penal Code section 1538.5 but can seek relief under sections 1539 and 1540.

B. The CPUC Has Standing To Challenge The Legality Of The Search Warrant And Seek Return Of Property

As the Court indicated in its May 20, 2016 order, and the Attorney General concedes, the CPUC, a third party which cannot be criminally charged, may nevertheless challenge the legality of the search warrants and seek return of its property pursuant to Penal Code sections 1539 and 1540. (May 20, 2016 Ord. at pp. 4-5; AG Opp. To Mot. to Quash at p. 3, n.1.) Sections 1539 and 1540 of the Penal Code provide that "where the grounds for issuance of the warrant are controverted, a hearing shall be held and, if it is found that there is no probable cause for believing the grounds on which the warrant was issued, that the magistrate must restore the property from whom it was taken." *People v. Keener*, 55 Cal. 2d 714, 720 (1961) (reviewing challenge to search warrant for lack of probable cause, even though it did not specifically seek return of property, was broad enough to include grounds for relief under sections 1539 and 1540), *overruled on other grounds by People v. Butler*, 64 Cal. 2d. 842 (1966); Cal. Penal Code §§ 1539(a), 1540; *see also People v. Sup. Ct. (Mem. Med. Center)*, 234 Cal. App. 3d 363 (1991) (in special proceeding for issuance of search warrant for hospital records concerning investigation into doctor's criminal negligence, third party hospital was allowed to oppose issuance of the search warrant invoking evidence code section 1157);[3] *People v. Gale*, 9 Cal. App. 3d 788, 793 (1973) (motion for return of property or to suppress evidence is essentially an *in rem* proceeding against the evidence itself and moving party's standing is based on sufficient interest in the property.) "Legislature's purpose in enacting those sections was not to regulate the procedure for

[3] This is the proper citation for the case described by CPUC counsel at the April 18, 2016 hearing concerning third party standing to challenge search warrants. CPUC counsel mistakenly cited *People v. Sup. Ct.*, 56 Cal. App. 3d 374 (1976) at oral argument, which was distinguished in the Court's May 20, 2015 ruling. In *People v. Sup. Ct. (Mem. Med. Center)*, 234 Cal. App. 3d 363 (1991), the third party hospital was allowed to oppose the issuance of a search warrant on evidentiary grounds during a special proceeding, before the search warrant issued.

objecting to the introduction of evidence in criminal trials but to afford the person from whom the property was wrongfully seized an expeditious remedy for its recovery." *Butler*, 64 Cal. 2d at 845. In this case, the CPUC has already produced 59,546 documents and seeks their return.

C. **The Search Warrants Are Defective**

Even though the Attorney General had already executed a broad search warrant at the San Francisco headquarters of the CPUC in November 2014, and had convened a grand jury which issued 3 subpoenas to the CPUC for documents, the Attorney General strategically chose to seek the SONGS documents via search warrants issued out of Los Angeles, rather than by grand jury subpoena. Perhaps the Attorney General chose the search warrant mode because the warrant and its returns would be publically available to the press[4], which grand jury subpoenas are not. Perhaps it was because the CPUC would have no opportunity to quash a search warrant – but would have had standing to quash and challenge a subpoena prior to any production. The law is clear that that third parties have standing to challenge and/or move to quash defective **subpoenas**. *See, e.g., People v. Superior Court (Barrett)*, 80 Cal. App. 4th 1305, 1320 (2000) (holding that a third party who is subpoenaed by defendant in a criminal matter "of course, could move to quash the subpoena and would have the opportunity, through its legal representative, to lodge objections"); *Alford v. Superior Court*, 29 Cal. 4th 1033, 1045 (2003) (recognizing that a custodian of records may object to disclosure of information sought pursuant to a subpoena under Penal Code section 1326, requiring the party seeking the information to make a "plausible justification or a good cause showing of need therefor").[5]

Despite choosing to act via search warrants, the Attorney General has nevertheless treated

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[4] Indeed, at least one reporter in San Diego somehow knew to search Los Angeles County court records for the search warrant and returns.

[5] Federal courts have criticized government authorities who use search warrants as a means to circumvent a third party's right to object to a grand jury subpoena. *See U.S. v. Comprehensive Drug Testing, Inc.*, 513 F.3d 1085, 1131-32 (9th Cir. 2008) ("Documents held in the possession of third parties are appropriately obtained through use of grand jury subpoena, not search warrant. The record is quite clear that the government used the vehicle of a search warrant only because it thought its grand jury subpoenas might be contested. As the DOJ Guidelines recognize, that is an inappropriate use of a search warrant."); *Stanford Daily v. Zurcher*, 353 F. Supp. 124 (N.D. Cal. 1972) ("A subpoena duces tecum ... is much less intrusive than a search warrant: the police do not go rummaging through one's home, office, or desk if armed with only a subpoena. And, perhaps equally important, there is no opportunity to challenge the search warrant, whereas one can always move to quash the subpoena before producing the sought-after materials.")

the search warrants as de facto *subpoenas duces tecum* or interrogatories, by requiring the CPUC to determine what is relevant, search emails, investigate and identify possible witnesses, and then review and produce tens of thousands of emails on a rolling basis over the course of several months. The search warrant states that: **"CPUC will search emails ... CPUC will identify employees, ... CPUC will propose to the Attorney General additional employees ... CPUC will collect and review email ..."** (*see* SONGS search warrant). The orders are not proper search warrants; they do not command a peace office to seize pertinent items, but instead require a third party to search, investigate, identify, and produce electronic and paper documents. They are in essence subpoenas issued, not by a grand jury, but by a court. *Cf.* Cal. Penal Code § 1528(a).

Nevertheless, the Court has deemed these orders to be search warrants and held, that as a non-defendant, CPUC has no standing to move to quash them. If these orders are truly search warrants, then they are defective since they order the custodian to identify witnesses and produce evidence; they do not instruct an agent to seize evidence. A search warrant must identify the specific items to be seized and must be executed within 10 days of its issuance. Cal. Penal Code § 1534(a). These "search warrants" are ill-defined and, apparently, limitless in time. Due to these incurable defects, the search warrants must be vacated and the documents returned.

D. The New Affidavit Does Not Allege Facts Establishing Probable Cause To Believe A Crime Has Been Committed

Property should be returned when there exists no probable cause to support the issuance of the search warrant. Cal. Penal Code §§ 1539, 1540. There are two probable cause prerequisites for the issuance of a search warrant. The first is the "commission element," that is, probable cause to believe a crime has been committed and, second, the "nexus" element, that is, a factual showing that evidence related to the suspected criminal activity probably will be found at the location to be searched at the time of the search and not some other time. *U.S. v. Zayas-Diaz*, 95 F.3d 105, 111 (1st Cir. 1996); *U.S. v. Grubbs*, 547 U.S. 90, 95 (2006); *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978).

The lack of probable cause and particularity is especially prominent as to the March 2016 SONGS search warrant, which was issued after the January 2016 enactment of the Electronic Communications Privacy Act, Penal Code § 1546, *et seq.* It specifies that the warrant must state with particularity the information to be seized, the target individuals or accounts, the applications or services covered, and the types of information sought. The search warrants at issue here are not particularized nor specific and leave it to the third party custodian to try to discern what is relevant to the investigation.

Both affidavits allege that there is probable cause for the search warrant for 2 reasons: (1) Peevey and Pickett knowingly engaged and conspired to engage in prohibited *ex parte* **communications** and (2) Peevey utilized his position to influence SCE to commit greenhouse gas research monies to UCLA as part of the settlement negotiations:

> 1. There is probable cause to believe Stephen Pickett, former Executive President of External Relations at SCE and Michael Peevey, former President of CPUC, knowingly engaged in and conspired to engage in **prohibited ex parte communications** regarding the closure of a nuclear facility to the advantage of SCE and to the disadvantage of other interested parties. And there is probable cause to believe the evidence showing that Pickett knowingly engaged in **prohibited ex parte communications** will be found.
>
> 2. There is probable cause to believe Peevey utilized his position to influence SCE's commitment of millions of dollars to UCLA to fund the research program and there is probable cause to believe such evidence documenting the commitment of research money to UCLA or University of California as part of settlement negotiations associated with closure of the nuclear facility will be found.

The affidavits conclude:

> Based on the above evidence and facts, there is probable cause to believe that PICKETT knowingly engaged and conspired to **engage in a reportable ex parte communication** with PEEVEY in POLAND to the overall advantage of SCE..."
>
> The facts indicate that PEEVEY conspired to obstruct justice by **illegally engaging in ex parte communications**, concealed ex parte communications and inappropriately interfered with the settlement process on behalf of the California Center for Sustainable Communities at UCLA's Luskin Institute.
>
> PEEVEY executed this plan through back channel communications and exertion of pressure, **in violation of CPUC ex parte rules**, and in obstruction of the due administration of laws.

Unlike the first affidavit, which at least (wrongly) claimed that the alleged *ex parte* communications violated CPUC Rules and constituted a misdemeanor under Public Utilities Code section 2110, the new affidavit simply alleges and concludes that the *ex parte* communications were "prohibited" and "illegal" without citing any rule, law, or regulations prohibiting them. The applicable portion of the "Legal Framework" section (discussed above), which was the only section the Attorney General revised, only defines what an *ex parte* communication is; it does not cite any authority indicating that such communications were prohibited, much less criminal. There cannot be probable cause to justify a search warrant when the affidavit completely fails to identify what rule the alleged conduct violated, much less a basis for why this constitutes a crime.

E. *Ex Parte* Communications Are Permitted In Ratesetting Cases

The affidavit also fails to acknowledge that California Public Utilities Code 1701.3(c) and CPUC Rules of Practice and Procedure **permit** *ex parte* communications in ratesetting cases such as the SONGS proceedings, with certain notice requirements to other parties, and that it is the sole responsibility of the **party**, **not** the CPUC decision maker such as a Commissioner, to file and serve notice of the *ex parte* communication.

Proceedings before the CPUC are governed by sections of the California Public Utilities Code and the CPUC Rules of Practice and Procedure. Cal. Pub. Util. Code § 1701(a). In ratesetting proceedings, like the SONGS OII, the Utilities Code and the CPUC Rules of Practice and Procedure contemplate 4 scenarios for *ex parte* communications (*See* Ex. 3):

> 1. **All party meetings**: pre-planned meetings between all parties to the proceeding and a Commissioner.
>
> 2. **Individual oral communications**: If a party ahead of time requests a meeting with a decision maker, the other parties should be granted meetings of equal time and notice.
>
> 3. **Written ex parte communications**: permitted at any time so long as the interested party serves copies on all parties.
>
> 4. **Unscheduled meetings/ communications**: These communications must be reported within 3 days of the communication.[6]

[6] CPUC Rule 8.4 provides:

Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of **whether the communication was initiated by the interested person**. Notice of *ex parte*

The alleged Pickett/Peevey communication falls into scenario 4 identified above: it was an **unplanned** communication in a hotel bar that **Pickett** should have reported within 3 days under CPUC Rule 8.4. There was nothing unlawful about this permitted conversation and certainly nothing criminal. *Ex parte* communications in CPUC ratesetting proceedings are commonplace. In fact, there were at least 72 reported *ex parte* communications between the Commissioners and various parties to the SONGS settlement, all of which were proper. The information contained in these *ex parte* notices is basic, *e.g.*, who initiated the conversation, when it took place, and what the party (notably not what the decision maker) discussed. Ratepayer advocates had equal access to, and, in fact, more *ex parte* communications with Commissioners and their staff. As an example, see Ex. 4 filed by John Geesman, the advocate quoted by Agent Diaz in the affidavit in support of the search warrants. Notably, Mr. Geesman did not disclose what the Commissioner said during the *ex parte* communication.

It is, therefore, a legal impossibility that the communications between Peevey and Pickett were a crime because the communications were permitted when they took place. *People v. Jerome*, 160 Cal. App. 3d 1087, 1094 (1984) ("It follows that if the statute only prohibited certain conduct, it is legally impossible to violate it by engaging in different conduct.")

The Attorney General's other theory – recently presented and not articulated in the supporting affidavit – is that Peevey and Pickett conspired not to report the *ex parte* communication after it occurred. This is a *post hoc* argument and should not be considered for purposes of whether the submitted affidavit was sufficient to establish probable cause. Probable cause for a search warrant must be delineated within the four corners of the supporting affidavit. *People v. Clark*, 230 Cal. App. 4th 490, 497 (2014) ("[I]n reviewing the sufficiency of the facts

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communications shall be filed **within three working days of the communication**. The notice may address multiple *ex parte* communications in the same proceeding, provided that notice of each communication identified therein is timely. The notice shall include the following information:

(a) The date, time, and location of the communication, and whether it was oral, written, or a combination;

(b) The identities of each decision maker (or Commissioner's personal advisor) involved, the person initiating the communication, and any persons present during such communication;

(c) A description of the interested person's, **but not the decision maker's** (or Commissioner's personal advisor's), communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

upon which the magistrate or judge based his or her probable cause determination, we consider only the facts that appear within "'the four corners of the warrant affidavit.'"). Furthermore, there is not a shred of evidence cited in the affidavit that suggests the two conspired not to report the communication. In fact, the evidence suggests the opposite. Ed Randolph, a witness to the Pickett/ Peevey communication, testified that he assumed Pickett would report the conversation. (Ex. 2.) The affidavit states that after the settlement was reached between the settling parties, Peevey waived the Warsaw notes around at a meeting at the CPUC and openly stated that he had discussed the matter with Pickett. (Diaz Affidavit at ¶ 6(B)). None of these facts support the theory that Peevey and Pickett conspired to keep the communication secret.[7]

Notably, the Attorney General **did not present a shred of new evidence** in the affidavit in support of the March 9, 2016 search warrant even though: (1) 8 months have passed since the original SONGS search warrant issued; (2) the CPUC alone has produced over 1.1 million documents to the Attorney General; and (3) the Attorney General has obviously obtained hundreds of thousands if not millions of other documents as well as testimony through other grand jury witnesses, search warrants and subpoenas. If the Attorney General's office had any other evidence or theory to support its criminal investigation, it follows that it would have said so in the new affidavit. It did not.

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[7] Although it appears that the Attorney General has abandoned its theory that the *ex parte* communication constitutes a misdemeanor under California Public Utilities Code section 2110 since this provision is not mentioned anywhere in the new affidavit, it should be noted that Section 2110 is only triggered if the CPUC itself does not take action. Cal. Pub. Util. Code §2110.[7] Section 2110 provides:

> Every **public utility and every officer, agent, or employee of any public utility**, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the California Constitution or of this part, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in the violation or noncompliance in a case **in which a penalty has not otherwise been provided**, is guilty of a misdemeanor and is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment. (Emphasis added.)

Since the CPUC Rules expressly provide that the CPUC will issue sanctions or impose penalties if its *ex parte* rules are violated (*See* CPUC Rule 8.3(j)), and in fact fined SCE over $16.7 million for its failure to report, there is no basis for a misdemeanor charge under Section 2110.

F. **There Is No Basis For Conspiracy When The Underlying Conduct Was Lawful**

The Diaz Affidavit asserts that Peevey and Pickett allegedly "conspired to engage in a reportable *ex parte* communication." Assuming for the sake of argument they did agree to engage in a reportable communication, this is **not illegal** and cannot form the basis for a criminal conspiracy charge. Criminal conspiracies require at least a criminal objective, even if all the specific actions taken to implement that criminal objective are otherwise not criminal. *Fleming v. Sup. Ct.*, 191 Cal. App. 4th 73, 101 (2010). If the underlying conduct was lawful, there can be no criminal objective to support a criminal conspiracy. "**It is fundamental that no one can be held criminally liable for conspiracy to do acts that are perfectly lawful and to which there is no criminal objective**." *Fleming*, 191 Cal. App. 4th at 101; *People v. Jurado*, 38 Cal. 4th 72, 123 (2006) ("the crime of conspiracy requires dual specific intents: a specific intent to agree to commit the target offense, and a specific intent to commit that offense."). "To be guilty of conspiracy, in other words, parties must have agreed to commit an act that is itself illegal – parties cannot be found guilty of conspiring to commit an act that is not itself against the law." *United States v. Vaghela*, 169 F.3d 729, 732 (11th Cir. 1999).

G. **There Is No Probable Cause For Obstruction Of Justice**

The only other alleged criminal basis for the search warrant is "obstruction of justice" under Cal. Penal Code section 182(a)(5), which makes it a felony "to commit any act injurious to public health, to public morals, or to pervert or obstruct justice, or the due administration of laws." The affidavit alleges there is probable cause to believe that Peevey obstructed justice by (1) engaging in prohibited *ex parte* communications with Pickett concerning the possible SONGS settlement terms; and (2) pressuring SCE to include a commitment of $25 million to fund greenhouse gas research **after** the settlement had been fully negotiated and agreed to by all parties. The extra money for the greenhouse gas research was contributed by SCE and its shareholders, **not** by ratepayers. Since none of this alleged conduct violated any rule or law, administrative, civil or criminal, it cannot serve as a basis for an obstruction of justice charge.

A party cannot conspire to, or pervert or obstruct justice, or the due administration of laws absent evidence that the acts would have been a crime under Title 7 of the Penal Code or common

law or that the defendant's duties included enforcement of law. *People v. Redd*, 228 Cal. App. 4th 449 (2014). The California Supreme Court in *Lorenson v. Superior Court*, 35 Cal. 2d 49 (1950) defined "obstruction of justice" by looking to common law and Title 7 of the Penal Code, which addresses offenses such as bribery, escapes, perjury, and falsifying evidence. *See Lorenson*, 35 Cal. 2d at 60 (upholding conviction of police officer who conspired with other officers and criminal organization to assault and rob a victim and then hide evidence of their collaboration concluding "[a] conspiracy with or among public officials not to perform their official duty **to enforce criminal laws** is an obstruction of justice and an indictable offense at common law .") (Emphasis added).

While conduct that perverts or obstructs justice is not necessarily limited to crimes listed in title 7 of the Penal Code (and not all listed crimes in title 7 necessarily pervert or obstruct justice), courts are clear that Section 182(a)(5) is limited and does not include every conceivably unlawful act. Indeed, because Section 182(a)(5) is a vaguely worded statute, it must be narrowly construed to avoid running afoul of the Due Process Clause. *Redd*, 228 Cal. App. 4th at 463 (if section 182(a)(5) is not to 'run afoul of the Due Process Clause because it fails to give adequate notice to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those accused' [citation], it must be given content by cases.' . . . [it] 'is not limitless but contracted.'") (citing *Davis v. Sup. Ct.*, 175 Cal. App. 2d 8, 16 (1959)).

People v. Redd and *Fleming vs. Sup. Ct.* are insightful cases. In *Redd*, the Court of Appeals reversed a conviction under section 182(a)(5) against a prison cook for smuggling cell phones and tobacco into prison. The court held that the act of smuggling tobacco into prison, while not lawful, was not a crime under title 7 of the Penal Code or common law and that the Attorney General failed to explain how the act of conspiring to bring tobacco into state prison constituted perversion or obstruction of justice or the due administration of laws:

> It is not enough to show that the object of the conspiracy was not lawful. We note that the Attorney General does not claim, for example that [the defendant] was a public official and smuggling tobacco to an inmate was a failure to perform his official duty to **enforce criminal laws**. [Citing *Lorenson*]. Nor does the Attorney General point to any evidence in the

> record showing that [the defendant's] duties as a correctional supervising cook included enforcement of the law.

Redd, 228 Cal. App. 4th at 464. So, even though the act of smuggling tobacco into a prison was not lawful, it did not amount to obstruction of justice.

In *Fleming v. Sup. Ct.*, a superintendent was charged with misusing public funds and conspiracy to obstruct justice per Penal Code section 182(a)(5) for compiling lists of individuals who were circulating petitions to recall school district board members. The Court concluded that because the superintendent was within his lawful authority as superintendent to research the nature of the discontent and unrest within the district, his conduct was not criminal and could not serve as a basis for a conspiracy to obstruct justice charge, regardless of his political motive for gathering the information. The Court held:

> [T]he conspiracy allegations under Penal Code section 182, subdivision (a)(5) fails because [the defendant] and his assistant superintendent agreed to do nothing more than acts which (1) they had a legal right do in the first place, (2) they had no criminal objective in doing, and (3) do not come anywhere near to obstructing justice or the due administration of law in the first place. . . .
>
> The district attorney's office has presented no evidence whatsoever that the lists were used in any political campaign, or that they were used to intimidate anybody, or that any child in the District was in any way affected by those lists or their preparation. Their compilation was *not criminal.*

Id. at 105. *See also United States v. Goyal*, 629 F.3d 912, 922 (9th Cir. 2010) (conc. Opn. Of Kozinski, J.) ("This case has consumed an inordinate amount of taxpayer resources, and has no doubt devastated the defendant's personal and professional life . . . . This is just one of a string of recent cases in which courts have found that federal prosecutors overreached by trying to stretch criminal law beyond its proper bounds. [Citations Omitted.] This is not the way criminal law is supposed to work. Civil law often covers conduct that falls in gray area of arguable legality. But criminal law should clearly separate conduct that is criminal from conduct that is legal.").

The same concerns arise here. The affidavit fails to cite any authority which even suggests the alleged *ex parte* communications themselves violated any rule, much less a criminal one. The affidavit alleges that Peevey "inappropriately interfered with the settlement process."

(Diaz Affidavit IV Summary.) Lots of conduct that might be "inappropriate" is certainly **not criminal**. There is also nothing unlawful about a Commissioner, who is appointed by the Governor to a policy position to lead and run the Commission, engaging in settlement discussions. No section of the *ex parte* rules or the settlement rules in the Public Utilities Code or the CPUC Rules of Practice and Procedure prohibit *ex parte* communications with a Commissioner about settlements. Neither does a Commissioner's participation in an *ex parte* discussion regarding settlement dictate his recusal from voting on any proposed settlement. *See Decision Adopting Settlements On Marginal Cost, Revenue Allocation, and Rate Design,* No. 09-08-028 (August 20, 2009) at pp. 50-51; *Morongo Band of Mission Indians v. State Water Resources Control Bd.*, 45 Cal. 4th 731, 737 (2009); *Assoc. of Nat. Advertisers, Inc. v. Fed. Trade Comm'n*, 627 F.2d 1151, 1170 (D.C. Cir. 1979). Indeed, even in civil court proceedings, judges engage in settlement discussions all the time. Are they obstructing justice?

It should also be noted that the affidavit fails to reveal the truth: that the utilities, SCE and SDG&E negotiated an arms-length settlement with the settling parties, which was reached on March 27, 2014. *See Joint Motion of SCE, SDG&E, TURN, ORA, Friends of the Earth and Coalition of California Utility Employees for Adoption of Settlement Agreement*, Investigation No. 12-10-013 (April 3, 2014). The rate to be paid by ratepayers had already been determined by the settling parties and was not changed. The affidavit does not allege anywhere that Peevey, interfered with the settlement negotiations among the parties. Rather, the Attorney General's complaint is that after the settlement agreement was reached, Peevey further pressured the utilities to contribute an additional $25 million of shareholder funds towards funding existing greenhouse gas emission research prior to the Commission's approval of the settlement agreement. *See Proposed Decision Approving Settlement Agreement As Amended and Restated by Settling Parties*, Investigation No. 12-10-013 (October 9, 2014). All of the settling parties agreed to this term, which was a cost **the utilities**, *e.g.*, SCE and SDG&E, **not the ratepayers** absorbed. This provision was to fund greenhouse gas emission research since these harmful emissions would increase due to the shutdown of the nuclear power plant and the increased reliance on electric power plants. This alleged conduct reflected the policy judgment of then-

Commissioner Peevey, which was ultimately supported by all of the CPUC Commissioners in their unanimous vote finding that the amendment requiring SCE and SDG&E to pay for the research was in the public interest. *See Decision Approving Settlement Agreement As Amended and Restated by Settling Parties* No.14-11-040 (November 20, 2014). CPUC Rule 13.1(d) ("The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.")

The Attorney General does not allege that then-Commissioner Peevey's communications about the greenhouse gas research were an illegal quid pro quo and cites no law or rules that prohibit a Commissioner from suggesting amendments to a settlement to ensure that it serves the public interest. The alleged conduct simply does not amount to criminal obstruction of justice. *Cf.*, *Lorenson*, 35 Cal. 2d at 59-60 (affirming obstruction of justice conviction of police officers who robbed and assaulted victim and destroyed evidence as it constituted interference with a criminal proceeding); *People v. Martin*, 135 Cal. App. 3d 710 (1982) (affirming obstruction of justice charge against criminal judge who had docket sheets falsified, declared prior DWIs unconstitutional, and falsely credited defendants with time served, when they in fact had not served the time).

wrong cite

It should also be noted that the "administ

United States v. Metcalf

435 F. 2d 754

obstructed was a CPUC administrative proceedir

holding that the "obstruction" of an administrati

3d

obstruction of justice charge. Quite the contrary

754, 756 (9th Cir. 1970) (federal obstruction of

proceedings).[8]

The Attorney General argues that the Warsaw discussion put SCE in an advantageous position in settlement negotiations because SCE learned what Peevey's position and estimates

[8] The Ninth Circuit in *Meltcalf* held that, **although the statute refers to the broad range of "administration of justice," it only prohibits specific types of impending acts and "[T]hus, not only must the broad term administration of justice be limited to pending judicial proceedings**, but also the manner in which the statute may be violated would only seem to be limited to **intimidating** actions. **This conclusion would appear necessarily to follow from the proposition that Section 1503, since it is a criminal statute, must be, and should be, construed narrowly so that it can be upheld against the charges of vagueness**." *Meltcaf*, 435 F.2d at 757.

were regarding some settlement terms. However, had SCE reported the meeting right after it occurred, as required by the rules, it would not have been required to disclose what **Peevey** said at the meeting, only what **Pickett** said. Thus, even if the rules had been scrupulously followed, the other parties would not have known what Peevey said. Therefore, compliance or non-compliance with the reporting requirements was not material to the settlement. The Attorney General claims the ratepayer parties were disadvantaged, but fails to state how. They, too, had *ex parte* meetings with Commissioners and they did not, and were not obliged to, report what the Commissioner said. (*See, e.g.* Ex. 4.) Moreover, according to ratepayer advocate parties, ORA and TURN, the final settlement was far more favorable to ratepayers and the numbers far different from the terms outlined in the Warsaw notes. (*See, e.g.*, Exh. 5.)

The legislature has invested the CPUC with the power to enforce laws affecting public utilities. *Southern Cal. Edison Co. v. Peevey*, 31 Cal. 4th 781, 800 (2003). The CPUC has already sanctioned SCE for failing to report (but not engaging in) the *ex parte* communications with Peevey. There are petitions for modifications and rehearing pending as well as a proceeding assessing the settlement. Indeed, how incongruous would it be if a prosecutor could unilaterally conclude, using a heightened criminal standard of proof, that a conversation obstructed justice, when the very body conducting the proceeding itself concluded, using a **lesser** civil standard of proof, that the conversation did not impede or affect its administration of justice?

II.

CONCLUSION

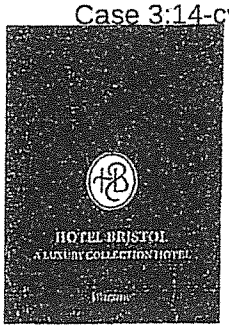
For the reasons discussed above, the CPUC requests that the Court find the search warrants are not supported by probable cause and the property of the CPUC be returned.

Dated: June 9, 2016

DLA PIPER LLP (US)

By _____

PAMELA NAUGHTON
REBECCA ROBERTS
Attorneys for Movant
California Public Utilities Commission



1. Pre-RSG investment: recover w/ debt-level return through 2022.
2. RSG and post-RSG investment: disallow "retroactively out of rate base" effective 2/1/2012
3. Replacement power responsibility: customer
4. NEIL/insurance recoveries: to customers
5. MHI recovery: 1st to SCE to the extent of the disallowance
   2d to customers

Next page

6. Decommissioning costs: remain in rates through time of decommissioning -- periodic redetermination in CPUC proceedings as before
7. O&M: a) Already approved GRC amounts through shutdown + 6 months
   b) OII to determine shutdown O&M through end of 2017 (i.e., not in GRC)
   c) shutdown O&M 2018 and beyond determined in GRC's
   d) Shutdown O&M to include reasonable severance for SONGS employees - ~$50 million

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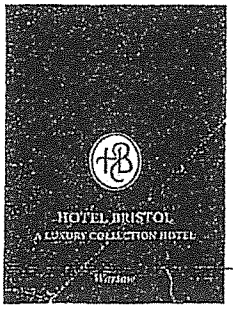

8. Environmental offset: SCE to donate $10 million per year 2014-2022 to _____ {an agreed upon GHG, climate, or environmental academic research fund, institution, etc.}

9. Process a) settlement agreement approved in OII
b) balance of OII closed except for shutdown O&M phase
c) new OII phase for shutdown O&M per 7(b) and 7(d) above
d) 2018 GRC for shutdown O&M 2018 and beyond
e) Usual CPUC proceedings for review of decommissioning costs

MHI Reserve

1- First $200 million — 50% costs
50% SCE
2- Next $200 million — 70% s
30% cost
3- Any above $400 million — 80% to s.
up to disallowance — 20% to c
4- Above disallowance — 25% SCE
75% costs

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.	I.12-10-013 (Filed October 25, 2012)
And Related Matters.	A.13-01-016 A.13-03-005 A.13-03-014 A.13-03-013

DECLARATION OF EDWARD F. RANDOLPH IN RESPONSE TO ADMINISTRATIVE LAW JUDGE QUESTIONS RECEIVED BY EMAIL ON JUNE 1, 2015.

Q. Please state your name, title, and business address.

A. My name is Edward F. Randolph. I am the Director of the Energy Division at the California Public Utilities Commission. My business address is 505 Van Ness Avenue, San Francisco, California, 94102.

Q. What is the purpose of your declaration?

A. The purpose of this declaration is to respond to questions I received via email on June 1, 2015 from the assigned Administrative Law Judges (ALJs), Melanie M. Darling and Kevin Dudney, in the above-captioned proceeding. These questions relate to Southern California Edison's (SCE) Late-Filed Notice of Ex Parte Communication filed February 9, 2015 in Investigation (I.)12-10-013 ("the SONGS OII").

Q. The first question from the assigned ALJs asks: "Were you present for some or all of the March 26, 2013 meeting referenced in SCE's 2/9/15 Late-Filed Notice? Describe the date, location, and identity of all those in attendance for the meeting, as well as the times you were present." What is your response?

A. Yes, I was present at the meeting described in the SCE's late-filed notice. The meeting occurred on March 26, 2013 in the Hotel Bristol in Warsaw Poland. I was present along with the Commission President at the time, Michael Peevey, and Stephen Pickett. I was present for the entire duration of the meeting.

Q. The second question from the assigned ALJs asks: "Did Mr. Pickett make any statements regarding substantive matters related to the SONGS OII, including potential settlement? If so, please describe those statements." What is your response?

A. President Peevey initiated the meeting for the purpose of encouraging SCE to make a decision soon if it would seek to restart the San Onofre Nuclear Generating Station (SONGS) or permanently shut down the plant. Ongoing uncertainty over whether the plant would operate in the long-term was causing negative ratepayer impacts because SCE and the CAISO were both forced to make continued short term investments to ensure reliability in Southern California, and planning for

permanent solutions to replace the output of the plant could not begin until a decision was made on the long term operations. Mr. Pickett stated that SCE was in the process of making a decision on that issue and he did not make any specific commitment during the meeting.

After this discussion a conversation was initiated about a possible settlement agreement on cost recovery in the OII. Mr. Pickett initially stated his opinion of what he thought a settlement agreement would look like in the SONGS OII. He emphasized that he had not communicated this vision with his management. After Mr. Pickett presented his vision of a settlement agreement, President Peevey stated that any settlement agreement should include protections for the workers and funding to help offset the increased greenhouse gas (GHG) emissions created by the need to replace power generated by SONGS.

Q. **The third question from the assigned ALJs asks: "Did Mr. Pickett make any statements about substantive matters related to other pending Commission proceedings?" What is your response?**

A. No. Other than the conversations I describe above, I do not recall discussions about any other topics occurring at that meeting.

Q. **The fourth question from the assigned ALJs asks: "Do you have any recollection of notes being taken of the meeting, and by whom? Did you create or keep any notes?" What is your response?**

A. No, I do not recall notes being taken at the meeting. No, I did not take notes of the meeting.

Q. **The fifth question from the assigned ALJs asks: "Did Mr. Pickett make any statements which led you to believe that he and President Peevey had reached an agreement about any matter then pending before the Commission?" What is your response?**

A. No. Mr. Pickett made it clear that he did not have authority to make an agreement on a SONGS settlement. No other issues were raised regarding any matter pending before the Commission.

Q. Does this conclude your responses to the Assigned ALJ's questions?

A. Yes.

Declaration of Witness

I, Edward F. Randolph, declare under penalty of perjury that the statements contained in the forgoing Declaration of Edward F. Randolph in Response to Administrative Law Judge Questions Received by Email on June 1, 2015, are true and correct to the best of my knowledge, information, and belief.

Executed on this 8 day of June, 2015.

Edward F. Randolph

State of California
California Public Utilities Commission

Rules of Practice and Procedure

California Code of Regulations
Title 20, Division 1, Chapter 1

California Public Utilities Commission

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Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(a), Public Utilities Code.

ARTICLE 8. COMMUNICATIONS WITH DECISIONMAKERS AND ADVISORS

8.1. (Rule 8.1) Definitions.

For purposes of this Article, the following definitions apply:

(a) "Commission staff of record" includes staff from the Division of Ratepayer Advocates assigned to the proceeding, staff from the Consumer Protection and Safety Division assigned to an adjudicatory proceeding or to a ratesetting proceeding initiated by complaint, and any other staff assigned to an adjudicatory proceeding in an advocacy capacity.

"Commission staff of record" does not include the following staff when and to the extent they are acting in an advisory capacity to the Commission with respect to a formal proceeding: (1) staff from any of the industry divisions; or (2) staff from the Consumer Protection and Safety Division in a quasi-legislative proceeding, or in a ratesetting proceeding not initiated by complaint.

(b) "Decisionmaker" means any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge.

(c) "Ex parte communication" means a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:

(1) concerns any substantive issue in a formal proceeding,

(2) takes place between an interested person and a decisionmaker, and

(3) does not occur in a public hearing, workshop, or other public forum noticed by ruling or order in the proceeding, or on the record of the proceeding.

Communications regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such nonsubstantive information are procedural inquiries, not ex parte communications.

(d) "Interested person" means any of the following:

(1) any party to the proceeding or the agents or employees of any party, including persons receiving consideration to represent any of them;

(2) any person with a financial interest, as described in Article I (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter at issue before the Commission, or such person's agents or employees, including persons receiving consideration to represent such a person; or

(3) a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a Commission member on a matter before the Commission, even if that association is not a party to the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

8.2. (Rule 8.2) Communications with Advisors.

Communications with Commissioners' personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications in ratesetting proceedings are permitted without the restrictions of Rule 8.3(c)(1) and (2).

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

8.3. (Rule 8.3) Ex Parte Requirements.

(a) In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement.

(b) In any adjudicatory proceeding, ex parte communications are prohibited.

(c) In any ratesetting proceeding, ex parte communications are subject to the reporting requirements set forth in Rule 8.4. In addition, the following restrictions apply:

(1) All-party meetings: Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or

call as soon as possible, but no less than three days before the meeting or call.

(2) Individual oral communications: If a decisionmaker grants an ex parte communication meeting or call to any interested person individually, all other parties shall be granted an individual meeting of a substantially equal period of time with that decisionmaker. The interested person requesting the initial individual meeting shall notify the parties that its request has been granted, and shall file a certificate of service of this notification, at least three days before the meeting or call.

(3) Written ex parte communications are permitted at any time provided that the interested person making the communication serves copies of the communication on all parties on the same day the communication is sent to a decisionmaker.

(4) Ratesetting Deliberative Meetings and Ex Parte Prohibitions:

(A) The Commission may prohibit ex parte communications for a period beginning not more than 14 days before the day of the Commission Business Meeting at which the decision in the proceeding is scheduled for Commission action, during which period the Commission may hold a Ratesetting Deliberative Meeting. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the day of the Business Meeting to which the decision is held.

(B) In proceedings in which a Ratesetting Deliberative Meeting has been scheduled, ex parte communications are prohibited from the day of the Ratesetting Deliberative Meeting at which the decision in the proceeding is scheduled to be discussed through the conclusion of the Business Meeting at which the decision is scheduled for Commission action.

(d) Notwithstanding Rule 8.5, unless otherwise directed by the assigned Administrative Law Judge with the approval of the assigned Commissioner, the provisions of subsections (b) and (c) of this rule, and any reporting requirements under Rule 8.4, shall cease to apply, and ex parte communications shall be permitted, in any proceeding in which (1) no timely answer, response, protest, or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding.

(e) Ex parte communications concerning categorization of a given

proceeding are permitted, but must be reported pursuant to Rule 8.4.

(f) Ex parte communications regarding the assignment of a proceeding to a particular Administrative Law Judge, or reassignment of a proceeding to another Administrative Law Judge, are prohibited. For purposes of this rule, "ex parte communications" include communications between an Administrative Law Judge and other decisionmakers about a motion for reassignment of a proceeding assigned to that Administrative Law Judge.

(g) The requirements of this rule, and any reporting requirements under Rule 8.4, shall apply until (1) the date when the Commission serves the decision finally resolving any application for rehearing, or (2) where the period to apply for rehearing has expired and no application for rehearing has been filed.

(h) Upon the filing of a petition for modification, the requirements of this rule, and any reporting requirements under Rule 8.4, that applied to the proceeding in which the decision that would be modified was issued shall apply until and unless (1) no timely response, protest or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

(i) Where a proceeding is remanded to the Commission by a court or where the Commission re-opens a proceeding, the requirements of this rule and any reporting requirements under Rule 8.4 that previously applied to the proceeding shall apply until and unless a Commission order or a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

(j) When the Commission determines that there has been a violation of this rule or of Rule 8.4, the Commission may impose penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the record and to protect the public interest.

(k) The Commission shall render its decision based on the evidence of record. Ex parte communications, and any notice filed pursuant to Rule 8.4, are not a part of the record of the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.1(a), 1701.2(b), 1701.3(c) and 1701.4(b), Public Utilities Code.

8.4. (Rule 8.4) Reporting Ex Parte Communications.

Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. Notice of ex parte communications shall be filed within three working days of the communication. The notice may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely. The notice shall include the following information:

(a) The date, time, and location of the communication, and whether it was oral, written, or a combination;

(b) The identities of each decisionmaker (or Commissioner's personal advisor) involved, the person initiating the communication, and any persons present during such communication;

(c) A description of the interested person's, but not the decisionmaker's (or Commissioner's personal advisor's), communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4)(C)(i)-(iii), Public Utilities Code.

8.5. (Rule 8.5) Ex Parte Requirements Prior to Final Categorization.

(a) Applications.

(1) The ex parte requirements applicable to ratesetting proceedings shall apply from the date the application is filed through the date of the Commission's preliminary determination of category pursuant to Rule 7.1(a).

(2) The ex parte requirements applicable to the category preliminarily determined by the Commission pursuant to Rule 7.1(a) shall apply until the date of the assigned Commissioner's scoping memo finalizing the determination of categorization pursuant to Rule 7.3.

(b) Rulemakings. The ex parte requirements applicable to the category preliminarily determined by the Commission pursuant to Rule 7.1(d) shall apply until the date of the assigned Commissioner's ruling on scoping memo finalizing the determination of category pursuant to Rule 7.3.

(c) Complaints. The ex parte requirements applicable to adjudicatory proceedings shall apply until the date of service of the instructions to answer finalizing the determination of category pursuant to Rule 7.1(b).

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

8.6. (Rule 8.6) Requirements in Proceedings Filed Before January 1, 1998.

The following requirements apply to proceedings filed before January 1, 1998:

(a) In any investigation or complaint where the order instituting investigation or complaint raises the alleged violation of any provision of law or Commission order or rule, ex parte communications and communications with Commissioners' personal advisors are prohibited after the proceeding has been submitted to the Commission.

(b) Ex parte communications and communications with Commissioners' personal advisors are permitted, and shall not be reported, in rulemakings and in investigations consolidated with rulemakings to the extent that the investigation raises the identical issues raised in the rulemaking.

(c) All other ex parte communications and communications with Commissioners' personal advisors are permitted, and are subject to the reporting requirements of Rule 8.4.

(d) The Commission, or the assigned Administrative Law Judge with the approval of the assigned Commissioner, may issue a ruling tailoring these requirements to the needs of any specific proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

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BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3	I.12-10-013 (Issued October 25, 2012)
And Related Matters.	A.13-01-016 A.13-03-005 A.13-03-013 A.13-03-014

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S NOTICE OF EX PARTE COMMUNICATIONS

JOHN L. GEESMAN

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Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

Date: July 14, 2014

NOTICE OF EX PARTE COMMUNICATION

Pursuant to Rule 8.4 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, the Alliance for Nuclear Responsibility ("A4NR") hereby provides notice of the following ex parte communication:

On July 9, 2014 at 3:01 p.m., I initiated a telephone call previously invited by Commission President Michael Peevey. The call concluded at 3:08 p.m. The conversation was conducted from my office in Oakland and President Peevey's office in San Francisco, and we were the only persons on the call. I emphasized the Proposed Settlement's arbitrary split of mythical recoveries from Mitsubishi and NEIL, and suggested increasing the utility share in exchange for more tangible and immediate ratepayer benefit. I also encouraged Commission attentiveness to the greenhouse gas impacts of SCE's mismanagement of SONGS. When discussion turned to SCE's interest in resolving the matter during a period of low interest rates and high stock valuation, I stated that A4NR would not file a frivolous appeal but would seek redress of the several legal infirmities in the Proposed Settlement unless they are removed. No written, audiovisual, or other material was used for or during the communication.

Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN
DICKSON GEESMAN LLP

Date: July 14, 2014

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

THE UTILITY REFORM NETWORK
OFFICE OF RATEPAYER ADVOCATES
Differences between terms identified on the note and the proposed/final SONGS settlement

Recovery of Base plant costs (Note item #1)
The note calls for SCE and SDG&E to recover these costs at a "debt-level" return through 2022. The note refers to "debt-level" return for the entire amount of unrecovered plant investments (apart from the Replacement Steam Generators). The note does not specify when the base plant would be removed from rates (SCE and SDG&E had proposed June 1, 2013). By contrast, the proposed settlement removes base plant from rates on February 1, 2012 and provides zero return on the equity portion of the plant and only 50% of preferred returns on that portion of the plant investment. For SCE, a "debt-level" return for the unrecovered investment would be 7.64% while the settlement allows a return of 2.62%.[1] For SDG&E, a "debt-level" return for the unrecovered investment would be 6.88% while the settlement provides a return of 2.41%.[2]

Conclusion - The lower level returns included in the proposed settlement results in a reduction of over $200 million (Net Present Value) in ratepayer costs. If the note intended to remove base plant from rates later than February 1, 2012 (as proposed by SCE and SDG&E), the settlement would provide even larger reductions.

Nuclear fuel (Note item #1)
The note appears to call for SCE and SDG&E to recover approximately $593 million in nuclear fuel costs (which are "Pre-RSG investment") at a "debt-level" return through 2022.[3] The proposed settlement allows recovery of nuclear fuel at a commercial paper rate of return (currently 0.1%) and requires that ratepayers be credited with 95% of the proceeds from the sale of any of this fuel to other nuclear plant owners.

Conclusion - The settlement results in significantly lower costs for ratepayers. If no nuclear fuel is sold, the settlement would result in approximately $65 million in lower ratepayer costs.

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[1] This comparison accounts for the "tax gross up" applied to equity returns set at debt levels and any returns on preferred stock. This "gross up" is a standard utility practice in ratemaking. SCE's "debt-level" return would be 7.64% (5.49% plus taxes on equity returns) while the settlement allows a return of 2.80% (2.62% plus taxes on preferred stock return).
[2] Due to the "tax gross up", SDG&E's "debt-level" return would be 6.88% (5.00% plus taxes on equity returns) while the settlement allows a return of 2.41% (2.35% plus taxes on preferred stock return).
[3] As of December 31, 2013, the net book value of nuclear fuel investments was $477 million for SCE and $115.8 million for SDG&E (Settlement §3.38). As shown in footnotes 1 and 2, this "debt-level" return would be 7.64% for SCE (after tax gross up) and 6.88% for SDG&E (after tax gross up).

Replacement Steam Generators (Note item #2)
The note calls for the RSG investments to be disallowed "retroactively out of ratebase effective 2/1/12". Since the note references disallowances "effective" February 1, 2012, there is no basis to conclude that the Peevey-Pickett note contemplated disallowances of costs prior to February 1, 2012. Had the note intended such treatment, the disallowance would have either been "retroactive" to an earlier date or would not have made this provision "effective" as of any particular date. The removal of RSG investments "retroactive" to February 1, 2012 is the same treatment provided by the settlement. The note references both the 2/1/2012 date and another date that has been crossed out and is not readable, suggesting that a later date may have also been contemplated. In the investigation, SCE and SDG&E proposed changing the rate treatment of its base plant as of June 2013 when SONGS was permanently retired.

Conclusion – No difference assuming a 2/1/2012 date. If the note intended to remove the RSG investments from rates later than February 1, 2012 (for example, the permanent shut-down date of June 1, 2013), the settlement would provide reductions of approximately $189 million: $148 million for SCE and $41 million for SDG&E.[4]

Operations and Maintenance costs (Note item #7)
The note calls for SCE and SDG&E to retain "O&M" (Operations and Maintenance) revenue requirements "already approved" in the most recent General Rate Cases (GRCs) "through shutdown + 6 months." SONGS was permanently shutdown on June 12, 2013. Using the actual shutdown date, the note would allow recovery of previously authorized revenue requirements through the end of 2013. Had the note intended to reference the outage that began on January 31, 2012, it would have specified an actual date in 2012 (such as August 1, 2012) rather than stating "shutdown + 6 months" (which demonstrates that "shutdown" had not yet occurred at the time the note was drafted).

For 2012, the settlement allows SCE and SDG&E to retain the lower of actual costs or GRC-authorized O&M revenue requirements. For 2013, the settlement requires SCE and SDG&E to refund the difference between authorized O&M revenue requirements and actual recorded costs. Actual O&M expenses were lower than GRC-authorized revenue requirements for SDG&E in 2012 (by $3.4 million) and 2013 ($23.5 million) and for SCE in 2013 (by $54 million).[5]

Conclusion - The more favorable provision in the settlement results in a reduction of $80.9 million -- $54 million for SCE ratepayers and $26.9 million for SDG&E ratepayers.

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[4] See SCE Advice Letter 3139-E, Attachment A; SDG&E Advice Letter 2672-E, Attachment C.
[5] See SCE Advice Letter 3139-E, Attachment A (shows $53.983 million credit due to lower actual vs. authorized O&M spending in 2013), SDG&E Advice Letter 2672-E, Attachment C (shows $3.369 million credit due to lower actual vs. authorized O&M spending in 2012 and $23.485 million credit in 2013).

Use of nuclear decommissioning trust funds (Note item #7)
The note assumes that all O&M costs after the shutdown of the plant would be paid through customer rates. In contrast, the settlement calls for SCE and SDG&E to recover their post-shutdown costs from the Nuclear Decommissioning Trusts, rather than ratepayers, whenever possible.[6] Consistent with the settlement, SCE and SDG&E have pending requests to recover approximately $434 million from their nuclear decommissioning trust funds for O&M costs incurred between June of 2013 and December 31, 2014.[7] If the CPUC approves these requests to access the trust funds, approximately $434 million would be returned to ratepayers.

Conclusion – Under the settlement, ratepayers would receive approximately $434 million in refunds that are not contemplated under the note.

Contribution to the Greenhouse Gas research (Note item #8)
The note calls for SCE to "donate" $90 million between 2014-2022 to an agreed-upon entity to perform research on greenhouse gases and climate change. The note does not indicate whether these funds would come from ratepayers or shareholders. The proposed settlement has no provisions addressing any such contributions. The CPUC issued a ruling modifying the settlement to require SCE and SDG&E to contribute $25 million over 5 years to the University of California for this purpose and specifying that shareholder money (not customer rates) is the source of these contributions. If the note contemplated that the $90 million would be funded through rates, the final settlement represents a savings of $90 million. If the note intended that the $90 million would come from shareholder fund, the impact on ratepayers would be the same under the note and the final settlement.

Conclusion – The settlement results in ratepayer savings of either $0 or $90 million depending on whether the note contemplated ratepayer-financed contributions.

Recovery of funds from NEIL and Mitsubishi (Note items #4 and #5)
Both the note and the approved settlement address the allocation of potential litigation proceeds from Nuclear Energy Insurance Limited (NEIL) and Mitsubishi Heavy Industries (MHI). Under the note, the allocation of proceeds from NEIL would go "to customers". Although the proposed settlement would have allocated 82.5% of NEIL proceeds to ratepayers (and 17.5% to shareholders), the final approved settlement requires that 95% of NEIL proceeds be allocated to ratepayers. Since there have been no recoveries to date from NEIL, it is not possible to determine the difference of allocating 95% vs. 100% of any proceeds to ratepayers.

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[6] Settlement §5(d) & §4.8(b).

[7] This amount includes post-shutdown O&M costs for 2013 and 2014 incurred by SCE and SDG&E. See SCE Advice Letter 3193-E (seeking $340 million from trusts for post-shutdown costs between June 7, 2013 and December 31, 2014), SDG&E Advice Letter 2724-E (seeking $54.59 million from trusts for 2013 post-shutdown costs), SDG&E Application 15-02-006 (seeking $39.36 million from trusts for 2014 post-shutdown costs),

Under the note, the allocation of proceeds from MHI would be as follows:

	Ratepayers	Shareholders
0-$200 million	50%	50%
$201-400 million	30%	70%
$401-"up to disallowance"[8]	20%	80%
In excess of "disallowance"	75%	25%

SCE is seeking over $4 billion from MHI in its arbitration claims. Compared to the note, the proposed settlement is slightly less favorable to ratepayers in the event that recoveries are less than $800 million (but would be more favorable to ratepayers if recoveries are higher than $800 million). Under the final approved settlement (as modified by the CPUC), all proceeds would be shared 50/50 between ratepayers and shareholders. The final settlement agreement is far more favorable for ratepayers than the note if total recoveries exceed $200 million.

Conclusion – The ultimate difference to ratepayers cannot be determined until NEIL coverage is successfully obtained, the arbitration proceedings between SCE and Mitsubishi are resolved, and the final amount of recoveries has been determined.

OII Process (Note items #7(b), #7(c) and #9)

The note calls for SONGS "shutdown" costs through 2017 to be decided in a new "shutdown O&M phase" of the CPUC SONGS OII with "shutdown O&M 2018 and beyond determined in [General Rate Cases]". The settlement does not contain any similar provisions. Under the settlement, the SONGS OII is not continued for this purpose and "shutdown O&M" costs are not collected from customers. The settlement provides that costs relating to "shutdown O&M" are instead financed via decommissioning trust funds and directs the utilities to seek a determination as to the reasonableness of 2014 costs in a separate ongoing CPUC proceeding (A.14-12-007) that includes involvement from a wide range of active stakeholders.

Conclusion – Under the settlement, all post-shutdown costs (beginning in June of 2013) are to be treated as decommissioning expenses and collected from decommissioning trust funds. For 2013-2014, this treatment results in approximately $434 million in refunds from the decommissioning trust funds. If the Note intended to allow collection of "shutdown O&M" in rates through 2018, the consequences for consumers would be significantly greater.

[8] The note does not explain how much recovery would be needed to satisfy the "disallowance". SCE and SDG&E would likely have proposed that the "disallowance" be calculated based on any expenses they could not recover under a settlement plus their anticipated recovery of RSG and base plant capital assuming a full rate of return on debt, preferred and shareholder equity.

SUMMARY OF DIFFERENCES BETWEEN
APPROVED SETTLEMENT AND PEEVEY-PICKETT NOTE

COST CATEGORY	RATEPAYER SAVINGS UNDER SETTLEMENT
Base plant	>$200 million
Nuclear fuel	≤$65 million
Replacement steam generators	$0 - $189 million
O&M costs	$80.9 million
Use of decommissioning trust funds	≥ $434 million
Greenhouse gas research	$0 - $90 million
NEIL/MHI recoveries	TBD based on actual recoveries
TOTAL SAVINGS	**$780 - 1,059 million**

ORIGINAL

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

In re June 5, 2015 Search Warrant No. 70763 issued to California Public Utilities Commission	CASE NO. SW-70763 **PROOF OF SERVICE** **FILED UNDER SEAL**

I, Maria E. Valentino, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is DLA Piper LLP (US), 401 B Street, Suite 1700, San Diego, California 92101-4297. On June 9, 2016, I served a copy of the foregoing document(s):

CPUC NOTICE OF MOTION AND MOTION FOR RETURN OF SEIZED PROPERTY

☒ **BY EMAIL** – [CRC 2060(c)] I personally transmitted via electronic means to the electronic mail address(es) noted below a true and correct copy of the aforementioned document(s) from maria.valentino@dlapiper.com on the date ascribed below. The transmission was reported as complete without error. I am aware that the form of original signature must be maintained and must be available for review and copying on the request of the court or any party to this action.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 9, 2016, at San Diego, California.

Maria E. Valentino

VIA FAX

FILED
Superior Court of California
County of Los Angeles

JUN 16 2016

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY _____ Deputy
Sheryl Ritchey Humber

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Attorneys for Movant
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

In re June 5, 2015 Search Warrant No. 70763 issued to California Public Utilities Commission	CASE NO. SW-70763 **PROOF OF SERVICE** **FILED UNDER SEAL**

I, Maria E. Valentino, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is DLA Piper LLP (US), 401 B Street, Suite 1700, San Diego, California 92101-4297. On June 9, 2016, I served a copy of the foregoing document(s):

SUPPLEMENTAL OPPOSITION TO PETITION FOR AN ORDER COMPELLING CALIFORNIA PUBLIC UTILITIES COMMISSION TO COMPLY WITH SEARCH WARRANT

☒ **BY EMAIL** – [CRC 2060(c)] I personally transmitted via electronic means to the electronic mail address(es) noted below a true and correct copy of the aforementioned document(s) from maria.valentino@dlapiper.com on the date ascribed below. The transmission was reported as complete without error. I am aware that the form of original signature must be maintained and must be available for review and copying on the request of the court or any party to this action.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 9, 2016, at San Diego, California.

Maria E. Valentino

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

IN RE: JUNE 5, 2015 SEARCH WARRANT NO. 70763 ISSUED TO CALIFORNIA PUBLIC UTILITIES COMMISSION

Case No.

DOJ'S OPPOSITION TO CPUC'S MOTION TO QUASH

UNDER SEAL FILING

Motion under 1538.5,
Denied by
Order

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

IN RE: JUNE 5, 2015 SEARCH WARRANT NO. 70763 ISSUED TO CALIFORNIA PUBLIC UTILITIES COMMISSION	Case No. **DOJ'S OPPOSITION TO CPUC'S MOTION TO QUASH** **UNDER SEAL FILING**

ORIGINAL

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

IN RE JUNE 5, 2015 SEARCH WARRANT NO. 70763 ISSUED TO CALIFORNIA PUBLIC UTILITIES COMMISSION	Case No. **DOJ'S OPPOSITION TO CPUC'S MOTION TO QUASH** Date: April 18, 2016 Time: 10:00 a.m. Dept: 56 **FILED UNDER SEAL**

TO THE HONORABLE JUDGE OF THE SUPERIOR COURT OF LOS ANGELES, AND TO THE RESPONDENT AND ITS ATTORNEYS OF RECORD:

The Attorney General, representing the People of the State of California, hereby opposes the California Public Utilities Commission's Motion to Quash and respectfully requests the Court order compliance with the search warrants issued by this Court on June 5, 2015, and March 9, 2016.

PROCEDURAL AND FACTUAL BACKGROUND

On June 5, 2015, the Department of Justice (DOJ) served a search warrant (the June warrant) on the California Public Utilities Commission (CPUC) seeking documents relevant to a

pending criminal investigation regarding the shutdown of San Onofre Nuclear Generating Station (SONGS). The warrant was signed by the Honorable David V. Herriford of the Los Angeles Superior Court after presentation by DOJ Special Agent Reye Diaz. CPUC was immediately served with the warrant. CPUC claimed that the materials sought were protected by the attorney client and deliberative process privileges. CPUC proposed a screening process whereby they would review evidence for privilege, and submit screened evidence to DOJ on a rolling basis.

CPUC partially complied with the warrant, submitting some responsive records to DOJ in September and December 2015. However, CPUC failed to provide a privilege log to DOJ, detailing which records are being withheld due to privilege claims. Moreover, CPUC has failed to complete the production and instead now attempts to challenge the warrant. CPUC essentially claims that an incorrect statement invalidates the warrant. DOJ submits that the June 5, 2015 search warrant is legally sufficient despite the misstatement and, therefore, that CPUC is obligated to comply. Nonetheless, DOJ submitted a new search warrant for the same items to the Court, excising the misstatement. On March 9, 2016, the Honorable David V. Herriford signed the new warrant and CPUC was served. Nonetheless, CPUC indicated it would not comply with either warrant and has since filed the instant Motion to Quash. DOJ maintains that both warrants were supported by adequate probable cause, and opposes CPUC's motion.

ARGUMENT

A. California Public Utilities Commission's Motion to Quash is Not a Proper Vehicle for a Pre-Filing Probable Cause Challenge

CPUC asks the Court to quash DOJ's warrant(s) pursuant to Penal Code section 1538.5. However, its request for this remedy is improper at the current, pre-filing stage of a criminal matter. Section 1538.5 is, by its own terms, restricted to a motion by "a defendant" to return property or suppress evidence. (Pen. Code 1538.5; *see also People v. Superior Court (Chico etc. Health Center)* (1986) 187 Cal. App. 3d 648, 652.) Here, CPUC is not a defendant, and lacks standing in the suppression context. Courts have long held that Fourth Amendment rights are personal and may not be vicariously asserted. (*Rakas v. Illinois* (1978) 439 U.S. 128, 133–134.) The question of whether a defendant has standing to challenge a search is a question of "whether

the challenged search and seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it." (*Id.* at p. 140.) Moreover, no person or entity has been charged with a crime, and thus, as filed, the CPUC's motion is not properly before this Court.[1] Finally, challenges to a search warrant should be first heard by the issuing magistrate pursuant to section 1538.5 (b). Therefore, the Honorable Judge Herriford should hear the current challenge.

B. Department of Justice's Search Warrants Are Supported by Probable Cause

Even assuming this challenge is cognizable at this time, by this Court, the People submit that the warrants are adequately supported by probable cause.

1. The Probable Cause Requirement

Probable cause exists for a search warrant when there is "a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 238-239; see also *Ibid* at p. 243 ["probable cause requires only a ... substantial chance."]; *Texas v. Brown* (1983) 460 U.S. 730, 742 [Probable cause is a "particularized suspicion"]; *Wimberly v. Superior Court* (1976) 16 Cal.3d 557, 564 [Probable cause is "facts that would lead a man of ordinary caution ... to entertain a strong suspicion that the object of the search is in the particular place to be searched."].) A magistrate reviewing a search warrant affidavit is tasked with making "a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information," the probable cause requirement is met. (*Illinois v. Gates, supra,* 462 U.S. at 238-239.) The search warrant affiant must provide the magistrate, by way of affidavit, with the factual information he or she knows and his or her opinion as a law enforcement officer. Because an affidavit offered in support of the search warrant is normally drafted by nonlawyers in the midst and haste of a criminal investigation, technical requirements of elaborate specificity once

[1] The proper vehicle for such a challenge would be a Motion for Return of Property pursuant to Penal Code sections 1539 and 1540. (Pen. Code, §§ 1539, 1540.) A motion pursuant to Penal Code section 1540 provides an owner of seized property with an avenue for challenging the legality of a seizure pursuant to a warrant, and may be relied upon in situations such as the one before the Court where relief is not available pursuant to PC 1538.5. (*People v. Superior Court (Chico etc. Health Center)*, 187 Cal. App. 3d 648, 652.)

exacted under common law pleadings have no proper place in this area. (*U.S. v. Ventresca* (1965) 380 U.S. 102, 108; *People v. Ulloa* (4th Dist. 2002) 101 Cal. App. 4th 1000, 1006 .)

2. The Court's Standard of Review

Great deference is shown to the issuing magistrate in challenges to a search warrant. (*See, for example, U.S. v. Grant*, 682 F.3d 827, 832 (9th Cir. 2012)). Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants. (*Jones v. United States, supra*, 362 U.S., at 270, 80 S.Ct., at 735.) Therefore, a reviewing court should resolve doubtful or marginal cases in favor of upholding the warrant. (*Caligari v. Superior Court*, 98 Cal. App. 3d 725, 729-730 (5th Dist. 1979)).

3. The Warrant Affidavits Articulate Probable Cause to Believe Peevey and Pickett Conspired to Have Unreported Ex Parte Communications in Violation of Penal Code section 182(a)(1)

Throughout the search warrant affidavits at issue, facts are presented that, in their totality, constitute probable cause that Michael Peevey (Peevey) and Stephen Pickett (Pickett) conspired to have unlawful ex parte communications. In ratesetting matters, the Public Utilities Code prohibits ex parte communications, which it defines as communications between a decisionmaker and a person with an interest in a matter before the commission concerning substantive issues. (Pub. Util. Code, § 1701.3, subd. (c).) However, a commissioner may permit oral ex parte communications "if all interested parties are invited and given not less than three days' notice." (*Ibid.*) Additionally, CPUC Rules, Rule 8.4, requires that, regardless of whether the ex parte communication was initiated by the interested person or the decisionmaker, the communication is reported by the interested person within three working days. Not only does the Public Utilities Code prohibit ex parte communications unless the proper notice is given, and the proper reporting requirements complied with, but it criminalizes them. Specifically, Public Utilities Code section 2110 provides that "[e]very public utility officer, agent, or employee of any public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility

of any provision of the California Constitution or of this part . . . is guilty of a misdemeanor. . . . (Pub. Util. Code, § 2110.)[2] Penal Code section 182(a)(1) makes it a crime to conspire to commit any other crime, including a violation of Public Utilities Code section 2110.

The facts contained in the search warrant affidavits present substantial evidence that Peevey and Picket violated Penal Code section 182(a)(1) by conspiring to have an ex parte communication that Pickett would not report, in violation of Public Utilities Code section 2110. Specifically, the warrant affidavit explains that while the San Onofre Nuclear Generating Station (SONGS) proceedings were ongoing before the CPUC, Pickett and Peevey met regarding the proceeding while at a hotel in Warsaw, Poland.[3] During this meeting, Peevey and Pickett discussed prospective settlement terms related to the closure of SONGS, including rate payer costs, which is most certainly an issue of "substance." The ex parte communication was witnessed by a third party, the current Director of Energy of the CPUC, who corroborated the substantive nature of the conversation. Upon returning home, Pickett provided SCE management with notes based on his recollection of the meeting. Peevey recorded notes from the meeting on hotel stationery which he brought home with him. These notes were recovered during the service of a search warrant at Peevey's house on January 27, 2015. The notes prepared by Pickett and Peevey are nearly identical.

The warrant affidavit goes on to explain that SCE did not disclose that the ex parte communications took place, or provide any type of notice regarding their occurrence, until after Peevey's notes were discovered and the fact that the meeting took place was publicly disclosed by the San Diego Union-Tribune. SCE attempted to justify this conduct by indicating that Pickett

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[2] Pursuant to Public Utilities Code section 2110, an individual can only be found guilty of a misdemeanor violation of the Public Utilities Code if a penalty has not otherwise been provided. However, this does not preclude Peevey and Pickett charged with, or found guilty of, conspiring to commit a violation of Public Utilities Code section 2110, as the conspiracy charge is an entirely different crime with wholly distinguishable elements. A conspiracy to violate Public Utilities Code section 2110 requires that Peevey and Picket agreed to engage in ex parte communications and committed some overt act toward that end. As discussed in this section, there is a factual basis for a violation of Penal Code section 182(a)(1) and probable cause to believe a violation of that section was committed.

[3] All references in this section to the facts included in the search warrant are from pages six through nine of the affidavit.

only remembered that he may have crossed the line by engaging in a substantive conversation, rather than just listening to Mr. Peevey deliver a monologue, after the public disclosure. Peevey also did not give notice of or report the communication. Though CPUC argues that because it was not CPUC's responsibility to report the communication, there cannot be a violation of law, this is incorrect. While it is true that the utility is responsible for reporting the communication, and not Peevey or the CPUC, this does not impact both parties' probable culpability in agreeing to have prohibited ex parte communications that would remain unreported and acting on that agreement.

It is uncontested that Peevey and Pickett met in Poland, discussed the substance of the SONGS proceeding during that meeting, and failed to disclose the meeting as required. These facts are all detailed in the search warrant affidavit. It is also clear that Peevey took, and kept, a single page of handwritten notes and Pickett, upon being asked about the meeting, suddenly had a limited recollection of what transpired. These facts, too, are laid out in the search warrant affidavit. Together, these facts most certainly give rise to a "particularized suspicion" that Pickett and Peevey conspired to have unlawful ex parte communications. As such, the affidavit establishes sufficient probable cause that further evidence of this crime and surrounding circumstances would likely be found at the CPUC.

4. The Warrant Affidavits Articulate Probable Cause to Believe Peevey and Pickett Conspired to Obstruct Justice in Violation of Penal Code section 182(a)(5)

There is probable cause to believe Peevey and Pickett, in their agreement to have unnoticed and unreported ex parte communications, also conspired to obstruct justice in violation of Penal Code section 182(a)(5). An individual violates this section if he or she is one of two or more people who conspire to commit any act injurious to the public health, or public morals, or to pervert or obstruct justice, or the due administration of the laws. (Pen. Code, § 182(a)(5).) An act that perverts or obstructs justice or the due administration of the laws is not limited to the crimes listed in the Penal Code. *(People v. Redd* (2014) 228 Cal. App. 4th 449,462; see *Davis v. Superior Court* (1959) 175 Cal. App. 2d 8.) Rather, this conduct includes "malfeasance and

nonfeasance by an officer in connection with the administration of his public duties, and also anything done by a person in hindering or obstructing an officer in the performance of his official obligations." (*Lorenson v. Superior Court* in and for Los Angeles County (1950) 35 Cal. 2d 49, 59.)

The search warrant affidavit lays out facts sufficient to yield particularized suspicion that Peevey and Pickett conspired to obstruct justice by agreeing to have ex parte communications without providing notice or reporting that the communications took place. As detailed in the warrant, at the time of the ex parte communication at issue, Peevey was an officer with official obligations: he was the President of the CPUC. In this role, his duties included assuring that CPUC achieved its stated mission of "serv[ing] the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates. . . ." (*CPUC Website*, http://www.cpuc.ca.gov/general.aspx?id=1034 (as of April 11, 2016).) and acted consistent with its "commit[ment] to transparency in its work to serve the people of California." (*CPUC Website*, http://www.cpuc.ca.gov/transparency/ (as of April 11, 2016.) Presumably, Peevey's duties as President also included following the provision of the Public Utilities Code – the statutory authority intended to govern his agency - and facilitating others doing so as well. Nonetheless, while ostensibly open and fair ratesetting proceedings were pending before the CPUC in Sacramento, California, Peevey and Pickett were engaged in ex parte communications half-way across the globe, without any notice to or input from ratepayers' settlement parties.

The evidence points to the fact that Peevey and Pickett agreed to have the unreported ex parte communication in Poland in an effort to influence the outcome of the SONGS proceeding, which was pending before a different CPUC Commissioner, and yield each of them respective benefits. During the meeting, Peevey attempted to influence the outcome of the SONGS ratesetting proceeding by discussing the terms of a potential settlement with Pickett "off the record." By participating in the ex parte communications, Pickett was able to help SCE achieve an optimal outcome in the SONGS negotiations.[4] A ratepayers' settlement party, upon learning

[4] All references in this section to the facts included in the search warrant are from pages ten through fifteen of the affidavit.

of the ex parte communications, issued a statement concluding that Peevey's handwritten hotel notes appear to have been the framework for the final settlement and that because Pickett had obtained knowledge regarding Peevey's position, it was likely that SCE was able to steer the settlement accordingly to achieve the favorable outcome. Among other terms, Peevey insisted that any settlement include a 25 million dollar commitment to UCLA. As detailed in the search warrant affidavit, the original SONGS settlement, which was filed on April 4, 2014, did not include this term. Peevey made several back door attempts, including the initiation of multiple private communications with other SCE employees and conversations with the Commissioner presiding over the proceeding, to demand that the UCLA term would be included in the settlement. Finally, on September 5, 2014, the assigned Commissioner rejected the parties' proposed settlement. The UCLA term was ultimately added and on November 25, 2014, a SONGS settlement was approved.

These facts lead to a particularized suspicion that Peevey and Pickett conspired to obstruct justice by agreeing to have unreported ex parte communications that would influence the outcome of the SONGS proceeding. By having the unreported ex parte communications, Peevey and Pickett were able to circumvent the statutes and regulations intended to assure the fairness and transparency of ratesetting proceedings and just outcomes for rate payers, thereby obstructing the just resolution of the SONGS proceedings. They undermined the sanctity of the proceeding before the CPUC, as well as CPUC's commitment to transparency, and put the rate payers CPUC is intended to protect in a disadvantaged position. Peevey and Pickett's agreement to have unreported ex parte communications demonstrated malfeasance in Peevey's administration of his public duties, and constitutes a violation of Penal Code section 182(a)(5). This is laid out in the search warrant affidavit which, in its presentation of the facts supporting a violation of Penal Code section 182(a)(5), provides probable cause to believe the crime was committed and further evidence would be found at the CPUC.

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C. CPUC Does Not Have Jurisdiction Over Criminal Investigations Related to, or Criminal Prosecutions Stemming From, Proceedings Before It

Public Utilities Code specifically provides for a criminal remedy, to be administered by the criminal justice system. CPUC is not a law enforcement or prosecutorial agency and, as such, has no jurisdiction over criminal investigations or prosecutions. The mere fact that a criminal investigation is concerning or related to a proceeding before the CPUC does not confer such jurisdiction upon the CPUC. Similarly, the fact that the CPUC has an administrative remedy for addressing improper conduct or a lack of fairness in the proceedings before it, does not foreclose the possibility that criminal charges may also be warranted.

CONCLUSION

DOJ's March and June search warrants are both supported by probable cause. The affidavits supporting each warrant present facts that generate a particularized suspicion that Peevey and Pickett unlawfully conspired to have ex parte communications. Therefore, the Court should deny CPUC's Motion to Quash and order CPUC to comply with the search warrants.

Dated: April 13, 2016

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES ROOT
Senior Assistant Attorney General
MAGGY KRELL
Deputy Attorney General

AMANDA G. PLISNER
Deputy Attorney General

DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER

Case Name: **CPUC/PG&E**
No.:

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with **FedEx [Tracking Number 809451924128]**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On April 13, 2016, I served the attached

DOJ'S OPPOSITION TO CPUC'S MOTION TO QUASH

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

DLA Piper, San Diego
Attn: Pamela Naughton
401 B. Street, Suite 1700
San Diego, CA 92101
Email: pamela.naughton@dlapiper.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 13, 2016, at Los Angeles, California.

M. Moore
Declarant

M. Moore
Signature