

Vol. #

II

SWJ #70763

CASE NUMBER

SUPERIOR COURT OF CALIFORNIA
County of Los Angeles

thru

VS.

WARNING!
THE DOCUMENTS CONTAINED HEREIN ARE PART OF THE OFFICIAL COURT RECORD.
PURSUANT TO THE GOVERNMENT CODE, PERSONS REMOVING, CONCEALING,
ALTERING, OR DAMAGING ANY PART OF THIS FILE MAY BE CHARGED WITH A CRIMINAL
OFFENSE AND IF FOUND GUILTY MAY SERVE TIME IN CUSTODY.

Rec'd at
10/24/16

1 KAMALA D. HARRIS
Attorney General of California
2 MAGGY KRELL
Supervising Deputy Attorney General
3 AMANDA G. PLISNER (SBN 258157)
Deputy Attorneys General
4 300 S. Spring Street, Suite 1702
Los Angeles, CA 90013.
5 Telephone: (213) 897-2182
E-mail: Amanda.Plisner@doj.ca.gov
6 Attorneys for People of the State of California

FILED
Superior Court of California
County of Los Angeles
OCT 24 2016
Sherri R. Carter, Executive Officer/Clerk
By Mary Gofaniuk, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 In re June 5, 2015 Search Warrant issued to
12 California Public Utilities Commission

Case No. SW-70763

STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER

FILED UNDER SEAL PURSUANT TO
COURT ORDER MARCH 24, 2016

16 The California Public Utilities Commission ("CPUC") and the California Department of
17 Justice ("Attorney General") by and through their counsel of record, respectfully submit this
18 stipulation and proposed protective order related to CPUC's production of documents pursuant to
19 the Attorney General's November 5, 2014 search warrant ("November Warrant"), and the June 5,
20 2015, and March 9, 2016 search warrants ("SONGS Search Warrants").

21 **STIPULATION**

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

25 2. As to the November Warrant, the CPUC is continuing its review of the remaining
26 documents. The CPUC agrees to produce all of the remaining not privileged documents¹ by

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

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

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

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

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

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

27 (...continued)
28 state criminal proceeding.

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

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

5 a. the Court;

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

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

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

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

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

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

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 10/14/16

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

Dated: 10/19/16

By: Robert Peter
Attorneys for the CPUC

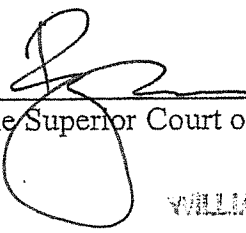
[PROPOSED] ORDER

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

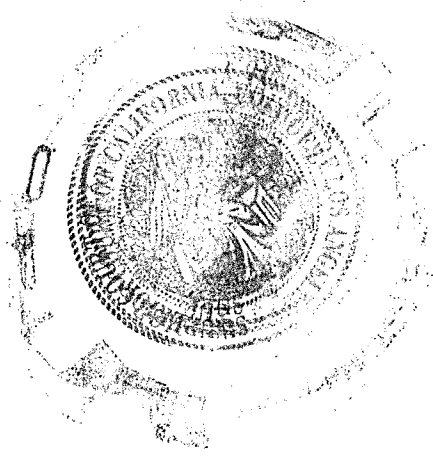
CPUC is to produce the outstanding documents responsive to the Attorney General's search warrant as detailed in paragraphs one through three of the stipulation.

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 G. RYAN



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 GRANTED BY ALBERTA S. WOOD, CLERK BY <i>[Signature]</i> Deputy Sherri R. Carter, Clerk
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>[Signature]</i>

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:

- | | |
|--|--|
| <input type="checkbox"/> Order Extending Time | <input type="checkbox"/> Memorandum of Decision |
| <input type="checkbox"/> Order to Show Cause | <input checked="" type="checkbox"/> Order re: Order to Compel, Return of seized property and OSC Re: contempt |
| <input type="checkbox"/> Order for Informal Response | <input type="checkbox"/> Order re: Appointment of Counsel |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> 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
[Signature]
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
401 B Street, Suite 1700
San Diego, CA 92101-4297

FILED
Superior Court of California
County of Los Angeles

At

AUG 12 2016

SHERIFF/COUNTY CLERK OFFICE/CLERK
BY *[Signature]* Deputy
Salary: *[Signature]* Deputy
Salary: *[Signature]* Deputy

1
2
3
4
5
6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10 CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER
11 CRIMINAL WRITS CENTER

12
13 In re
14 SEARCH WARRANTS ISSUED TO
15 CALIFORNIA PUBLIC UTILITIES
16 COMMISSION.

) Case No.: SW-79763

-) ORDER RE:
17) - PETITION FOR ORDER TO COMPEL
18) - MOTION FOR RETURN OF SEIZED
19) PROPERTY
20) - APPLICATION FOR AN ORDER TO
21) SHOW CAUSE RE CONTEMPT

22 AFTER HEARING

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

27 PROCEDURAL HISTORY

28 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.

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

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

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

11 PETITION TO COMPEL

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

19 In December of 2015, the Attorney General provided additional search terms. The CPUC
20 refused to produce additional documents. After reviewing the sealed June 5, 2015 affidavit with
21 the Court’s permission, the CPUC claimed that the affidavit contained an error. On March 9,
22 2016, the Attorney General obtained a new search warrant from this Court seeking the same
23 documents. The affidavit was identical to the June 5, 2015 affidavit, but omitted a single line
24 which the CPUC alleged to be incorrect. On March 21, 2016, the Attorney General filed the
25 instant Petition to Compel.

26 ¹ The CPUC notes that the agency has produced over 1.1 million documents to the Attorney General and
27 over 1.7 million documents in total to government agencies regarding the SONGS settlement. Prior search warrants
28 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.

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

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

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

1 Contrary to the CPUC's argument, the Attorney General's December 2015 request for
2 additional search terms did not expand the scope of the originally requested documents under the
3 June 5, 2015 warrant. Indeed, these search terms were provided as an "alternative...to limit the
4 number of documents [the CPUC] must review." (CPUC Opposition, Letter dated Oct. 22, 2015,
5 Exh. 17.) The CPUC has produced approximately 59,546 documents in response to the June 5,
6 2015 warrant. (CPUC Opposition, Letter dated Feb. 24, 2016, Exh. 23.) The CPUC's
7 compliance and production of other documents outside of the June 5, 2015 and March 9, 2016
8 warrants is immaterial as to whether the CPUC should be compelled to comply with these
9 warrants.

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

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

17 MOTION FOR RETURN OF SEIZED PROPERTY

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

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

26 ² The CPUC also requests that the Court, in equity, shift the cost of production for the remaining
27 documents to the Attorney General. The CPUC cites no authority for this request. Indeed, in *People v. Superior*
28 *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.

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

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

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

23 California Public Utilities Code section 1701.3 explicitly prohibits ex parte
24 communications in rate setting proceedings, but allows them if specific conditions are met. Rule
25 8.3, subdivision (c)(2) of title 20 of the California Code of Regulations provides, “If a

26 ³ The June 5, 2015 search warrant and the March 9, 2016 search warrant are identical, with one exception.
27 The June 5, 2015 warrant incorrectly cited California Public Utilities Code section 1701.2, subdivision (c) to
28 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.

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

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

17 DELIBERATIVE PROCESS PRIVILEGE

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

21 ⁴ The CPUC argues that unnoticed ex parte communications are not prohibited under Rule 8.3 and Rule
22 8.4, but “happen all the time.” (CPUC Reply, p. 6.) Regardless of whether unnoticed ex parte communications are
23 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.

24 ⁵The CPUC argues that the failure to report the ex parte communication did not rise to the level of criminal
25 obstruction of justice, because there was no judicial proceeding. The CPUC cites *United States v. Metcalf* (9th Cir.
26 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
27 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].)

28 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.

1 where the privilege has been successfully asserted. (See *U.S. v. Nixon* (1974) 418 U.S. 683, 687
2 [claim of absolute executive privilege in federal grand jury investigation]; *Coito v. Superior*
3 *Court* (2012) 54 Cal.4th 480 [wrongful death action where the defendant claimed attorney work
4 product privilege, not the deliberative process privilege]; *People v. Superior Court (Laff)* (2001)
5 25 Cal.4th 703, 708–09 [attorney client privilege asserted in response to search warrant]; *Times*
6 *Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325 [deliberative process privilege applies in
7 Public Records Act request for Governor’s appointment calendars]; *Marylander v. Superior*
8 *Court* (2000) 81 Cal.App.4th 1119 [civil litigation seeking to compel discovery from a state
9 agency for documents relating to defense in underlying case]; *In re Sealed Case* (D.C. Cir. 1997)
10 121 F.3d 729, 737-38 [deliberative process privilege asserted in federal grand jury proceeding].)⁷

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

25
26
27 ⁷ The CPUC also cites instances where the Attorney General claimed the deliberative process privilege in
28 *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.

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

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

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

19 ///
20 ///
21 ///

23 ⁸ The CPUC also claims that “there is authority holding that if privileged material is produced in response
24 to a grand jury subpoena, the privilege is deemed waived as to production in related civil case.” The CPUC cites *In
25 re Pacific Pictures Corp.* (9th Cir. 2012) 679 F.3d 1121, 1130, a federal case in which an attorney waived the
26 attorney-client privilege by not asserting it before producing documents pursuant to a grand jury subpoena. Under
27 California law, “a waiver of privilege must be voluntary; i.e., ‘without coercion’ [citation].” (*Regents of the
28 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.

Send copy of order to:

1
2 Department of Justice – State of California
3 Office of the Attorney General
4 1300 I Street, Suite 125
5 P.O. Box 944255
6 Sacramento, CA 94244-2550
7 Attn: Deputy Attorney Generals Amanda Plisner and Maggy Krell

8 DLA Piper, LLP
9 Pamela Naughton
10 Rebecca Roberts
11 401 B Street, Suite 1700
12 San Diego, CA 92101-4297
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

*Cont on Court's Motion by
Department of Counsel to
July 27 (W) 130*

1 PAMELA NAUGHTON (Bar No. 97369)
2 REBECCA ROBERTS (Bar No. 225757)
3 **DLA PIPER LLP (US)**
4 401 B Street, Suite 1700
5 San Diego, California 92101-4297
6 Tel: 619.699.2700
7 Fax: 619.699.2701

8 Attorneys for Movant
9 California Public Utilities Commission

FILED
Superior Court of California
County of Los Angeles

JUL 14 2016

SHERRIL CARTER, EXECUTIVE OFFICER/CLERK
BY Sheryl Ritchey Humber Deputy
Sheryl Ritchey Humber

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12 In re June 5, 2015 Search Warrant issued to
13 California Public Utilities Commission

CASE NO. SW-70763

14 **APPLICATION FOR AN ORDER TO SHOW
15 CAUSE RE CONTEMPT**

**FILED UNDER SEAL PURSUANT TO
16 COURT ORDER MARCH 24, 2016**


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

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

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

10 Dated: July 14, 2016

11 DLA PIPER LLP (US)

12
13 By 
14 PAMELA NAUGHTON
15 REBECCA ROBERTS
16 Attorneys for Movant
17 California Public Utilities Commission
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
I. BACKGROUND	1
A. Search Warrants and Media Coverage	1
B. Attorney General Release of the Warsaw Notes	3
C. Media Knowledge of SONGS Search Warrants	6
D. Violation of Court Order Sealing Record	7
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	8
III. CONCLUSION	11

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

Farr v. Sup. Ct.,
22 Cal. App. 3d 60 (1971)..... 9

Goldstein v. Super. Ct.,
45 Cal. 4th 218 (2008) 5

In re Grayson,
15 Cal. 4th 792 (1997) 9

Koshak v. Malek,
200 Cal. App. 4th 1540 (2011)..... 9

Moss v. Sup. Ct.,
17 Cal. 4th 396 (1998) 9

People v. Conner,
34 Cal. 3d 141 (1983) 9

People v. Sup. Ct. (Greer),
19 Cal. 3d 255 (1977) 9

People v. Sup. Ct.,
28 Cal. App. 3d 600 (1972)..... 9

Rosato v. Sup. Ct.,
51 Cal. App. 3d 190 (1975)..... 8, 10

Vidrio v. Hernandez,
172 Cal. App. 4th 1443 (2009)..... 8

STATUTES

Cal. Civ. Proc. Code § 128..... 8

Cal. Civ. Proc. Code §§ 128(a)(2)(3)(4)&(5) 8

Cal. Civ. Proc. Code § 1209..... 9

Cal. Civ. Proc. Code § 1209(a)(5) 9

Cal. Civ. Proc. Code § 1211..... 9

Cal. Civ. Proc. Code § 1211(a) 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
Cal. Civ. Proc. Code § 1212.....	9
Cal. Civ. Proc. Code § 1218 et seq.	10
Cal. Civ. Proc. Code § 1218(a)	11
Cal. Penal Code § 911.....	5
Cal. Penal Code § 915.....	5
Cal. Penal Code § 924.1.....	5
Cal. Penal Code § 924.2.....	5
Cal. Penal Code § 924.3.....	5
Cal. Penal Code § 939.....	5
Cal. Penal Code § 939.1.....	5
 OTHER AUTHORITIES	
Local Rule 3.11(a).....	9

1 **I. BACKGROUND**

2 **A. Search Warrants and Media Coverage**

3 Following the public release of emails between the CPUC and Pacific Gas & Electric
4 Company (“PG&E”) and the issuance of federal grand jury subpoenas, the Attorney General’s
5 office obtained a search warrant from the San Francisco Superior Court to seize documents,
6 computers and other devices from the CPUC’s headquarters in San Francisco and a second
7 location in Los Angeles. The San Francisco Superior Court issued the search warrant on
8 November 5, 2014 and ordered that it was not to be disclosed. (Naughton Decl. ¶ 2, Ex. 1
9 (Handwritten “Non Disclosure Yes [X]” indicated on search warrant)). Yet, in spite of this order,
10 media outlets were alerted and set up TV cameras in the courtyard of CPUC headquarters. (*Id.*
11 ¶ 3, Ex. 2.) Notably, the search warrant was not executed by uniformed officers but by special
12 agents who presumably were not broadcasting over the police scanner.

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

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

23 Any records, correspondence, or documentation between
24 CHERRY, PEEVEY, [redacted name] and others, tending to show
25 ex parte communications, judge shopping, bribery, Obstruction of
26 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 . . .

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

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

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

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

17 Prior to the UT article’s speculation that the RSG notes may concern the SONGS
18 proceeding, the Attorney General’s investigation had focused on CPUC proceedings concerning
19 PG&E, not SCE. (*See, e.g.*, Naughton Decl. ¶¶ 2,4, Exs. 1,3.) However, a private plaintiff’s
20 attorney, Michael Aguirre, saw an opportunity to solicit the Attorney General’s assistance with
21 his private actions. Mr. Aguirre represented ratepayer Ruth Hendricks in the SONGS OII
22 proceedings, throughout which Mr. Aguirre made sweeping accusations of corruption that
23 garnered media attention. Aguirre also filed a civil lawsuit against the CPUC and the utilities
24 challenging the SONGS settlement in November 2014 in the Southern District of California,
25 *Citizen Oversight, Inc. et al. v. California Public Utilities Commission et al.*, Case No. 14-cv-
26 02703-CAB-NLS.¹ Notably, in early January 2015, before the Attorney General obtained the
27

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

the newspaper posted a copy with the paper?

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

7 Approximately a week after the UT article ran, Southern California Edison ("SCE") filed
8 an ex parte notice of Pickett's, Peevey's and Randolph's meeting in Poland in March 2013, on
9 February 9, 2015. This same day, the UT ran another article, touting its role in connecting the
10 Warsaw notes with SONGS OII and speculating "the notes taken from Peevey's house may have
11 been Pickett's summary of his meeting with Peevey." The article also quotes Mr. Aguirre as
12 saying "[t]his undermines the settlement approval of the CPUC and necessitates an investigation
13 by the criminal authorities into whether an illegal agreement was made to settle the case." (*Id.*
14 ¶ 8, Ex. 7.) Also, on February 9, 2015, Mr. Aguirre submitted a PRA request to the CPUC for
15 "[a]ny and all records showing when any Commission or staff of any Commissioner first was
16 informed of the meeting in Poland at which Mr. Peevey discussed a settlement of the OII, as
17 described in the late filed ex parte notice from Southern California Edison." (*Id.* ¶ 9, Ex. 8.) On
18 February 27, 2015, UT reporter Jeff MacDonald submitted a similar PRA request: "[p]lease
19 consider this a fresh PRA for all the materials released to Severson/Aguirre and other law firms
20 and nonprofits that have received records from [sic] the CPUC since Jan. 1, 2014." (*Id.* ¶ 10,
21 Ex. 9.)

22 **B. Attorney General Release of the Warsaw Notes**

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

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

3 While you may have some awareness that a search warrant was
4 executed in Los Angeles, you have not set forth any legal basis to
5 receive a “copy” of evidence seized in a separate criminal
6 investigation (evidence which must be retained in the custody of the
7 officer pursuant to the warrant.) Following the laws relating to
8 California search warrant, we typically do not release evidence
9 obtained in confidential criminal investigations.

10

11 One issue of note . . . is that this document may have been subject
12 to previous disclosure requirements by both the CPUC and the
13 SCE. For that reason, we are considering whether this document
14 should be released to other parties that may claim an interest in this
15 document or the information, as that document or information
16 appears to have been shared between multiple parties already.

17 (Naughton Decl. ¶11, Ex. 10.) So, the government refused to provide a copy to the CPUC
18 because it was seized as a result of an ongoing criminal investigation, but seemed to have no
19 problem releasing the same document to third parties. The CPUC requested that the government
20 at least provide it with notice if choose to share the document with third parties. The Attorney
21 General did not respond and again stated: “I believe my previous points still hold – evidence
22 obtained during the execution of a search warrant cannot be released, and all indications
23 surrounding the document to which you refer are that no recognizable privilege could be asserted
24 by the CPUC.” *Id.* The Attorney General’s office also indicated that it would oppose any motion
25 the CPUC filed with the San Francisco Superior Court to obtain a copy of the notes. (Naughton
26 Decl. ¶10.) On or about February 27, 2015, the CPUC renewed it request for a copy of the notes
27 so that its Energy Division director was prepared for his testimony before the grand jury on
28 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

1 affidavits issued months later. The UT article also included quotes from unidentified grand jury
2 witnesses even though grand jury proceedings are subject to strict secrecy requirements. Cal.
3 Penal Code sections 911, 915, 924.1, 924.2, 924.3, 939, 939.1. *See Goldstein v. Super. Ct.*, 45
4 Cal. 4th 218, 221 (2008). (Indeed, grand jurors who unlawfully disclose information received by
5 the grand jury may be subject to a misdemeanor. *See, e.g.*, Cal. Penal Code sections 924.1,
6 924.2.) The UT article states: “the handwritten notes were the first evidence to connect the
7 broken San Diego County power plant to the corruption investigation, which had been limited to
8 commission dealings with Pacific Gas & Electric in Northern California.” (Naughton Decl. ¶ 13,
9 Ex. 12 (emphasis added).) Notably, the inventory return did not mention that the RSG notes were
10 “handwritten” (which they were). Thus, the UT article indicates that the content and perhaps the
11 notes themselves were shared with the UT as early as March 2015, even though the Attorney
12 General refused to provide a copy of these same notes to the CPUC at the time, even though the
13 notes were presumably relevant to an open and ongoing CPUC proceeding.

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

16 . . . any and all emails related to any discussions or understandings
17 held or reached at the Bristol Hotel meeting in Warsaw, Poland
18 amongst Peevey, and Pickett. Please provide any emails sent or
19 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.

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

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

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

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

19 C. Media Knowledge of SONGS Search Warrants

20 As discussed at length in the CPUC’s prior pleadings, the Attorney General sought and
21 obtained a second search warrant from the Los Angeles Superior Court on June 5, 2015, based on
22 allegations very similar to those identified in the March 2015 UT article. As discussed in the
23 CPUC’s prior pleadings, the Attorney General’s office filed a return on June 24, 2015, falsely
24 claiming that the CPUC would not comply with the search warrant. **Less than two weeks later,**
25 on July 6, 2015, the UT published an article discussing the new search warrants executed on the
26 CPUC and Edison concerning SONGS and posting the SONGS Search Warrants and return. (*Id.*
27 ¶ 17, Ex. 16.) The UT article quoted directly the search warrant return: “CPUC legal counsel
28 advises that due to limited resources, and concurrent demands of federal subpoenas and public

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

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

12 **D. Violation of Court Order Sealing Record**

13 In conjunction with its initial motion for in camera review of the supporting SONGS
14 affidavit, the CPUC filed a motion to seal the pleadings and record in this matter, which the
15 Attorney General supported and the Court granted on March 24, 2016. (Naughton Decl. ¶ 19, Ex.
16 18; *see also* Attorney General “NO OPPOSITION TO CALIFORNIA PUBLIC UTILITY
17 COMMISSION’S MOTIONS TO VIEW SEARCH WARRANT AFFIDVAIT *IN CAMERA*
18 AND TO SEAL ALL DOCUMENTS AND HEARINGS RELATED TO ITS MOTION” *filed*
19 March 21, 2016.²)

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

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

25 ² The Attorney General wrote:

26 CPUC requests that the pleadings and hearings related to its Motion to View Search Warrant *in*
27 *Camera* be sealed. DOJ does not object to this request. As CPUC points out in its pleadings, the
28 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.)

1 pleadings or court filings made with any court in connection with
2 [sic] the search warrant served on the CPUC in connection with the
3 San Onofre matter including with regard to search warrant number
4 70763.

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

11 Counsel for the CPUC raised its concerns about these leaks and violation of the Court's
12 order directly with the supervisor in charge of the Attorney General's investigation. On June 6,
13 2016, Ms. Naughton, counsel for the CPUC, telephoned and spoke with Senior Assistant
14 Attorney General James Root. Ms. Naughton went through the evidence of the series of leaks, as
15 outlined above, and the June 3, 2016 PRA request from Mr. Aguirre. (Naughton Decl. ¶ 22.) Ms.
16 Naughton asked Mr. Root to investigate the source of the leaks from his office and to take
17 appropriate action to plug the leaks. (*Id.*) Ms. Naughton again telephoned Mr. Root over a week
18 later and left him a voice message further inquiring as to his investigation into the leaks. Ms.
19 Naughton again called Mr. Root on July 12, 2015 to see if the breach had been resolved. As of
20 the date of this filing, Mr. Root has not returned Ms. Naughton's phone calls and no
21 representative from the Attorney General's office has provided any update or explanation. (*Id.*)
22 Thus, the CPUC had no alternative but to bring this OSC.

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

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

1 (2009) (holding that a California court has inherent power to take appropriate action to secure
2 compliance with its orders, to punish contempt and to secure its proceedings); *Rosato v. Sup. Ct.*,
3 51 Cal. App. 3d 190, 206 (1975) (Section 128 represents “a statutory confirmation of the court’s
4 power ‘(t)o provide for the orderly conduct of proceedings before it, or its officers,’ of power
5 ‘(t)o compel obedience to its judgments, orders, and process’, and power ‘(t)o control . . . the
6 conduct of its ministerial officers, and of all other persons in any manner connected with a
7 judicial proceeding before it . . .”). Disobedience of a court order is punishable by contempt.
8 Cal. Code of Civ. Proc. § 1209(a)(5); *Koshak v. Malek*, 200 Cal. App. 4th 1540, 1549 (2011)
9 (“Willful failure to comply with an order of the court constitutes contempt.”) (Citing *In re*
10 *Grayson*, 15 Cal. 4th 792, 794 (1997)).

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

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

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

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

4 A court:

5 has the authority and duty to investigate possible violations of its
6 protective and seal orders by those subject to their provisions in
7 order to protect the integrity of the judicial process, to assure the
8 proper administration of justice and to perfect the record pertaining
9 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.

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

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

26 Notably, the Attorney General itself has asked for all affidavits submitted in support its
27
28

1 various search warrants and demands³ to be filed under seal to ensure that its investigation facts
2 remain confidential. As a result, the CPUC has not been able to access the confidential affidavits
3 without seeking relief from the Court. How inconsistent is it for the Attorney General to actively
4 seal its investigation from the state agency responsible for evaluating all evidence relevant to
5 SONGS OII on the one hand but then to leak confidential information to selected parties and the
6 press on the other?

7 **III. CONCLUSION**

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

15 Dated: July 14, 2016

DLA PIPER LLP (US)

17 By 

18 PAMELA NAUGHTON
19 REBECCA ROBERTS
20 Attorneys for Movant
California Public Utilities Commission

21
22
23
24
25
26
27
28 ³ The one exception is Special Agent Diaz's affidavit submitted in support of the search warrant for Pickett's
personal emails.

1 PAMELA NAUGHTON (Bar No. 97369)
2 REBECCA ROBERTS (Bar No. 225757)
3 **DLA PIPER LLP (US)**
4 401 B Street, Suite 1700
San Diego, California 92101-4297
Tel: 619.699.2700
Fax: 619.699.2701

5 Attorneys for Movant
6 California Public Utilities Commission
7

FILED
Superior Court of California
County of Los Angeles

JUL 14 2016

SHERRI CARTER, EXECUTIVE OFFICER/CLERK
BY Sherri Carter Deputy
Sherri Carter Number

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 In Re June 5, 2015 Search Warrant No.
11 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**

15
16 I, Pamela J. Naughton, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

26 14. Attached as Exhibit 13 is a copy of April 10, 2015 correspondence between CPUC
27 counsel Mr. Marshall and Special Agent Diaz concerning production of the Warsaw notes.
28

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

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

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

[Signature]
(Signature of Affiant)

NIGHT SEARCH REQUESTED: YES [] NO [X]
NON DISCLOSURE YES [X] NO []

(SEARCH WARRANT)

11/5/2014 1345 hours

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,
- was used as the means of committing a felony,
- 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,
- 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

YOU ARE THEREFORE COMMANDED TO SEARCH:

See Attachment #1 thru #6.

NOV 05 2014

FOR THE FOLLOWING PROPERTY/PERSON:

See Attachment #1, thru #6.

CLERK OF THE COURT
Superior Court of California, County of San Francisco
BY: [Signature]
DEPUTY CLERK

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 5th Day of March, 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.**

[Signature]

Judge of the San Francisco County Superior Court

DONALD SULLIVAN
H J - 10

NIGHT SEARCH APPROVED: YES [] NO [X]

NON DISCLOSURE

YES [X] NO []

1 5:52 PM

11/5/2014 1345 hours

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.

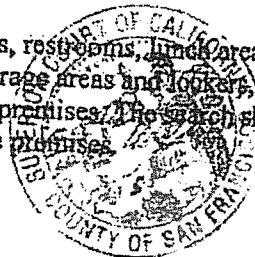
If necessary, searching officers are authorized to employ the use of outside experts, acting under the control of the investigating officers, to access, preserve and examine any data seized.

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

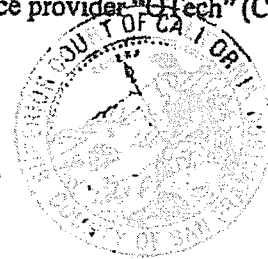
- B.) For the time period from May 1, 2010 through September 30 2014 all connection logs and records of user activity for each such account including:

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.



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.

ADVERTISEMENT

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.

ADVERTISEMENT

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@sfgate.com Twitter: @jvanderbeken

© 2016 Hearst Communications, Inc.



ADVERTISEMENT

EXHIBIT 3

SW No. _____

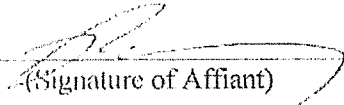
STATE OF CALIFORNIA – COUNTY OF SAN FRANCISCO

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) _____

 1/23/15
(Signature of Affiant)

(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;

SW 36694

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 September, 2015, at 1:15 A.M./P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.



(Signature of Magistrate)

Judge of the Superior Court – San Francisco County Judicial District

NIGHT SEARCH APPROVED: YES [] NO [X]

(Magistrate's Initials)

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

SEARCH WARRANT (Page 7)

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, ~~_____~~ § 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

SEARCH WARRANT (Page 8)

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 _____, 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

SEARCH WARRANT (Page 9)

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

SEARCH WARRANT (Page 10)

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 or 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
Affiant

[Signature]
Judge of the Court

Penal Code § 1537

ATTACHMENT "A"

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE

Page 1 of 2

DIVISION OF LAW ENFORCEMENT

Investigation No. BI-SF2014-00008

PROPERTY RECEIPT

Date: 1/27/15

Property Received From:

Name: MICHAEL PEEVY

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 MICHAEL PEEVY & CAROL LIU	ROOM A: OFFICE DESK
010-003	60 DAY PLANNERS 2009-2014	ROOM A: OFFICE DESK
010-004	CPUC EMPLOYEE ROSTER AS OF DEC 31 2014	ROOM A: OFFICE DESK
010-005	2015 DAY PLANNER	ROOM A: OFFICE DESK
010-006	EMAIL FROM MARK TONG, 12/10/2009 J. KETBONED	ROOM A: OFFICE DESK
010-007	1-APPLE I MAC COMPUTER C02K3R2TDWCR	ROOM A: OFFICE
010-008	1-DELL X410 CPU TOWER 62268W-MV283- JCFYF-M4KFM-X5228	ROOM A: OFFICE
010-009	1-DELL DIMENSION C521 SN/00141311946024	ROOM C: GARAGE
010-010	1-DELL DIMENSION 2400 SN/00043549974161	ROOM C: GARAGE
010-011	1-APPLE IPHONE 5 S/N: 99000327591858	ROOM D: KITCHEN
010-012	1-APPLE MACBOOK PRO #W 8938H3E66D & POWER CORD	ROOM D: KITCHEN

Receiving Individual (print or type)

REYER DIAZ AG #10

Receiving Individual (signature)

[Signature]

Witnessing Individual (print or type)

JAMES F. HUNT, SAS, LABI

Witnessing Individual (signature)

[Signature]

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE

Page 2 of 2

DIVISION OF LAW ENFORCEMENT

Investigation No. B1-SF2014-00008

PROPERTY RECEIPT

Date: 1/27/15

Property Received From:

PREVIEW

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)
D10-013	1- THUMB DRIVE CNDA ATTACHED IT2 ILBODE P20	

Receiving Individual (print or type)
KEYE DIAZ AG#10

Receiving Individual (signature)
[Signature]

Witnessing Individual (print or type)
[REDACTED], P.O. BOX, POLICE

Witnessing Individual (signature)
[Signature]

100

DIVISION OF LAW ENFORCEMENT

Investigation No: 17-00000000

PROPERTY RECEIPT

Date: 1/11/17

Property Received From:

Name: Robert M. Kelly Address: [REDACTED]

I HEREBY ACKNOWLEDGE RECEIPT OF THE BELOW DESCRIBED PROPERTY

Item No.	Description (include serial number)	Exact Location found (if applicable)
<u>11-0001</u>	<u>Typewriter</u> <u>model # 171 (Mitsubishi)</u> <u>serial # 114570211/A</u>	<u>Room 11</u> <u>3rd floor</u>
<u>11-0002</u>	<u>Verizon Tablet</u> <u>model # (SMV-11)</u> <u>Serial # MV1A 31 DUS 1/1A</u> <u>and V.P. 100</u> <u>has camera</u>	<u>Room 11</u> <u>3rd floor</u>
<u>11-0003</u>	<u>Apple iPad</u> <u>Model # M6210211/A</u> <u>Serial # D12ARV1566VT</u>	<u>Room 11</u> <u>3rd floor</u>

Receiving Individual (print or type) Robert M. Kelly

Receiving Individual (signature) [Signature]

Witnessing Individual (print or type) A. Alvarez

Witnessing Individual (signature) [Signature]

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

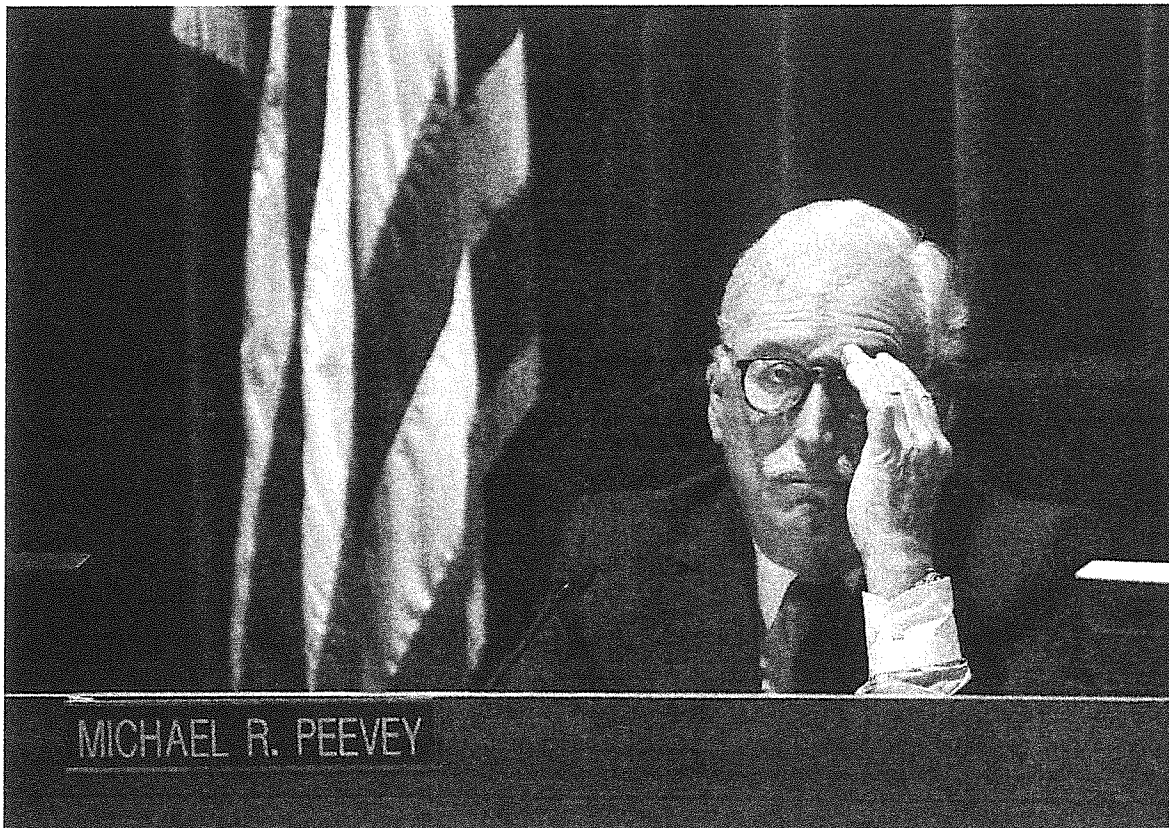
By Jaxon Van Derbeken Updated 9:45 pm, Wednesday, January 28, 2015

ADVERTISEMENT

Horizon Solar in CA

gohorizonsolar.com

Choose Horizon Solar & Save 20%. Get Your Free Solar Estimate Today!



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 of Michael 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.

ADVERTISEMENT

Horizon Solar in CA

gohorizonsolar.com

Choose Horizon Solar & Save 20%. Get Your Free Solar Quote Today!

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.

ADVERTISEMENT

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

© 2016 Hearst Communications, Inc.



ADVERTISEMENT

EXHIBIT 5