

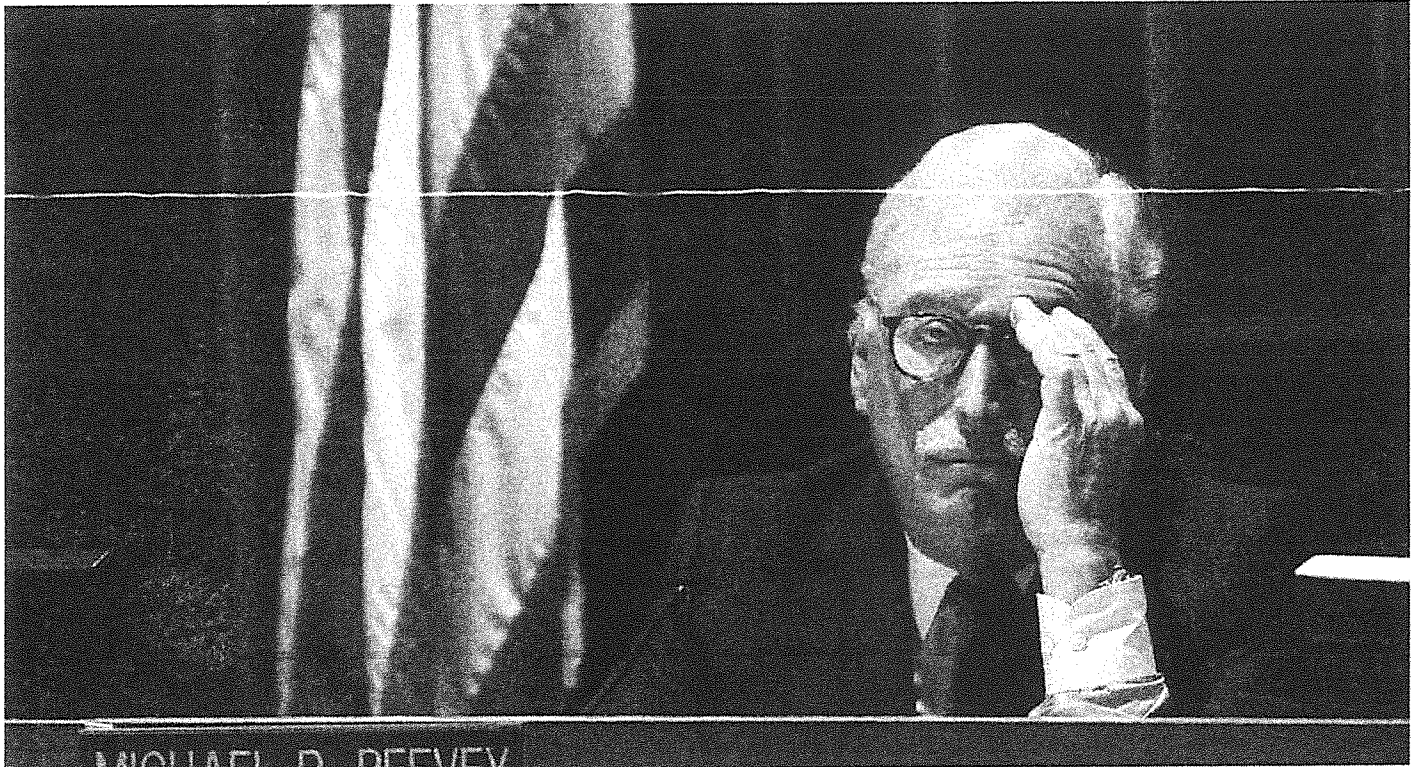
AG cites possible felony crime in raid on ex-utility boss

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



(/staff/jeff-mcdonald/)

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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EXHIBIT 6

Regulator was 'dear friend' of Edison

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



(/staff/jeff-mcdonald/)

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

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

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

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

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

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

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

The Edison lawyer quickly accepted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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EXHIBIT 7

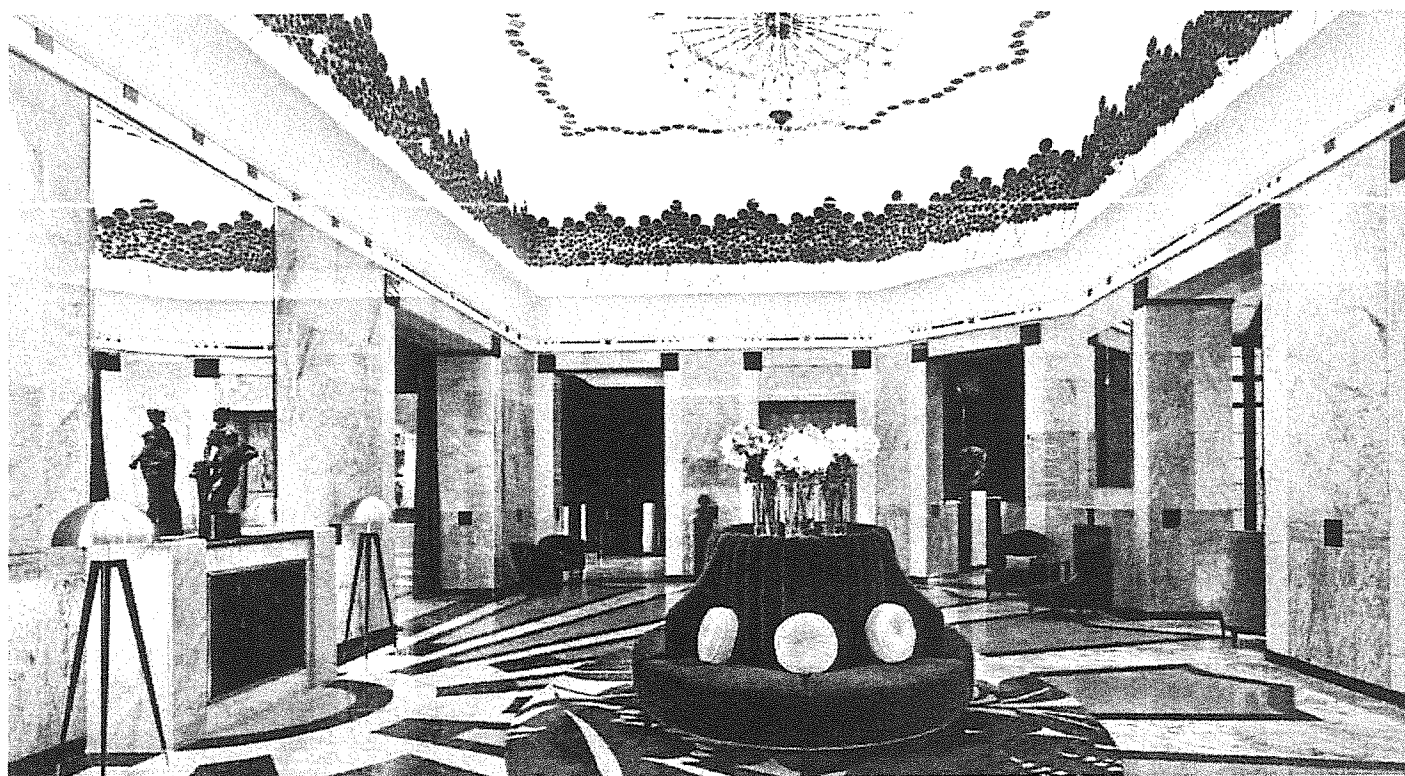
Meeting links CPUC probe to San Onofre

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



(/staff/jeff-mcdonald/)

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



Hotel Bristol, Warsaw

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"And they did it in Poland."

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

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

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

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

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

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

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

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

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

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

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

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

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

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EXHIBIT 8

Ralph, James

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

~~This message has been archived. View the original item.~~

Mr. Aguirre,

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

Sincerely,

James M. Ralph

Attorney

California Public Utilities Commission

505 Van Ness Avenue

San Francisco, CA 94102

Phone: (415) 703-4673

Email: James.Ralph@cpuc.ca.gov

~~Attachments:~~

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

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

April 10, 2015

VIA ELECTRONIC MAILMike Aguirre
Aguirre & Severson
501 West Broadway
Suite 1050
San Diego, CA 92101
maguirre@amslawyers.com**Re: Public Records Request
CPUC Reference No.: PRA #1414 and 1460**

Dear Mr. Aguirre:

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

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

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

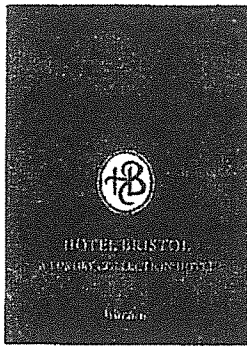
On March 18, 2015, the Commission received your request to provide copies of the following records:

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

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

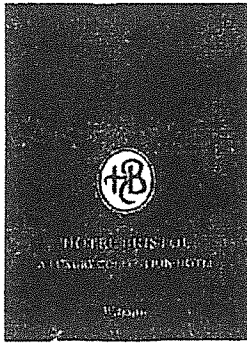
Sincerely,

/s/James Ralph
James M. Ralph
Staff Counsel



1. Pre-RSG investment: recover w/ debt-level return through 2022.
2. RSG and post-RSG investment: disallow "retroactively out of rate base" effective ~~2/1/2012~~ ~~1/1/2012~~
3. Replacement power responsibility: customer
4. NEIL/insurance recoveries: to customers
5. MHI recovery: 1st to SCE to the extent of the disallowance
2^d to customers
6. Decommissioning costs: remain in rates through time of decommissioning -- periodic redetermination in CPUC proceedings as before
7. O&M:
 - a) Already approved GRC amounts through shutdown + 6 months
 - b) OII to determine shutdown O&M through end of 2017 (i.e., not in GRC)
 - c) shutdown O&M 2018 and beyond determined in GRC's
 - d) Shutdown O&M to include reasonable severance for SONGS employees - A ~~part~~ of \$50 million

Next page



8. Environmental offset: SCE to donate ~~\$5.0~~¹⁰ million per year 2014-2022 to _____ {as agreed upon GHG, climate, or environmental academic research fund, institution, etc.}

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

MH7 Recovery

- 1 - First \$200 million — 50% cost
- 2 - Next \$200 million — 50% cost
- 3 - Any above \$400 million — 70% cost
- 4 - Above disallowance — 30% cost
- 5 - Any above \$400 million up to disallowance — 80% to 85%
- 6 - Above disallowance — 20% to 25% cost
- 7 - Above disallowance — 25% cost
- 8 - Above disallowance — 75% cost

+48 22 55 11 000 telephone / telefon
+48 22 625 25 77 facsimile / fax
KRAKOWSKIE PRZEDMIEŚCIE 42/44
00-325 WARSZAWA, POLAND
luxurycollection.com/bristolwarsaw

EXHIBIT 9

Ralph, James

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

~~This message has been archived. View the original item.~~

Mr. McDonald,

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

Sincerely,

James M. Ralph

Attorney

California Public Utilities Commission

505 Van Ness Avenue

San Francisco, CA 94102

Phone: (415) 703-4673

Email: James.Ralph@cpuc.ca.gov

~~Attachments:~~

[Amended Response to Records Request \(PRA #1440\).pdf](#)

(84 KB)

[PRA Request 1440 Responsive Document.pdf](#)

(745 KB)

PUBLIC UTILITIES COMMISSION

LEGAL DIVISION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 10, 2015

VIA ELECTRONIC MAIL

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

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

Dear Mr. McDonald:

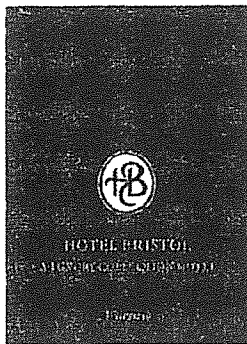
On February 27, 2015, the California Public Utilities Commission (Commission) received your request to provide copies of the following records:

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

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

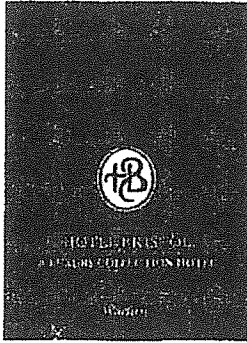
Sincerely,

/s/James Ralph
James M. Ralph
Staff Counsel



1. Pre-RSG investment: recover w/ debt-level return through 2022.
2. RSG and post-RSG investment: disallow "retroactively out of rate base" effective 2/1/2012 ~~1/1/2012~~
3. Replacement power responsibility: customer
4. NEIL/insurance recoveries: to customers
5. MHI recovery: 1st to SCE to the extent of the disallowance
2^d to customers
6. Decommissioning costs: remain in rates through time of decommissioning -- periodic redetermination in CPUC proceedings as before
7. O&M:
 - a) Already approved GRC amounts through shutdown + 6 months
 - b) OII to determine shutdown O&M through end of 2017 (i.e., not in GRC)
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 - d) Shutdown O&M to include reasonable severance for SONGS employees - A pool of \$50 million

Next page



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

MHI Reentry

- 1 - First \$200 million — 50% cost
- 2 - Next \$200 million — 50% cost
- 3 - Any above \$400 million — 70% cost
- 4 - Above disallowance — 30% cost
- 5 - Any above \$400 million up to disallowance — 80% to 85%
- 6 - Above disallowance — 20% to 0
- 7 - Above disallowance — 25% cost
- 8 - Above disallowance — 75% cost

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

EXHIBIT 10

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

REDACTED

Raymond C. Marshall
415.774.3167 | direct
415.403.6230 | direct fax
RMarshall@sheppardmullin.com | [Bio](#)

SheppardMullin

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

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

Mr. Marshall-

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

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

Sent from my iPhone

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

Brett,

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

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

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

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

Ray

Raymond C. Marshall
415.774.3167 | direct
415.403.6230 | direct fax
RMarshall@sheppardmullin.com | [Bio](#)

SheppardMullin

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

From: Brett Morris [<mailto:Brett.Morris@doj.ca.gov>]

Sent: Friday, February 13, 2015 11:35 AM

To: Raymond Marshall

Subject: RE: Request for Peevey's Notes

Mr. Marshall-

I write in response to your request, on behalf of your client the CPUC, to obtain a copy of a document that you claim: may exist, may be written by a third party, may involve a CPUC proceeding, may contain information relating to a discussion between a party to a CPUC proceeding with a CPUC officer, and may be important to a third party law suit.

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

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

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

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

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

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

Brett,

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

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

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

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

Thank you for your cooperation and assistance in this matter.

Ray

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San Francisco, CA 94111-4109
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EXHIBIT 11

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

REDACTED

-----Original Message-----

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

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

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

Again, thanks and I'll see you Monday.

EXHIBIT 12

San Onofre plan details under scrutiny

Investigators have focused on two last-minute additions to settlement



(/staff/jeff-mcdonald/)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Investigation stopped

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Greenhouse gas research

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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EXHIBIT 13

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

REDACTED

Raymond C. Marshall
415.774.3167 | direct
415.403.6230 | direct fax
RMarshall@sheppardmullin.com | [Bio](#)

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
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San Francisco, CA 94111-4109
415.434.9100 | main
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From: Reye Diaz [<mailto:Reye.Diaz@doj.ca.gov>]
Sent: Friday, April 10, 2015 1:51 PM
To: Raymond Marshall
Subject: RE: Hello

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

Reye

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

Reye,

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

Ray

Raymond C. Marshall
415.774.3167 | direct

415.403.6230 | direct fax
RMarshall@sheppardmullin.com | [Bio](#)

SheppardMullin

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San Francisco, CA 94111-4109
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From: Reye Diaz [<mailto:Reye.Diaz@doj.ca.gov>]
Sent: Friday, April 10, 2015 1:13 PM
To: Raymond Marshall
Subject: Hello

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

Reye
916-997-5396

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U.S. District Court

Southern District of California

Notice of Electronic Filing

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

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

Document Number: 24

Docket Text:

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

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

Harvey Yale Morris hym@cpuc.ca.gov

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

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

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

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

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

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

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1106146653 [Date=4/10/2015] [FileNumber=8954039-0]
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82c9f41fb4522c275cd5b6bb16756a7feb4cada1779263e78c7e4283c75a0]]

Document description:Proof of Service

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1106146653 [Date=4/10/2015] [FileNumber=8954039-1]
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c59915353008b254d14798c4f78331eb21a458a52f7cc2a44f3d977b32de2]]

EXHIBIT 15

Hotel notes show San Onofre deal hatched early

Framework was set in Poland, before public process began



(/staff/jeff-mcdonald/)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

That provision is important for two reasons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 16

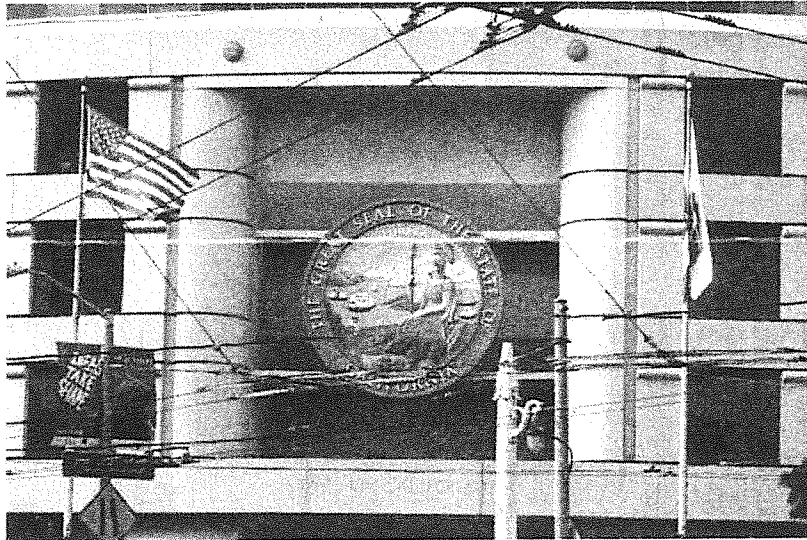
2 new warrants served in CPUC case

Agents seek documents at headquarters for Edison, utilities commission



(/staff/jeff-mcdonald/)

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Jonah Valdez contributed to this report.

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EXHIBIT 17

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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

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

December 22, 2015

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

RE: California Public Utilities Commission

Dear Ms. Roberts:

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

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

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


Unit3*
"Unit 3"
Bristol
Pincetl
Aguirre

December 22, 2015
Page 2

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

Please do not hesitate to contact me with any questions.

Sincerely,



DEBORAH R. HALBERSTADT
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

DRH:

LA2014118251

EXHIBIT 18

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 56W

Date: 3/24/16

Honorable: WILLIAM C. RYAN
D. PALAU

Judge
Bailiff

S. HUMBER #282371
A.BLANCO, CSR #10775

J.A.
Reporter

(Parties and Counsel checked if present)

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

Counsel for People: NOT PRESENT

Counsel for Defendant: NOT PRESENT

NO LEGAL FILE

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

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

NO LEGAL FILE-RED JACKET ONLY

MATTER IS CALLED FOR HEARING IN A CLOSED PROCEEDING.

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

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

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

COUNSEL ARE DIRECTED TO WORK OUT DISLOSURE.

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

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

Minutes Entered
3/24/16
County Clerk

EXHIBIT 19

Public Record Requests

[\(/requests/16-31\)](#)

Request #16-32

[\(/requests/16-34\)](#)

Closed

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

Mike Aguirre

[Read more](#)

Received

June 3, 2016 via web

Department

Legal -- Public Records Act

Documents

(none)

Staff

Point of Contact

Public Records

Request Closed

No Responsive Documents Released

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

about 1 month ago

Request Published

about 1 month ago

Department assigned

Legal -- Public Records Act

about 1 month ago

Request Opened

Request received via web on June 3, 2016

about 1 month ago

EXHIBIT 20


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

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

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

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

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

 **Hotel Bristol Notes.pdf** (745 KB HTML)

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

FILED
Superior Court of California
County of Los Angeles

JUN 21 2016

CLERK OF SUPERIOR COURT
K. J. ... Deputy
Caryl Ritchey Number

1 PAMELA NAUGHTON (Bar No. 97369)
2 REBECCA ROBERTS (Bar No. 225757)
3 **DLA PIPER LLP (US)**
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

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 In re June 5, 2015 Search Warrant
11 No. 70763 issued to California Public
12 Utilities Commission

CASE NO. SW-70763
PROOF OF SERVICE
FILED UNDER SEAL

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I, Maria E. Valentino, declare:

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

CPUC REPLY TO DOJ OPPOSITION TO MOTION FOR RETURN OF PROPERTY

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


Amanda Plisner, Esq.
Deputy Attorney General
Office of Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Tel: 213.897.2000
amanda.plisner@doj.ca.gov

Maggy Krell, Esq.
Office of Attorney General
Deputy Attorney General
1300 I Street
Sacramento, CA 95814
Tel: 916.445.0896
maggy.krell@doj.ca.gov

James Root, Esq.
Deputy Attorney General
Office of Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Tel: 213.897.2000
jim.root@doj.ca.gov

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

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



Maria E. Valentino

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

Attorneys for Movant
California Public Utilities Commission

FILED
Superior Court of California
County of Los Angeles

JUN 21 2016

SHERIFF'S OFFICE
BY *[Signature]* DEPUTY SHERIFF
Deputy
Sheriff's Office Number

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

In re June 5, 2015 Search Warrant
No. 70763 issued to California Public
Utilities Commission

CASE NO. SW-70763

UNDER SEAL FILING

EXHIBIT A

DECLARATION OF STEPHEN PICKETT

I, Stephen Pickett, do hereby declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

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



Stephen Pickett

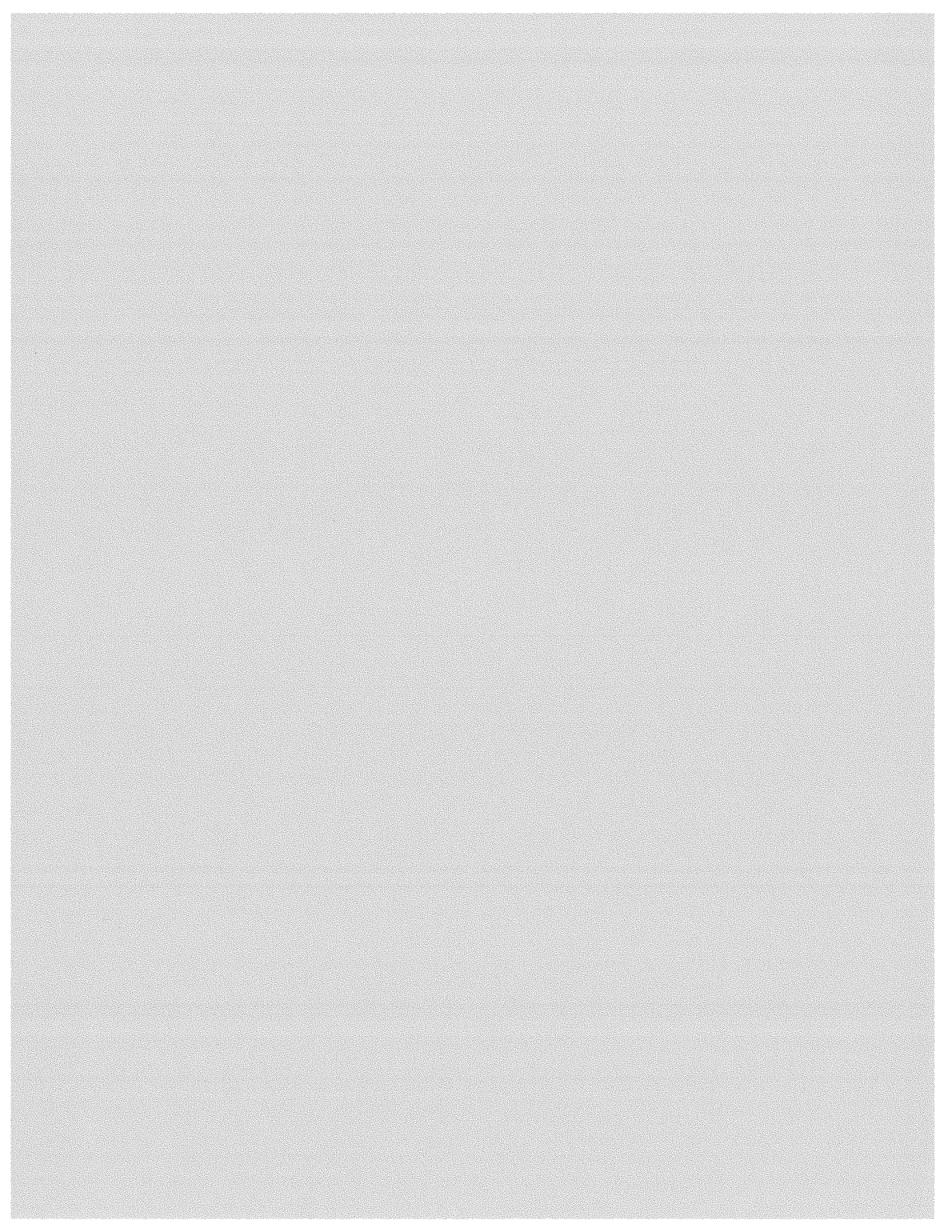


EXHIBIT B

NOTICE OF EX PARTE COMMUNICATION

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

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

Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN
DICKSON GEESMAN LLP

Date: July 14, 2014

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



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4-11-14
04:59 PM

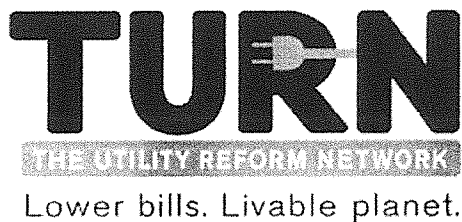
Order Instituting Investigation on the Commission's
Own Motion into the Rates, Operations, Practices,
Services and Facilities of Southern California Edison
Company and San Diego Gas and Electric Company
Associated with the San Onofre Nuclear Generating
Station Units 2 and 3

Investigation 12-10-013
(Filed October 25, 2012)

And Related Matters

Application 13-01-016
Application 13-03-005
Application 13-03-013
Application 13-03-014

NOTICE OF EX PARTE COMMUNICATION



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

NOTICE OF EX PARTE COMMUNICATION

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

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

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

Respectfully submitted,

_____/s/_____

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

Dated: April 11, 2014

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

08-15-13
04:59 PM

Order Instituting Investigation on the
Commission's Own Motion into the Rates,
Operations, Practices, Services and Facilities of
Southern California Edison Company and San
Diego Gas & Electric Company Associated with
the San Onofre Nuclear Generating Station Units
2 and 3.

I.12-10-013
(Filed October 25, 2012)

And related matters

A.13-01-016
A.13-03-005
A.13-03-013
A.13-03-014

NOTICE OF EX PARTE COMMUNICATION

Billy Blattner
Manager of Regulatory Relations
San Diego Gas & Electric Co.
601 Van Ness Avenue, Suite 2060
San Francisco, CA 94102-6316
Phone: (415) 202-9983
Fax: (415) 346-3630
E-Mail: WBlattner@SempraUtilities.com

August 15, 2013

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the
Commission's Own Motion into the Rates,
Operations, Practices, Services and Facilities of
Southern California Edison Company and San
Diego Gas & Electric Company Associated with
the San Onofre Nuclear Generating Station Units
2 and 3.

I.12-10-013
(Filed October 25, 2012)

And related matters

A.13-01-016
A.13-03-005
A.13-03-013
A.13-03-014

NOTICE OF EX PARTE COMMUNICATION

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

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

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

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

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

Respectfully submitted,

/s/ BILLY BLATTNER _____

Billy Blattner

Manager of Regulatory Relations

San Diego Gas & Electric Co.

601 Van Ness Avenue, Suite 2060

San Francisco, CA 94102-6316

Phone: (415) 202-9983

Fax: (415) 346-3630

E-Mail: WBlattner@SempraUtilities.com

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

FILED
Superior Court of California
County of Los Angeles

JUN 21 2016

SHERRI G. ... CLERK
BY Sherril ... Deputy
Sherril ... Number

8 Attorneys for
9 California Public Utilities Commission

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 CPUC REPLY TO DOJ OPPOSITION TO
15 MOTION FOR RETURN OF PROPERTY

Date: June 23, 2016
Time: 1:30 p.m.
Place: Department 56
Judge: Hon. William C. Ryan

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

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

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

¹ The Attorney General previously ignored the filing deadline concerning the CPUC's prior motion. More importantly, the CPUC is concerned with the media leaks in this case. Television cameras accompanied agents to the WEST269791781.5

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

A. Factual Inconsistencies and Omissions

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

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

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

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

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

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

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

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

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

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

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

10 Although they are not condoned, unplanned *ex parte* communications occur due to the
11 fact-finding and policy making roles of the Commissioners. Rule 8.4 was developed to address
12 them. To the extent parties anticipate *ex parte* communications, they are to provide notice ahead
13 of time so that other parties can have equal time per CPUC Rule 8.3. However, to the extent the
14 unplanned communications occur, they are to be reported *ex post facto*. CPUC Rule 8.4. That is
15 how the agency which wrote, interprets, and enforces its rules, applies them. Unnoticed *ex parte*
16 communications **have been** allowed in rate-setting proceedings, including SONGS OII.
17 Examples of such unplanned communications in SONGS OII are attached as Exhibit B. The first
18 one, which was previously attached to the CPUC's underlying motion, is a notice of an
19 **unplanned** *ex parte* communication between AN4R and Commissioner Peevey in SONGS OII,
20 one that occurred over the telephone, which AN4R filed per Rule 8.4, not Rule 8.3. The second
21 one was filed by TURN, a settling party, which addresses a meeting its attorney, Mr. Freeman,
22 had with Peevey concerning the settlement agreement. Similarly, the CPUC penalized SCE for
23 violating Rule 8.4, e.g., for not reporting the *ex parte* communications, not for violating Rule 8.3.
24 These notices and rulings aptly demonstrate that unplanned/unscheduled *ex parte*
25 communications occur in ratesetting proceedings and there is nothing "unlawful" about them. If
26 they are not unlawful, any intent to have such a conversation **cannot** amount to specific intent to
27

1 commit a crime.³

2 While the DOJ acknowledges that Peevey could not be charged under section 2110 and
3 that the reporting onus is on the party, not the Commissioner, the DOJ maintains that Peevey
4 could still be charged with conspiracy. However, the DOJ misses the point. Neither Peevey nor
5 Pickett can be charged with conspiracy to engage in unlawful communications because there was
6 nothing unlawful about the communications. A party can only be liable for criminal conspiracy if
7 there is **criminal specific intent** to: (1) agree; and (2) commit the crime. *People v. Johnson*, 47
8 Cal. 4th 250 (2013); *People v. Jones*, 228 Cal. App. 2d 74 (1964). There cannot be specific
9 intent when the underlying conduct is lawful. *See Fleming v. Superior Court*, 191 Cal. App. 4th
10 73, 101 (2010) (“All criminal conspiracies require at least a criminal objective, even if all the
11 specific actions taken to implement that criminal objective are otherwise not criminal . . . it is
12 fundamental that no one can be held criminally liable for conspiracy to do acts that are perfectly
13 lawful to do.”)

14 It is not disputed that conspiracies do not require any criminal acts actually be committed.
15 However, even in the cases cited by the DOJ, there still must be a criminal objective to commit an
16 act that is a crime. *See, e.g., People v. Lee*, 136 Cal. App. 4th 522, 529 (2006) (prison inmate
17 who could not be charged of underlying crime for distribution of a controlled substance because
18 of statutory exception, could be charged with conspiracy); *People v. Biane*, 58 Cal. 4th 381
19 (2013) (offeror of a bribe is not categorically exempt from conspiracy to cause receipt of a bribe
20 if there is evidence of the requisite intent). Here, there can be no criminal objective because the
21 communications were lawful.

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

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

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

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

9 If the DOJ's position is correct, Commissioners or other decision makers could be subject
10 to criminal prosecution for merely attending an industry conference and overhearing a
11 presentation from a party on a panel who made a point that somehow concerned a matter before
12 the Commission. If the speaker did not later report the communication, then, under the DOJ's
13 theory, the Commissioner could be charged with a crime. This is certainly not, and cannot be, the
14 law, as it would chill the free exchange of important information provided to and received by
15 CPUC decision makers. It also constitutes impermissible judicial overreaching because there is
16 no fair warning that a party can be criminally charged for the underlying conduct. Due process is
17 violated when a criminal statute does not give fair warning of the conduct it intends to punish or
18 when it is expanded to an interpretation beyond what it says on its face. *Rogers v. Tennessee*, 532
19 U.S. 451, 457 (2001) (“A criminal statute must give fair warning of the conduct it makes a
20 crime.”) (citing *Bouie v. City of Columbia*, 378 U.S. 347, 350 (1964)). *Marks v. United States*,
21 430 U.S. 188, 191-92 (1977) (“Deprivation of the right to fair warning can result both from vague
22 statutory language and from an unforeseeable and retroactive judicial expansion of statutory
23 language that appears narrow and precise on its face. That persons have a right to fair warning of
24 that conduct which will give rise to criminal penalties is fundamental to our concept of
25 constitutional liberty. As such, that right is protected against judicial action by the Due Process
26 Clause of the Fifth Amendment.”); *Rathert v. Galaza*, 203 F. App'x 97, 99 (9th Cir. 2006).

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

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

14 **C. There is No Probable Cause For Obstruction of Justice**

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

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

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

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

13 **D. The Attorney General’s Challenge to the CPUC’s Deliberative Process**
14 **Designation Should be Heard by Noticed Motion**

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

20 The deliberative process privilege is a common law privilege that “allows the government
21 to withhold documents and other materials that would reveal ‘advisory opinions,
22 recommendations and deliberations comprising part of a process by which governmental
23 decisions and policies are formulated.’” *See In re Sealed Case*, 121 F.3d 729, 737-38 (D.C. Cir.
24 1997). Courts recognize that it is a valid basis for withholding documents in response to demands
25 for records in both criminal and civil cases. *Id.* (In course of grand jury investigation of the
26 former Secretary of Agriculture, White House withheld documents on grounds of deliberative
27 process privilege and presidential communications privilege); *United States v. Nixon*, 418 U.S.
28 683, 705-713 (1974) (recognizing the appropriateness of asserting executive privilege in response

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

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

17 **SONGS OII is an ongoing adversarial rate-setting proceeding.** The Commissioners,
18 the Administrative Law Judges, their advisors and researchers need to be able to discuss the facts,
19 law, and parties’ positions in candor and confidence, just as a court judge does. There is a long
20 tradition for recognizing this judicial privilege and it applies in this context as well. It would be
21 detrimental to the integrity of the CPUC’s proceedings if these documents were publically
22 released, as other documents obtained via DOJ search warrants have been. Moreover, there is
23 authority holding that if privileged material is produced in response to a grand jury subpoena, the
24 privilege is deemed waived as to productions in related civil cases. *See In re Pac. Pictures Corp.*,
25 679 F.3d 1121, 1130 (9th Cir. 2012).

26 The Attorney General’s complaint that “large swaths” of documents have been withheld is
27
28

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

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

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

24 The Attorney General claims that it sought to alleviate the CPUC workload by appointing
25 a "special master." Courts may appoint special masters. However, all expenses must be borne by
26

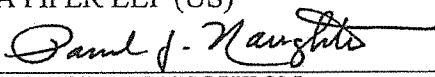
27 ⁴ It should be noted that the CPUC has already produced thousands of confidential documents which are arguably
28 subject to the deliberative process privilege to the Attorney General to foster transparency has so informed it in
written correspondence accompanying the production. *See generally* Roberts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

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

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

9 Dated: June 21, 2016

DLA PIPER LLP (US)

10 By 

11 PAMELA NAUGHTON

REBECCA ROBERTS

Attorneys for Movant

California Public Utilities Commission

VIA FAX

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

FILED
Superior Court of California
County of Los Angeles

JUN 16 2016

5 Attorneys for
6 California Public Utilities Commission

SHERIFF DANIEL S. GREGG, CLERK OF THE COURT
BY [Signature] Deputy
Sheriff's Registry Number

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

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

CASE NO. SW-70763

12 **SUPPLEMENTAL OPPOSITION TO**
13 **PETITION FOR AN ORDER COMPELLING**
14 **CALIFORNIA PUBLIC UTILITIES**
15 **COMMISSION TO COMPLY WITH SEARCH**
16 **WARRANT**

17 Date: June 23, 2016
18 Time: 1:30 p.m.
19 Place: Department 56
20 Judge: Hon. William C. Ryan

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


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

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

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

18 Dated: June 16, 2016

19 DLA PIPER LLP (US)

20
21 By 
22 PAMELA NAUGHTON
23 REBECCA ROBERTS
24 Attorneys for Movant
25 California Public Utilities Commission
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1 MEMORANDUM OF POINTS OF AUTHORITIES

2 I. BACKGROUND

3 The background facts concerning the 6 demands by the Attorney General and the CPUC's
4 compliance are outlined in the April 11, 2016 opposition. Additionally, it should be noted that
5 the demands and means of "execution" for the June 5, 2015 and March 9, 2016 search warrants
6 ("SONGS Search Warrants") are highly unusual and also contrary to the Attorney General's
7 representations in its March 21, 2016 "Petition." Even though the Attorney General had already
8 executed a broad search warrant at the San Francisco headquarters of the CPUC in November
9 2014, and had convened a grand jury which issued 3 subpoenas to the CPUC for documents, the
10 Attorney General strategically chose to seek more documents related to SONGS via search
11 warrants issued out of Los Angeles, rather than by grand jury subpoena. Perhaps the Attorney
12 General chose to seek search warrants because the warrants and returns would be publically
13 available to the press¹ while grand jury subpoenas are not. Perhaps they did so to cut off the
14 CPUC's opportunity to challenge the issuance since the CPUC would not have standing to quash
15 a search warrant – but would have had standing to quash and challenge a subpoena prior to any
16 production.

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

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

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

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

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

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

1 the CPUC informed the Attorney General how it would complete its review. (Pet. to Compel at
2 p. 2 (“Based on its investigation, DOJ submitted additional search terms to CPUC in December
3 2015.”); *see also* attached Exhibits 2-4; Roberts Decl. ¶¶9-11; Exs. 16-22.)

4 **II. ARGUMENT**

5 **A. There Is No Legal Basis for the Attorney General’s “Petition” to Compel the**
6 **CPUC to “Comply”**

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

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

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

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

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

18 **B. The Search Warrants Were Not Properly Executed**

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

23 _____
24 ² Federal courts have criticized government authorities who use search warrants as a means to circumvent a third
25 party’s right to object to a grand jury subpoena. *See U.S. v. Comprehensive Drug Testing, Inc.*, 513 F.3d 1085, 1131-
26 32 (9th Cir. 2008) (“Documents held in the possession of third parties are appropriately obtained through use of
27 grand jury subpoena, not search warrant. The record is quite clear that the government used the vehicle of a search
28 subpoena duces tecum . . . is much less intrusive than a search warrant: the police do not go rummaging through
one’s home, office, or desk if armed with only a subpoena. And, perhaps equally important, there is no opportunity
to challenge the search warrant, whereas one can always move to quash the subpoena before producing the sought-
after materials.”)

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

13 Search warrants must also be executed within 10 days or they are void. Cal. Penal Code
14 §1534(a) (“A search warrant shall be executed and returned within 10 days after date of issuance.
15 . . . After the expiration of 10 days, the warrant, unless executed, is void.”); *People v. Hernandez*,
16 43 Cal. App. 3d 581, 587-588 (1974) (statutory requirement to ensure probable cause between the
17 time of issuance of the warrant and the time of execution to avoid staleness problem).

18 Here, the search warrants were neither executed by a peace officer nor within the requisite
19 10 days. While the SONGS Search Warrants were issued to Special Agent Diaz, he did not in
20 fact “execute” the search warrant, e.g., seize the identified property. Instead, the Attorney
21 General’s office served the CPUC’s outside counsel and instructed the CPUC to search for and
22 identify responsive witnesses and documents, effectively deputizing the CPUC to carry out its
23 criminal investigation and incur the expense. Similarly, Agent Diaz did not seize the property or
24 even instruct the CPUC to turn over the documents within the requisite 10 days. The search
25 warrants themselves contemplate a protracted and ongoing production. (*See, e.g.*, SONGS
26 Search Warrants ¶4 (“ . . . CPUC will advise the Attorney General’s Office of its progress and
27 plan for collection and review of any such documents.”) The Attorney General can point to no
28 authority which holds that it can continue to demand documents six months after the search

1 warrant was served.

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

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

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

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

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

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

19 **D. The Search Warrants Are Overly Burdensome**

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

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

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

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

11 **III. CONCLUSION**

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

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

21 Dated: June 16, 2016

DLA PIPER LLP (US)

22
23 By 

24 PAMELA NAUGHTON
25 REBECCA ROBERTS
26 Attorneys for Movant
27 California Public Utilities Commission
28

