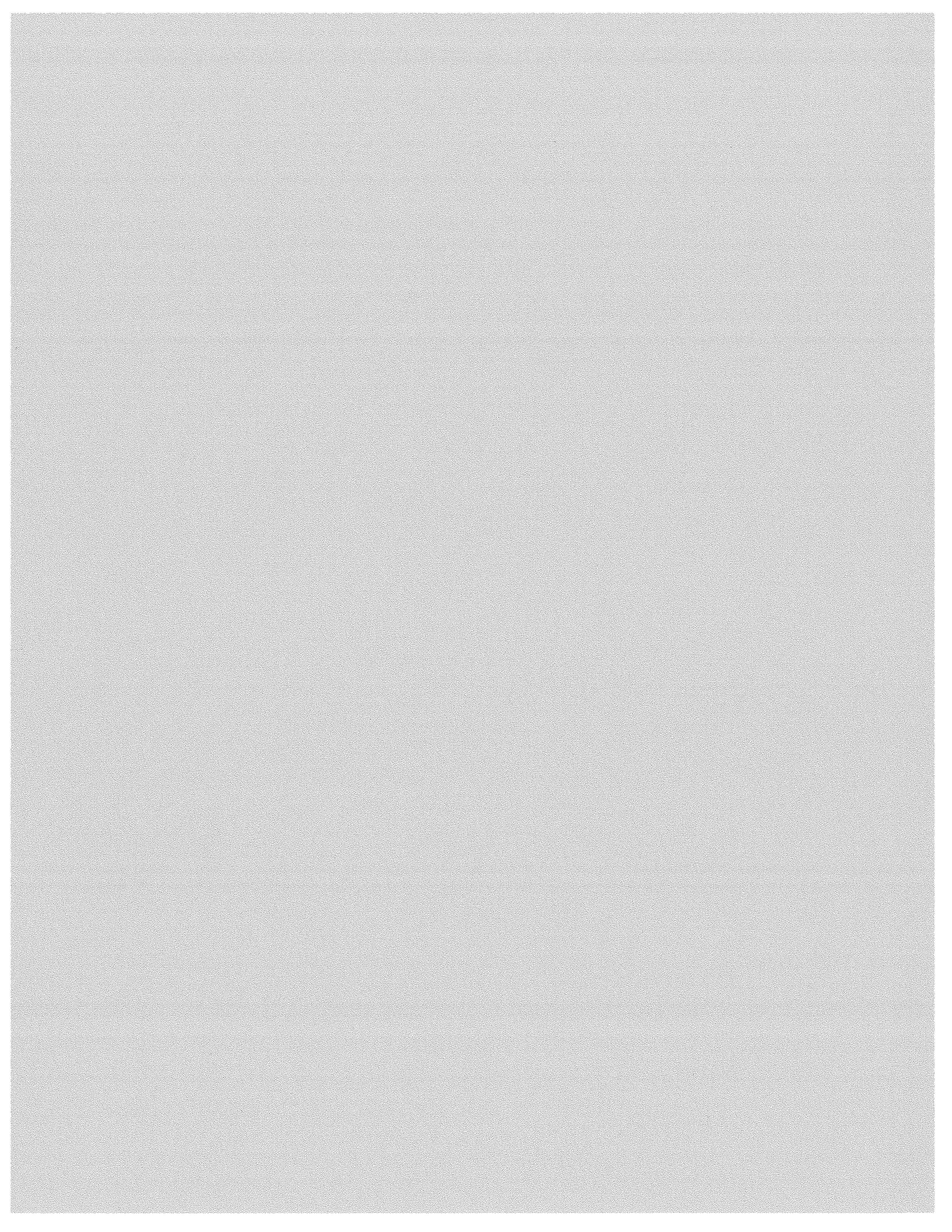


BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

DECLARATION OF EDWARD F. RANDOLPH IN RESPONSE TO ADMINISTRATIVE LAW JUDGE QUESTIONS RECEIVED BY EMAIL ON JUNE 1, 2015.

Q. Please state your name, title, and business address.

A. My name is Edward F. Randolph. I am the Director of the Energy Division at the California Public Utilities Commission. My business address is 505 Van Ness Avenue, San Francisco, California, 94102.

Q. What is the purpose of your declaration?

A. The purpose of this declaration is to respond to questions I received via email on June 1, 2015 from the assigned Administrative Law Judges (ALJs), Melanie M. Darling and Kevin Dudney, in the above-captioned proceeding. These questions relate to Southern California Edison's (SCE) Late-Filed Notice of Ex Parte Communication filed February 9, 2015 in Investigation (I.)12-10-013 ("the SONGS OII").

Q. The first question from the assigned ALJs asks: "Were you present for some or all of the March 26, 2013 meeting referenced in SCE's 2/9/15 Late-Filed Notice? Describe the date, location, and identity of all those in attendance for the meeting, as well as the times you were present." What is your response?

A. Yes, I was present at the meeting described in the SCE's late-filed notice. The meeting occurred on March 26, 2013 in the Hotel Bristol in Warsaw Poland. I was present along with the Commission President at the time, Michael Peevey, and Stephen Pickett. I was present for the entire duration of the meeting.

Q. The second question from the assigned ALJs asks: "Did Mr. Pickett make any statements regarding substantive matters related to the SONGS OII, including potential settlement? If so, please describe those statements." What is your response?

A. President Peevey initiated the meeting for the purpose of encouraging SCE to make a decision soon if it would seek to restart the San Onofre Nuclear Generating Station (SONGS) or permanently shut down the plant. Ongoing uncertainty over whether the plant would operate in the long-term was causing negative ratepayer impacts because SCE and the CAISO were both forced to make continued short term investments to ensure reliability in Southern California, and planning for

permanent solutions to replace the output of the plant could not begin until a decision was made on the long term operations. Mr. Pickett stated that SCE was in the process of making a decision on that issue and he did not make any specific commitment during the meeting.

After this discussion a conversation was initiated about a possible settlement agreement on cost recovery in the OII. Mr. Pickett initially stated his opinion of what he thought a settlement agreement would look like in the SONGS OII. He emphasized that he had not communicated this vision with his management. After Mr. Pickett presented his vision of a settlement agreement, President Peevey stated that any settlement agreement should include protections for the workers and funding to help offset the increased greenhouse gas (GHG) emissions created by the need to replace power generated by SONGS.

Q. **The third question from the assigned ALJs asks: "Did Mr. Pickett make any statements about substantive matters related to other pending Commission proceedings?" What is your response?**

A. No. Other than the conversations I describe above, I do not recall discussions about any other topics occurring at that meeting.

Q. **The fourth question from the assigned ALJs asks: "Do you have any recollection of notes being taken of the meeting, and by whom? Did you create or keep any notes?" What is your response?**

A. No, I do not recall notes being taken at the meeting. No, I did not take notes of the meeting.

Q. **The fifth question from the assigned ALJs asks: "Did Mr. Pickett make any statements which led you to believe that he and President Peevey had reached an agreement about any matter then pending before the Commission?" What is your response?**

A. No. Mr. Pickett made it clear that he did not have authority to make an agreement on a SONGS settlement. No other issues were raised regarding any matter pending before the Commission.

Q. Does this conclude your responses to the Assigned ALJ's questions?

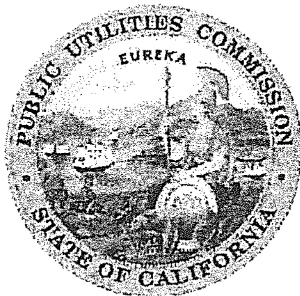
A. Yes.

Declaration of Witness

I, Edward F. Randolph, declare under penalty of perjury that the statements contained in the forgoing Declaration of Edward F. Randolph in Response to Administrative Law Judge Questions Received by Email on June 1, 2015, are true and correct to the best of my knowledge, information, and belief.

Executed on this 8 day of June, 2015.

Edward F. Randolph



State of California
California Public Utilities Commission

Rules of Practice and Procedure

California Code of Regulations
Title 20, Division 1, Chapter 1

California Public Utilities Commission

TABLE OF CONTENTS

Title Page

TABLE OF CONTENTS ii
ARTICLE 1. GENERAL PROVISIONS 1
1.1. (Rule 1.1) Ethics. 1
1.2. (Rule 1.2) Construction. 1
1.3. (Rule 1.3) Definitions. 1
1.4. (Rule 1.4) Participation in Proceedings. 2
1.5. (Rule 1.5) Form and Size of Tendered Documents. 3
1.6. (Rule 1.6) Title Page Requirements. 3
1.7. (Rule 1.7) Scope of Filing. 4
1.8. (Rule 1.8) Signatures. 5
1.9. (Rule 1.9) Service Generally. 6
1.10. (Rule 1.10) Electronic Mail Service. 9
1.11. (Rule 1.11) Verification. 10
1.12. (Rule 1.12) Amendments and Corrections. 11
1.13. (Rule 1.13) Tendering of Document for Filing. 11
1.14. (Rule 1.14) Review and Filing of Tendered Documents 13
1.15. (Rule 1.15) Computation of Time. 15
1.16. (Rule 1.16) Filing Fees. 15
1.17. (Rule 1.17) Daily Calendar. 15
ARTICLE 2. APPLICATIONS GENERALLY 16
2.1. (Rule 2.1) Contents. 16
2.2. (Rule 2.2) Organization and Qualification to Transact Business 16
2.3. (Rule 2.3) Financial Statement. 17
2.4. (Rule 2.4) CEQA Compliance. 18
2.5. (Rule 2.5) Fees for Recovery of Costs in Preparing EIR. 18
2.6. (Rule 2.6) Protests, Responses, and Replies. 19
2.7. (Rule 2.7) Copy of Document on Request. 20
ARTICLE 3. PARTICULAR APPLICATIONS 20
3.1. (Rule 3.1) Construction or Extension of Facilities. 20
3.2. (Rule 3.2) Authority to Increase Rates. 25
3.3. (Rule 3.3) Certificate to Operate. 28
3.4. (Rule 3.4) Abandon Passenger Stage Service. 30
3.5. (Rule 3.5) Debt and Equity. 31
3.6. (Rule 3.6) Transfers and Acquisitions. 33
3.7. (Rule 3.7) Public Road Across Railroad. 34

TABLE OF CONTENTS
(Continued)

Title Page

3.8. (Rule 3.8) Alter or Relocate Existing Railroad Crossing. 35
3.9. (Rule 3.9) Railroad Across Public Road. 36
3.10. (Rule 3.10) Railroad Across Railroad. 36
3.11. (Rule 3.11) Light-Rail Transit System Crossings. 37
3.12. (Rule 3.12) Exemption from Underground Rules. 38
ARTICLE 4. COMPLAINTS 40
4.1. (Rule 4.1) Who May Complain. 40
4.2. (Rule 4.2) Form and Contents of Complaint. 40
4.3. (Rule 4.3) Service of Complaints and Instructions to Answer. 41
4.4. (Rule 4.4) Answers. 41
4.5. (Rule 4.5) Expedited Complaint Procedure. 42
ARTICLE 5. INVESTIGATIONS 43
5.1. (Rule 5.1) Investigations. 43
5.2. (Rule 5.2) Responses to Investigations. 43
ARTICLE 6. RULEMAKING 44
6.1. (Rule 6.1) Rulemaking. 44
6.2. (Rule 6.2) Comments. 44
6.3. (Rule 6.3) Petition for Rulemaking. 44
ARTICLE 7. CATEGORIZING AND SCOPING PROCEEDINGS 46
7.1. (Rule 7.1) Categorization, Need for Hearing. 46
7.2. (Rule 7.2) Prehearing Conference. 47
7.3. (Rule 7.3) Scoping Memos. 47
7.4. (Rule 7.4) Consolidation. 48
7.5. (Rule 7.5) Changes to Preliminary Determinations. 48
7.6. (Rule 7.6) Appeals of Categorization. 48
ARTICLE 8. COMMUNICATIONS WITH DECISIONMAKERS AND ADVISORS 49
8.1. (Rule 8.1) Definitions. 49
8.2. (Rule 8.2) Communications with Advisors. 50
8.3. (Rule 8.3) Ex Parte Requirements. 50
8.4. (Rule 8.4) Reporting Ex Parte Communications. 53
8.5. (Rule 8.5) Ex Parte Requirements Prior to Final Categorization. 53
8.6. (Rule 8.6) Requirements in Proceedings Filed Before January 1, 1998. 54
ARTICLE 9. ADMINISTRATIVE LAW JUDGES 55
9.1. (Rule 9.1) Authority. 55
9.2. (Rule 9.2) Motion for Reassignment on Peremptory Challenge. 55
9.3. (Rule 9.3) Motion for Reassignment for Prior Service. 56
9.4. (Rule 9.4) Motion for Reassignment for Cause. 57
9.5. (Rule 9.5) Circumstances Not Constituting Cause. 58

TABLE OF CONTENTS
(Continued)

Title | Page

9.6. (Rule 9.6) Administrative Law Judge's Request for Reassignment. 59
9.7. (Rule 9.7) Waiver. 59
9.8. (Rule 9.8) Prior Rulings. 59
ARTICLE 10. DISCOVERY 59
10.1. (Rule 10.1) Discovery from Parties. 59
10.2. (Rule 10.2) Subpoenas. 60
10.3. (Rule 10.3) Computer Model Documentation. 61
10.4. (Rule 10.4) Computer Model and Data Base Access. 62
ARTICLE 11. LAW AND MOTION 63
11.1. (Rule 11.1) Motions. 63
11.2. (Rule 11.2) Motion to Dismiss. 64
11.3. (Rule 11.3) Motion to Compel or Limit Discovery. 64
11.4. (Rule 11.4) Motion for Leave to File Under Seal. 64
11.5. (Rule 11.5) Motion to Seal the Evidentiary Record. 65
11.6. (Rule 11.6) Motion for Extension of Time. 65
11.7. (Rule 11.7) Referral to Law and Motion Judge. 66
ARTICLE 12. SETTLEMENTS 66
12.1. (Rule 12.1) Proposal of Settlements. 66
12.2. (Rule 12.2) Comments. 67
12.3. (Rule 12.3) Hearing Where Contested. 68
12.4. (Rule 12.4) Rejection of Settlement. 68
12.5. (Rule 12.5) Adoption Binding, Not Precedential. 68
12.6. (Rule 12.6) Confidentiality and Inadmissibility. 69
12.7. (Rule 12.7) Applicability. 69
ARTICLE 13. HEARINGS, EVIDENCE, BRIEFS AND SUBMISSION 69
13.1. (Rule 13.1) Notice. 69
13.2. (Rule 13.2) Presiding Officer. 70
13.3. (Rule 13.3) Assigned Commissioner Presence. 70
13.4. (Rule 13.4) Order of Procedure. 71
13.5. (Rule 13.5) Limiting Number of Witnesses. 71
13.6. (Rule 13.6) Evidence. 72
13.7. (Rule 13.7) Exhibits. 72
13.8. (Rule 13.8) Prepared Testimony. 73
13.9. (Rule 13.9) Official Notice of Facts. 74
13.10. (Rule 13.10) Additional Evidence. 74
13.11. (Rule 13.11) Closing Briefs. 74
13.12. (Rule 13.12) Oral Argument in Adjudicatory Proceeding. 74
13.13. (Rule 13.13) Oral Argument Before Commission. 75
13.14. (Rule 13.14) Submission and Reopening of Record. 75

TABLE OF CONTENTS
(Continued)

Title | Page

ARTICLE 14. RECOMMENDED DECISIONS 76
14.1. (Rule 14.1) Definitions. 76
14.2. (Rule 14.2) Issuance of Recommended Decision. 77
14.3. (Rule 14.3) Comments on Proposed or Alternate Decision. 78
14.4. (Rule 14.4) Appeal and Review of Presiding Officer's Decision. 78
14.5. (Rule 14.5) Comment on Draft or Alternate Draft Resolution. 79
14.6. (Rule 14.6) Reduction or Waiver of Review. 79
14.7. (Rule 14.7) Exemptions. 81
ARTICLE 15. COMMISSION DECISIONS 82
15.1. (Rule 15.1) Commission Meetings. 82
15.2. (Rule 15.2) Meeting Agenda. 83
15.3. (Rule 15.3) Agenda Item Documents. 84
15.4. (Rule 15.4) Decision in Ratesetting or Quasi-Legislative Proceeding. 84
15.5. (Rule 15.5) Decision in Adjudicatory Proceeding. 84
15.6. (Rule 15.6) Service of Decisions and Orders. 85
ARTICLE 16. REHEARING, MODIFICATION AND TIME TO COMPLY 85
16.1. (Rule 16.1) Application for Rehearing. 85
16.2. (Rule 16.2) Parties Eligible to File Applications for Rehearing and Responses. 86
16.3. (Rule 16.3) Oral Arguments on Application for Rehearing. 86
16.4. (Rule 16.4) Petition for Modification. 88
16.5. (Rule 16.5) Correction of Obvious Errors. 89
16.6. (Rule 16.6) Extension of Time to Comply. 89
ARTICLE 17. COMPENSATING INTERVENORS 90
17.1. (Rule 17.1) Notice of Intent to Claim Compensation. 90
17.2. (Rule 17.2) Eligibility in Phased Proceedings. 91
17.3. (Rule 17.3) Request for Award. 91
17.4. (Rule 17.4) Request for Compensation; Reply to Responses. 92
ARTICLE 18. FORMS 93
18.1. (Rule 18.1) Forms. 93

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(a), Public Utilities Code.

ARTICLE 8. COMMUNICATIONS WITH DECISIONMAKERS AND ADVISORS

8.1. (Rule 8.1) Definitions.

For purposes of this Article, the following definitions apply:

(a) "Commission staff of record" includes staff from the Division of Ratepayer Advocates assigned to the proceeding, staff from the Consumer Protection and Safety Division assigned to an adjudicatory proceeding or to a ratesetting proceeding initiated by complaint, and any other staff assigned to an adjudicatory proceeding in an advocacy capacity.

"Commission staff of record" does not include the following staff when and to the extent they are acting in an advisory capacity to the Commission with respect to a formal proceeding: (1) staff from any of the industry divisions; or (2) staff from the Consumer Protection and Safety Division in a quasi-legislative proceeding, or in a ratesetting proceeding not initiated by complaint.

(b) "Decisionmaker" means any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge.

(c) "Ex parte communication" means a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:

(1) concerns any substantive issue in a formal proceeding,

(2) takes place between an interested person and a decisionmaker, and

(3) does not occur in a public hearing, workshop, or other public forum noticed by ruling or order in the proceeding, or on the record of the proceeding.

Communications regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such nonsubstantive information are procedural inquiries, not ex parte communications.

(d) "Interested person" means any of the following:

(1) any party to the proceeding or the agents or employees of any party, including persons receiving consideration to represent any of them;

(2) any person with a financial interest, as described in Article I (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter at issue before the Commission, or such person's agents or employees, including persons receiving consideration to represent such a person; or

(3) a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a Commission member on a matter before the Commission, even if that association is not a party to the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

8.2. (Rule 8.2) Communications with Advisors.

Communications with Commissioners' personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications in ratesetting proceedings are permitted without the restrictions of Rule 8.3(c)(1) and (2).

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

8.3. (Rule 8.3) Ex Parte Requirements.

(a) In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement.

(b) In any adjudicatory proceeding, ex parte communications are prohibited.

(c) In any ratesetting proceeding, ex parte communications are subject to the reporting requirements set forth in Rule 8.4. In addition, the following restrictions apply:

(1) All-party meetings: Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or

call as soon as possible, but no less than three days before the meeting or call.

(2) Individual oral communications: If a decisionmaker grants an ex parte communication meeting or call to any interested person individually, all other parties shall be granted an individual meeting of a substantially equal period of time with that decisionmaker. The interested person requesting the initial individual meeting shall notify the parties that its request has been granted, and shall file a certificate of service of this notification, at least three days before the meeting or call.

(3) Written ex parte communications are permitted at any time provided that the interested person making the communication serves copies of the communication on all parties on the same day the communication is sent to a decisionmaker.

(4) Ratesetting Deliberative Meetings and Ex Parte Prohibitions:

(A) The Commission may prohibit ex parte communications for a period beginning not more than 14 days before the day of the Commission Business Meeting at which the decision in the proceeding is scheduled for Commission action, during which period the Commission may hold a Ratesetting Deliberative Meeting. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the day of the Business Meeting to which the decision is held.

(B) In proceedings in which a Ratesetting Deliberative Meeting has been scheduled, ex parte communications are prohibited from the day of the Ratesetting Deliberative Meeting at which the decision in the proceeding is scheduled to be discussed through the conclusion of the Business Meeting at which the decision is scheduled for Commission action.

(d) Notwithstanding Rule 8.5, unless otherwise directed by the assigned Administrative Law Judge with the approval of the assigned Commissioner, the provisions of subsections (b) and (c) of this rule, and any reporting requirements under Rule 8.4, shall cease to apply, and ex parte communications shall be permitted, in any proceeding in which (1) no timely answer, response, protest, or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding.

(e) Ex parte communications concerning categorization of a given

proceeding are permitted, but must be reported pursuant to Rule 8.4.

(f) Ex parte communications regarding the assignment of a proceeding to a particular Administrative Law Judge, or reassignment of a proceeding to another Administrative Law Judge, are prohibited. For purposes of this rule, "ex parte communications" include communications between an Administrative Law Judge and other decisionmakers about a motion for reassignment of a proceeding assigned to that Administrative Law Judge.

(g) The requirements of this rule, and any reporting requirements under Rule 8.4, shall apply until (1) the date when the Commission serves the decision finally resolving any application for rehearing, or (2) where the period to apply for rehearing has expired and no application for rehearing has been filed.

(h) Upon the filing of a petition for modification, the requirements of this rule, and any reporting requirements under Rule 8.4, that applied to the proceeding in which the decision that would be modified was issued shall apply until and unless (1) no timely response, protest or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

(i) Where a proceeding is remanded to the Commission by a court or where the Commission re-opens a proceeding, the requirements of this rule and any reporting requirements under Rule 8.4 that previously applied to the proceeding shall apply until and unless a Commission order or a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

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

(k) The Commission shall render its decision based on the evidence of record. Ex parte communications, and any notice filed pursuant to Rule 8.4, are not a part of the record of the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.1(a), 1701.2(b), 1701.3(c) and 1701.4(b), Public Utilities Code.

8.4. (Rule 8.4) Reporting Ex Parte Communications.

Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. Notice of ex parte communications shall be filed within three working days of the communication. The notice may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely. The notice shall include the following information:

(a) The date, time, and location of the communication, and whether it was oral, written, or a combination;

(b) The identities of each decisionmaker (or Commissioner's personal advisor) involved, the person initiating the communication, and any persons present during such communication;

(c) A description of the interested person's, but not the decisionmaker's (or Commissioner's personal advisor's), communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4)(C)(i)-(iii), Public Utilities Code.

8.5. (Rule 8.5) Ex Parte Requirements Prior to Final Categorization.

(a) Applications.

(1) The ex parte requirements applicable to ratesetting proceedings shall apply from the date the application is filed through the date of the Commission's preliminary determination of category pursuant to Rule 7.1(a).

(2) The ex parte requirements applicable to the category preliminarily determined by the Commission pursuant to Rule 7.1(a) shall apply until the date of the assigned Commissioner's scoping memo finalizing the determination of categorization pursuant to Rule 7.3.

(b) Rulemakings. The ex parte requirements applicable to the category preliminarily determined by the Commission pursuant to Rule 7.1(d) shall apply until the date of the assigned Commissioner's ruling on scoping memo finalizing the determination of category pursuant to Rule 7.3.

(c) Complaints. The ex parte requirements applicable to adjudicatory proceedings shall apply until the date of service of the instructions to answer finalizing the determination of category pursuant to Rule 7.1(b).

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

8.6. (Rule 8.6) Requirements in Proceedings Filed Before January 1, 1998.

The following requirements apply to proceedings filed before January 1, 1998:

(a) In any investigation or complaint where the order instituting investigation or complaint raises the alleged violation of any provision of law or Commission order or rule, ex parte communications and communications with Commissioners' personal advisors are prohibited after the proceeding has been submitted to the Commission.

(b) Ex parte communications and communications with Commissioners' personal advisors are permitted, and shall not be reported, in rulemakings and in investigations consolidated with rulemakings to the extent that the investigation raises the identical issues raised in the rulemaking.

(c) All other ex parte communications and communications with Commissioners' personal advisors are permitted, and are subject to the reporting requirements of Rule 8.4.

(d) The Commission, or the assigned Administrative Law Judge with the approval of the assigned Commissioner, may issue a ruling tailoring these requirements to the needs of any specific proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

FILED
7-14-14
04:59 PM

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S NOTICE OF EX PARTE COMMUNICATIONS

JOHN L. GEESMAN

DICKSON GEESMAN LLP
1999 Harrison Street, Suite 2000
Oakland, CA 94612
Telephone: (510) 899-4670
Facsimile: (510) 899-4671
E-Mail: john@dicksongeesman.com

Date: July 14, 2014

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

NOTICE OF EX PARTE COMMUNICATION

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

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

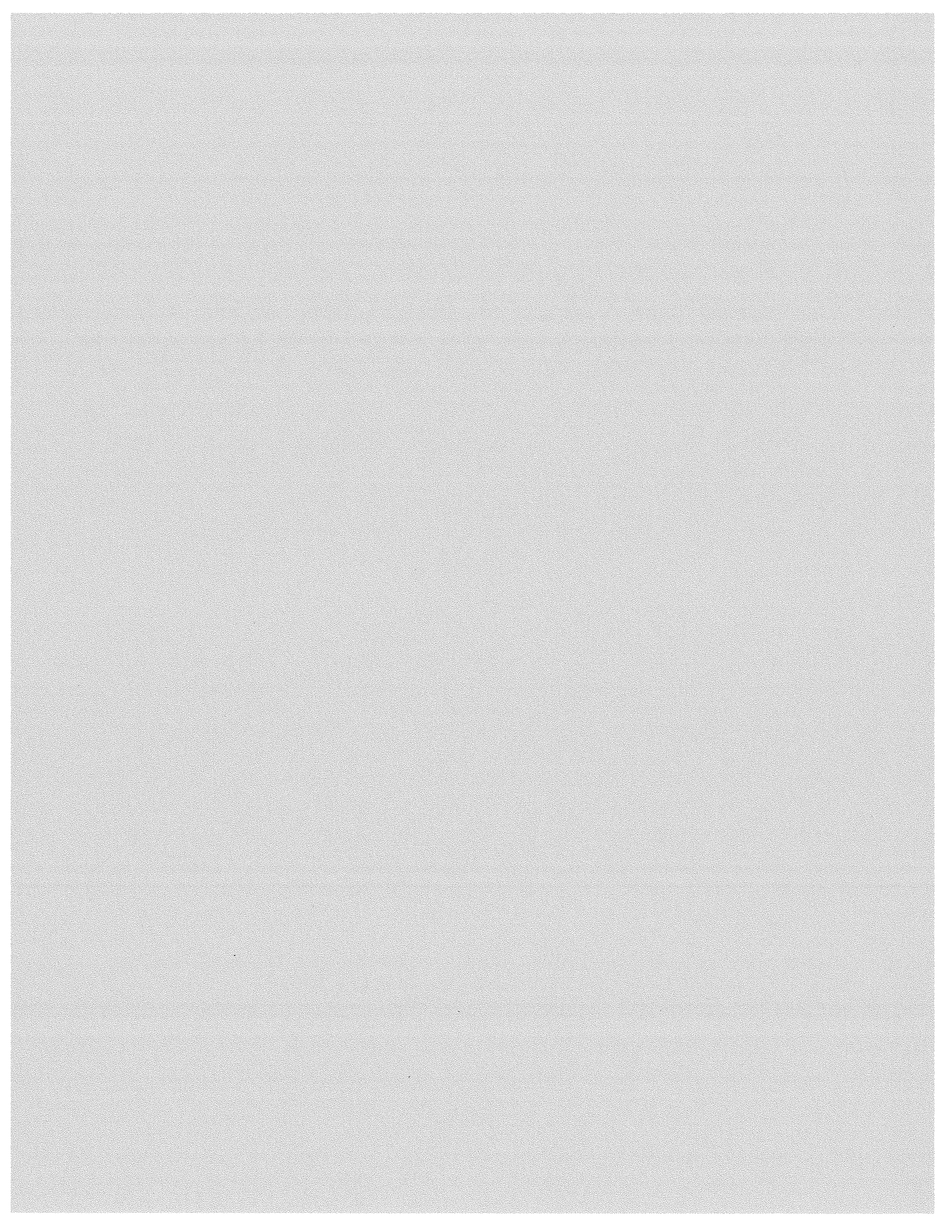
Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN
DICKSON GEESMAN LLP

Date: July 14, 2014

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY



THE UTILITY REFORM NETWORK
OFFICE OF RATEPAYER ADVOCATES
Differences between terms identified on the note and
the proposed/final SONGS settlement

Recovery of Base plant costs (Note item #1)
The note calls for SCE and SDG&E to recover these costs at a "debt-level" return through 2022. The note refers to "debt-level" return for the entire amount of unrecovered plant investments (apart from the Replacement Steam Generators). The note does not specify when the base plant would be removed from rates (SCE and SDG&E had proposed June 1, 2013). By contrast, the proposed settlement removes base plant from rates on February 1, 2012 and provides zero return on the equity portion of the plant and only 50% of preferred returns on that portion of the plant investment. For SCE, a "debt-level" return for the unrecovered investment would be 7.64% while the settlement allows a return of 2.62%.[1] For SDG&E, a "debt-level" return for the unrecovered investment would be 6.88% while the settlement provides a return of 2.41%.[2]

Conclusion - The lower level returns included in the proposed settlement results in a reduction of over $200 million (Net Present Value) in ratepayer costs. If the note intended to remove base plant from rates later than February 1, 2012 (as proposed by SCE and SDG&E), the settlement would provide even larger reductions.

Nuclear fuel (Note item #1)
The note appears to call for SCE and SDG&E to recover approximately $593 million in nuclear fuel costs (which are "Pre-RSG investment") at a "debt-level" return through 2022.[3] The proposed settlement allows recovery of nuclear fuel at a commercial paper rate of return (currently 0.1%) and requires that ratepayers be credited with 95% of the proceeds from the sale of any of this fuel to other nuclear plant owners.

Conclusion - The settlement results in significantly lower costs for ratepayers. If no nuclear fuel is sold, the settlement would result in approximately $65 million in lower ratepayer costs.

---

[1] This comparison accounts for the "tax gross up" applied to equity returns set at debt levels and any returns on preferred stock. This "gross up" is a standard utility practice in ratemaking. SCE's "debt-level" return would be 7.64%(5.49% plus taxes on equity returns) while the settlement allows a return of 2.80% (2.62%plus taxes on preferred stock return).
[2] Due to the "tax gross up", SDG&E's "debt-level" return would be 6.88%(5.00% plus taxes on equity returns) while the settlement allows a return of 2.41% (2.35%plus taxes on preferred stock return).
[3] As of December 31, 2013, the net book value of nuclear fuel investments was $477 million for SCE and $115.8 million for SDG&E (Settlement §3.38). As shown in footnotes 1 and 2, this "debt-level" return would be 7.64% for SCE (after tax gross up) and 6.88% for SDG&E (after tax gross up).

Replacement Steam Generators (Note item #2)
The note calls for the RSG investments to be disallowed "retroactively out of ratebase effective 2/1/12". Since the note references disallowances "effective" February 1, 2012, there is no basis to conclude that the Peevey-Pickett note contemplated disallowances of costs prior to February 1, 2012. Had the note intended such treatment, the disallowance would have either been "retroactive" to an earlier date or would not have made this provision "effective" as of any particular date. The removal of RSG investments "retroactive" to February 1, 2012 is the same treatment provided by the settlement. The note references both the 2/1/2012 date and another date that has been crossed out and is not readable, suggesting that a later date may have also been contemplated. In the investigation, SCE and SDG&E proposed changing the rate treatment of its base plant as of June 2013 when SONGS was permanently retired.

Conclusion – No difference assuming a 2/1/2012 date. If the note intended to remove the RSG investments from rates later than February 1, 2012 (for example, the permanent shut-down date of June 1, 2013), the settlement would provide reductions of approximately $189 million: $148 million for SCE and $41 million for SDG&E.[4]

Operations and Maintenance costs (Note item #7)
The note calls for SCE and SDG&E to retain "O&M" (Operations and Maintenance) revenue requirements "already approved" in the most recent General Rate Cases (GRCs) "through shutdown + 6 months." SONGS was permanently shutdown on June 12, 2013. Using the actual shutdown date, the note would allow recovery of previously authorized revenue requirements through the end of 2013. Had the note intended to reference the outage that began on January 31, 2012, it would have specified an actual date in 2012 (such as August 1, 2012) rather than stating "shutdown + 6 months" (which demonstrates that "shutdown" had not yet occurred at the time the note was drafted).

For 2012, the settlement allows SCE and SDG&E to retain the lower of actual costs or GRC-authorized O&M revenue requirements. For 2013, the settlement requires SCE and SDG&E to refund the difference between authorized O&M revenue requirements and actual recorded costs. Actual O&M expenses were lower than GRC-authorized revenue requirements for SDG&E in 2012 (by $3.4 million) and 2013 ($23.5 million) and for SCE in 2013 (by $54 million).[5]

Conclusion - The more favorable provision in the settlement results in a reduction of $80.9 million -- $54 million for SCE ratepayers and $26.9 million for SDG&E ratepayers.

[4] See SCE Advice Letter 3139-E, Attachment A; SDG&E Advice Letter 2672-E, Attachment C.
[5] See SCE Advice Letter 3139-E, Attachment A (shows $53.983 million credit due to lower actual vs. authorized O&M spending in 2013), SDG&E Advice Letter 2672-E, Attachment C (shows $3.369 million credit due to lower actual vs. authorized O&M spending in 2012 and $23.485 million credit in 2013).

Use of nuclear decommissioning trust funds (Note item #7)
The note assumes that all O&M costs after the shutdown of the plant would be paid through customer rates. In contrast, the settlement calls for SCE and SDG&E to recover their post-shutdown costs from the Nuclear Decommissioning Trusts, rather than ratepayers, whenever possible.[6] Consistent with the settlement, SCE and SDG&E have pending requests to recover approximately $434 million from their nuclear decommissioning trust funds for O&M costs incurred between June of 2013 and December 31, 2014.[7] If the CPUC approves these requests to access the trust funds, approximately $434 million would be returned to ratepayers.

Conclusion – Under the settlement, ratepayers would receive approximately $434 million in refunds that are not contemplated under the note.

Contribution to the Greenhouse Gas research (Note item #8)
The note calls for SCE to "donate" $90 million between 2014-2022 to an agreed-upon entity to perform research on greenhouse gases and climate change. The note does not indicate whether these funds would come from ratepayers or shareholders. The proposed settlement has no provisions addressing any such contributions. The CPUC issued a ruling modifying the settlement to require SCE and SDG&E to contribute $25 million over 5 years to the University of California for this purpose and specifying that shareholder money (not customer rates) is the source of these contributions. If the note contemplated that the $90 million would be funded through rates, the final settlement represents a savings of $90 million. If the note intended that the $90 million would come from shareholder fund, the impact on ratepayers would be the same under the note and the final settlement.

Conclusion – The settlement results in ratepayer savings of either $0 or $90 million depending on whether the note contemplated ratepayer-financed contributions.

Recovery of funds from NEIL and Mitsubishi (Note items #4 and #5)
Both the note and the approved settlement address the allocation of potential litigation proceeds from Nuclear Energy Insurance Limited (NEIL) and Mitsubishi Heavy Industries (MHI). Under the note, the allocation of proceeds from NEIL would go "to customers". Although the proposed settlement would have allocated 82.5% of NEIL proceeds to ratepayers (and 17.5% to shareholders), the final approved settlement requires that 95% of NEIL proceeds be allocated to ratepayers. Since there have been no recoveries to date from NEIL, it is not possible to determine the difference of allocating 95% vs. 100% of any proceeds to ratepayers.

---

[6] Settlement §5(d) & §4.8(b).

[7] This amount includes post-shutdown O&M costs for 2013 and 2014 incurred by SCE and SDG&E. See SCE Advice Letter 3193-E (seeking $340 million from trusts for post-shutdown costs between June 7, 2013 and December 31, 2014), SDG&E Advice Letter 2724-E (seeking $54.59 million from trusts for 2013 post-shutdown costs), SDG&E Application 15-02-006 (seeking $39.36 million from trusts for 2014 post-shutdown costs),

Under the note, the allocation of proceeds from MHI would be as follows:

	Ratepayers	Shareholders
0-$200 million	50%	50%
$201-400 million	30%	70%
$401-"up to disallowance"[8]	20%	80%
In excess of "disallowance"	75%	25%

SCE is seeking over $4 billion from MHI in its arbitration claims. Compared to the note, the proposed settlement is slightly less favorable to ratepayers in the event that recoveries are less than $800 million (but would be more favorable to ratepayers if recoveries are higher than $800 million). Under the final approved settlement (as modified by the CPUC), all proceeds would be shared 50/50 between ratepayers and shareholders. The final settlement agreement is far more favorable for ratepayers than the note if total recoveries exceed $200 million.

Conclusion – The ultimate difference to ratepayers cannot be determined until NEIL coverage is successfully obtained, the arbitration proceedings between SCE and Mitsubishi are resolved, and the final amount of recoveries has been determined.

OII Process (Note items #7(b), #7(c) and #9)
The note calls for SONGS "shutdown" costs through 2017 to be decided in a new "shutdown O&M phase" of the CPUC SONGS OII with "shutdown O&M 2018 and beyond determined in [General Rate Cases]". The settlement does not contain any similar provisions. Under the settlement, the SONGS OII is not continued for this purpose and "shutdown O&M" costs are not collected from customers. The settlement provides that costs relating to "shutdown O&M" are instead financed via decommissioning trust funds and directs the utilities to seek a determination as to the reasonableness of 2014 costs in a separate ongoing CPUC proceeding (A.14-12-007) that includes involvement from a wide range of active stakeholders.

Conclusion – Under the settlement, all post-shutdown costs (beginning in June of 2013) are to be treated as decommissioning expenses and collected from decommissioning trust funds. For 2013-2014, this treatment results in approximately $434 million in refunds from the decommissioning trust funds. If the Note intended to allow collection of "shutdown O&M" in rates through 2018, the consequences for consumers would be significantly greater.

---

[8] The note does not explain how much recovery would be needed to satisfy the "disallowance". SCE and SDG&E would likely have proposed that the "disallowance" be calculated based on any expenses they could not recover under a settlement plus their anticipated recovery of RSG and base plant capital assuming a full rate of return on debt, preferred and shareholder equity.

SUMMARY OF DIFFERENCES BETWEEN
APPROVED SETTLEMENT AND PEEVEY-PICKETT NOTE

COST CATEGORY	RATEPAYER SAVINGS UNDER SETTLEMENT
Base plant	>$200 million
Nuclear fuel	≤$65 million
Replacement steam generators	$0 - $189 million
O&M costs	$80.9 million
Use of decommissioning trust funds	≥ $434 million
Greenhouse gas research	$0 - $90 million
NEIL/MHI recoveries	TBD based on actual recoveries
TOTAL SAVINGS	**$780 - 1,059 million**

ORIGINAL

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 09 2016

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY Sheryl Ritchey Humber Deputy
Sheryl Ritchey Humber

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

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

CASE NO. SW-70763

PROOF OF SERVICE

FILED UNDER SEAL

I, Maria E. Valentino, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is DLA Piper LLP (US), 401 B Street, Suite 1700, San Diego, California 92101-4297. On June 9, 2016, I served a copy of the foregoing document(s):

CPUC NOTICE OF MOTION AND MOTION FOR RETURN OF SEIZED PROPERTY

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

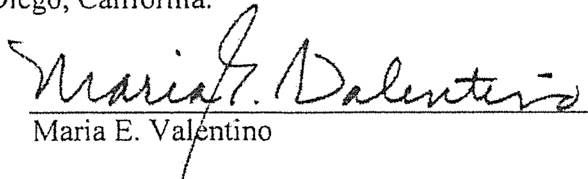
Amanda Plisner, Esq.
Deputy Attorney General
Office of Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Tel: 213.897.2000
amanda.plisner@doj.ca.gov

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 9, 2016, at San Diego, California.



Maria E. Valentino

VIA FAX

FILED
Superior Court of California
County of Los Angeles

JUN 16 2016

Sherri R. Carter, Executive Officer/Clerk
BY Sheryl Ritchey Humber, Deputy

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

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

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

I, Maria E. Valentino, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is DLA Piper LLP (US), 401 B Street, Suite 1700, San Diego, California 92101-4297. On June 9, 2016, I served a copy of the foregoing document(s):

SUPPLEMENTAL OPPOSITION TO PETITION FOR AN ORDER COMPELLING CALIFORNIA PUBLIC UTILITIES COMMISSION TO COMPLY WITH SEARCH WARRANT

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

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 9, 2016, at San Diego, California.

Maria E. Valentino

KAMALA D. HARRIS
Attorney General of California
JAMES ROOT
Senior Assistant Attorney General
AMANDA PLISNER
Deputy Attorney General
MAGGY KRELL
Deputy Attorney General
State Bar No. 226675
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-1995
Fax: (916) 322-2368
E-mail: Maggy.Krell@doj.ca.gov
Attorneys for People of the State of California

FILED
LOS ANGELES SUPERIOR COURT
APR 14 2016
Sherri R. Carter, Executive Officer/Clerk
By ________, Deputy
M. Seals

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

IN RE: JUNE 5, 2015 SEARCH WARRANT NO. 70763 ISSUED TO CALIFORNIA PUBLIC UTILITIES COMMISSION	Case No. **DOJ'S OPPOSITION TO CPUC'S MOTION TO QUASH** **UNDER SEAL FILING**

Made under 1558, Denied by order

KAMALA D. HARRIS
Attorney General of California
JAMES ROOT
Senior Assistant Attorney General
AMANDA PLISNER
Deputy Attorney General
MAGGY KRELL
Deputy Attorney General
State Bar No. 226675
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-1995
Fax: (916) 322-2368
E-mail: Maggy.Krell@doj.ca.gov
Attorneys for People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

IN RE: JUNE 5, 2015 SEARCH WARRANT NO. 70763 ISSUED TO CALIFORNIA PUBLIC UTILITIES COMMISSION	Case No. **DOJ'S OPPOSITION TO CPUC'S MOTION TO QUASH** **UNDER SEAL FILING**

ORIGINAL

KAMALA D. HARRIS
Attorney General of California
JAMES ROOT
Senior Assistant Attorney General
MAGGY KRELL
AMANDA PLISNER
Deputy Attorneys General
State Bar No. 258157
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2182
Fax: (213) 897-2806
E-mail: Amanda.Plisner@doj.ca.gov

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

IN RE JUNE 5, 2015 SEARCH WARRANT NO. 70763 ISSUED TO CALIFORNIA PUBLIC UTILITIES COMMISSION	Case No. **DOJ'S OPPOSITION TO CPUC'S MOTION TO QUASH** Date: April 18, 2016 Time: 10:00 a.m. Dept: 56 **FILED UNDER SEAL**

TO THE HONORABLE JUDGE OF THE SUPERIOR COURT OF LOS ANGELES, AND TO THE RESPONDENT AND ITS ATTORNEYS OF RECORD:

The Attorney General, representing the People of the State of California, hereby opposes the California Public Utilities Commission's Motion to Quash and respectfully requests the Court order compliance with the search warrants issued by this Court on June 5, 2015, and March 9, 2016.

PROCEDURAL AND FACTUAL BACKGROUND

On June 5, 2015, the Department of Justice (DOJ) served a search warrant (the June warrant) on the California Public Utilities Commission (CPUC) seeking documents relevant to a

pending criminal investigation regarding the shutdown of San Onofre Nuclear Generating Station (SONGS). The warrant was signed by the Honorable David V. Herriford of the Los Angeles Superior Court after presentation by DOJ Special Agent Reye Diaz. CPUC was immediately served with the warrant. CPUC claimed that the materials sought were protected by the attorney client and deliberative process privileges. CPUC proposed a screening process whereby they would review evidence for privilege, and submit screened evidence to DOJ on a rolling basis.

CPUC partially complied with the warrant, submitting some responsive records to DOJ in September and December 2015. However, CPUC failed to provide a privilege log to DOJ, detailing which records are being withheld due to privilege claims. Moreover, CPUC has failed to complete the production and instead now attempts to challenge the warrant. CPUC essentially claims that an incorrect statement invalidates the warrant. DOJ submits that the June 5, 2015 search warrant is legally sufficient despite the misstatement and, therefore, that CPUC is obligated to comply. Nonetheless, DOJ submitted a new search warrant for the same items to the Court, excising the misstatement. On March 9, 2016, the Honorable David V. Herriford signed the new warrant and CPUC was served. Nonetheless, CPUC indicated it would not comply with either warrant and has since filed the instant Motion to Quash. DOJ maintains that both warrants were supported by adequate probable cause, and opposes CPUC's motion.

ARGUMENT

A. California Public Utilities Commission's Motion to Quash is Not a Proper Vehicle for a Pre-Filing Probable Cause Challenge

CPUC asks the Court to quash DOJ's warrant(s) pursuant to Penal Code section 1538.5. However, its request for this remedy is improper at the current, pre-filing stage of a criminal matter. Section 1538.5 is, by its own terms, restricted to a motion by "a defendant" to return property or suppress evidence. (Pen. Code 1538.5; *see also People v. Superior Court* (*Chico etc. Health Center*) (1986) 187 Cal. App. 3d 648, 652.) Here, CPUC is not a defendant, and lacks standing in the suppression context. Courts have long held that Fourth Amendment rights are personal and may not be vicariously asserted. (*Rakas v. Illinois* (1978) 439 U.S. 128, 133–134.) The question of whether a defendant has standing to challenge a search is a question of "whether

the challenged search and seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it." (*Id.* at p. 140.) Moreover, no person or entity has been charged with a crime, and thus, as filed, the CPUC's motion is not properly before this Court.[1] Finally, challenges to a search warrant should be first heard by the issuing magistrate pursuant to section 1538.5 (b). Therefore, the Honorable Judge Herriford should hear the current challenge.

B. Department of Justice's Search Warrants Are Supported by Probable Cause

Even assuming this challenge is cognizable at this time, by this Court, the People submit that the warrants are adequately supported by probable cause.

1. The Probable Cause Requirement

Probable cause exists for a search warrant when there is "a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 238-239; see also *Ibid* at p. 243 ["probable cause requires only a ... substantial chance."]; *Texas v. Brown* (1983) 460 U.S. 730, 742 [Probable cause is a "particularized suspicion"]; *Wimberly v. Superior Court* (1976) 16 Cal.3d 557, 564 [Probable cause is "facts that would lead a man of ordinary caution ... to entertain a strong suspicion that the object of the search is in the particular place to be searched."].) A magistrate reviewing a search warrant affidavit is tasked with making "a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information," the probable cause requirement is met. (*Illinois v. Gates, supra,* 462 U.S. at 238-239.) The search warrant affiant must provide the magistrate, by way of affidavit, with the factual information he or she knows and his or her opinion as a law enforcement officer. Because an affidavit offered in support of the search warrant is normally drafted by nonlawyers in the midst and haste of a criminal investigation, technical requirements of elaborate specificity once

[1] The proper vehicle for such a challenge would be a Motion for Return of Property pursuant to Penal Code sections 1539 and 1540. (Pen. Code, §§ 1539, 1540.) A motion pursuant to Penal Code section 1540 provides an owner of seized property with an avenue for challenging the legality of a seizure pursuant to a warrant, and may be relied upon in situations such as the one before the Court where relief is not available pursuant to PC 1538.5. (*People v. Superior Court (Chico etc. Health Center)*, 187 Cal. App. 3d 648, 652.)

exacted under common law pleadings have no proper place in this area. (*U.S. v. Ventresca* (1965) 380 U.S. 102, 108; *People v. Ulloa* (4th Dist. 2002) 101 Cal. App. 4th 1000, 1006 .)

2. The Court's Standard of Review

Great deference is shown to the issuing magistrate in challenges to a search warrant. (*See, for example, U.S. v. Grant*, 682 F.3d 827, 832 (9th Cir. 2012)). Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants. (*Jones v. United States, supra*, 362 U.S., at 270, 80 S.Ct., at 735.) Therefore, a reviewing court should resolve doubtful or marginal cases in favor of upholding the warrant. (*Caligari v. Superior Court*, 98 Cal. App. 3d 725, 729-730 (5th Dist. 1979)).

3. The Warrant Affidavits Articulate Probable Cause to Believe Peevey and Pickett Conspired to Have Unreported Ex Parte Communications in Violation of Penal Code section 182(a)(1)

Throughout the search warrant affidavits at issue, facts are presented that, in their totality, constitute probable cause that Michael Peevey (Peevey) and Stephen Pickett (Pickett) conspired to have unlawful ex parte communications. In ratesetting matters, the Public Utilities Code prohibits ex parte communications, which it defines as communications between a decisionmaker and a person with an interest in a matter before the commission concerning substantive issues. (Pub. Util. Code, § 1701.3, subd. (c).) However, a commissioner may permit oral ex parte communications "if all interested parties are invited and given not less than three days' notice." (*Ibid.*) Additionally, CPUC Rules, Rule 8.4, requires that, regardless of whether the ex parte communication was initiated by the interested person or the decisionmaker, the communication is reported by the interested person within three working days. Not only does the Public Utilities Code prohibit ex parte communications unless the proper notice is given, and the proper reporting requirements complied with, but it criminalizes them. Specifically, Public Utilities Code section 2110 provides that "[e]very public utility officer, agent, or employee of any public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility

of any provision of the California Constitution or of this part . . . is guilty of a misdemeanor. . . . (Pub. Util. Code, § 2110.)[2] Penal Code section 182(a)(1) makes it a crime to conspire to commit any other crime, including a violation of Public Utilities Code section 2110.

The facts contained in the search warrant affidavits present substantial evidence that Peevey and Picket violated Penal Code section 182(a)(1) by conspiring to have an ex parte communication that Pickett would not report, in violation of Public Utilities Code section 2110. Specifically, the warrant affidavit explains that while the San Onofre Nuclear Generating Station (SONGS) proceedings were ongoing before the CPUC, Pickett and Peevey met regarding the proceeding while at a hotel in Warsaw, Poland.[3] During this meeting, Peevey and Pickett discussed prospective settlement terms related to the closure of SONGS, including rate payer costs, which is most certainly an issue of "substance." The ex parte communication was witnessed by a third party, the current Director of Energy of the CPUC, who corroborated the substantive nature of the conversation. Upon returning home, Pickett provided SCE management with notes based on his recollection of the meeting. Peevey recorded notes from the meeting on hotel stationery which he brought home with him. These notes were recovered during the service of a search warrant at Peevey's house on January 27, 2015. The notes prepared by Pickett and Peevey are nearly identical.

The warrant affidavit goes on to explain that SCE did not disclose that the ex parte communications took place, or provide any type of notice regarding their occurrence, until after Peevey's notes were discovered and the fact that the meeting took place was publicly disclosed by the San Diego Union-Tribune. SCE attempted to justify this conduct by indicating that Pickett

---

[2] Pursuant to Public Utilities Code section 2110, an individual can only be found guilty of a misdemeanor violation of the Public Utilities Code if a penalty has not otherwise been provided. However, this does not preclude Peevey and Pickett charged with, or found guilty of, conspiring to commit a violation of Public Utilities Code section 2110, as the conspiracy charge is an entirely different crime with wholly distinguishable elements. A conspiracy to violate Public Utilities Code section 2110 requires that Peevey and Picket agreed to engage in ex parte communications and committed some overt act toward that end. As discussed in this section, there is a factual basis for a violation of Penal Code section 182(a)(1) and probable cause to believe a violation of that section was committed.

[3] All references in this section to the facts included in the search warrant are from pages six through nine of the affidavit.

only remembered that he may have crossed the line by engaging in a substantive conversation, rather than just listening to Mr. Peevey deliver a monologue, after the public disclosure. Peevey also did not give notice of or report the communication. Though CPUC argues that because it was not CPUC's responsibility to report the communication, there cannot be a violation of law, this is incorrect. While it is true that the utility is responsible for reporting the communication, and not Peevey or the CPUC, this does not impact both parties' probable culpability in agreeing to have prohibited ex parte communications that would remain unreported and acting on that agreement.

It is uncontested that Peevey and Pickett met in Poland, discussed the substance of the SONGS proceeding during that meeting, and failed to disclose the meeting as required. These facts are all detailed in the search warrant affidavit. It is also clear that Peevey took, and kept, a single page of handwritten notes and Pickett, upon being asked about the meeting, suddenly had a limited recollection of what transpired. These facts, too, are laid out in the search warrant affidavit. Together, these facts most certainly give rise to a "particularized suspicion" that Pickett and Peevey conspired to have unlawful ex parte communications. As such, the affidavit establishes sufficient probable cause that further evidence of this crime and surrounding circumstances would likely be found at the CPUC.

4. The Warrant Affidavits Articulate Probable Cause to Believe Peevey and Pickett Conspired to Obstruct Justice in Violation of Penal Code section 182(a)(5)

There is probable cause to believe Peevey and Pickett, in their agreement to have unnoticed and unreported ex parte communications, also conspired to obstruct justice in violation of Penal Code section 182(a)(5). An individual violates this section if he or she is one of two or more people who conspire to commit any act injurious to the public health, or public morals, or to pervert or obstruct justice, or the due administration of the laws. (Pen. Code, § 182(a)(5).) An act that perverts or obstructs justice or the due administration of the laws is not limited to the crimes listed in the Penal Code. *(People v. Redd* (2014) 228 Cal. App. 4th 449,462; see *Davis v. Superior Court* (1959) 175 Cal. App. 2d 8.) Rather, this conduct includes "malfeasance and

nonfeasance by an officer in connection with the administration of his public duties, and also anything done by a person in hindering or obstructing an officer in the performance of his official obligations." (*Lorenson v. Superior Court* in and for Los Angeles County (1950) 35 Cal. 2d 49, 59.)

The search warrant affidavit lays out facts sufficient to yield particularized suspicion that Peevey and Pickett conspired to obstruct justice by agreeing to have ex parte communications without providing notice or reporting that the communications took place. As detailed in the warrant, at the time of the ex parte communication at issue, Peevey was an officer with official obligations: he was the President of the CPUC. In this role, his duties included assuring that CPUC achieved its stated mission of "serv[ing] the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates. . . ." (*CPUC Website*, http://www.cpuc.ca.gov/general.aspx?id=1034 (as of April 11, 2016).) and acted consistent with its "commit[ment] to transparency in its work to serve the people of California." (*CPUC Website*, http://www.cpuc.ca.gov/transparency/ (as of April 11, 2016.) Presumably, Peevey's duties as President also included following the provision of the Public Utilities Code – the statutory authority intended to govern his agency - and facilitating others doing so as well. Nonetheless, while ostensibly open and fair ratesetting proceedings were pending before the CPUC in Sacramento, California, Peevey and Pickett were engaged in ex parte communications half-way across the globe, without any notice to or input from ratepayers' settlement parties.

The evidence points to the fact that Peevey and Pickett agreed to have the unreported ex parte communication in Poland in an effort to influence the outcome of the SONGS proceeding, which was pending before a different CPUC Commissioner, and yield each of them respective benefits. During the meeting, Peevey attempted to influence the outcome of the SONGS ratesetting proceeding by discussing the terms of a potential settlement with Pickett "off the record." By participating in the ex parte communications, Pickett was able to help SCE achieve an optimal outcome in the SONGS negotiations.[4] A ratepayers' settlement party, upon learning

[4] All references in this section to the facts included in the search warrant are from pages ten through fifteen of the affidavit.

of the ex parte communications, issued a statement concluding that Peevey's handwritten hotel notes appear to have been the framework for the final settlement and that because Pickett had obtained knowledge regarding Peevey's position, it was likely that SCE was able to steer the settlement accordingly to achieve the favorable outcome. Among other terms, Peevey insisted that any settlement include a 25 million dollar commitment to UCLA. As detailed in the search warrant affidavit, the original SONGS settlement, which was filed on April 4, 2014, did not include this term. Peevey made several back door attempts, including the initiation of multiple private communications with other SCE employees and conversations with the Commissioner presiding over the proceeding, to demand that the UCLA term would be included in the settlement. Finally, on September 5, 2014, the assigned Commissioner rejected the parties' proposed settlement. The UCLA term was ultimately added and on November 25, 2014, a SONGS settlement was approved.

These facts lead to a particularized suspicion that Peevey and Pickett conspired to obstruct justice by agreeing to have unreported ex parte communications that would influence the outcome of the SONGS proceeding. By having the unreported ex parte communications, Peevey and Pickett were able to circumvent the statutes and regulations intended to assure the fairness and transparency of ratesetting proceedings and just outcomes for rate payers, thereby obstructing the just resolution of the SONGS proceedings. They undermined the sanctity of the proceeding before the CPUC, as well as CPUC's commitment to transparency, and put the rate payers CPUC is intended to protect in a disadvantaged position. Peevey and Pickett's agreement to have unreported ex parte communications demonstrated malfeasance in Peevey's administration of his public duties, and constitutes a violation of Penal Code section 182(a)(5). This is laid out in the search warrant affidavit which, in its presentation of the facts supporting a violation of Penal Code section 182(a)(5), provides probable cause to believe the crime was committed and further evidence would be found at the CPUC.

///

///

///

C. CPUC Does Not Have Jurisdiction Over Criminal Investigations Related to, or Criminal Prosecutions Stemming From, Proceedings Before It

Public Utilities Code specifically provides for a criminal remedy, to be administered by the criminal justice system. CPUC is not a law enforcement or prosecutorial agency and, as such, has no jurisdiction over criminal investigations or prosecutions. The mere fact that a criminal investigation is concerning or related to a proceeding before the CPUC does not confer such jurisdiction upon the CPUC. Similarly, the fact that the CPUC has an administrative remedy for addressing improper conduct or a lack of fairness in the proceedings before it, does not foreclose the possibility that criminal charges may also be warranted.

CONCLUSION

DOJ's March and June search warrants are both supported by probable cause. The affidavits supporting each warrant present facts that generate a particularized suspicion that Peevey and Pickett unlawfully conspired to have ex parte communications. Therefore, the Court should deny CPUC's Motion to Quash and order CPUC to comply with the search warrants.

Dated: April 13, 2016

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES ROOT
Senior Assistant Attorney General
MAGGY KRELL
Deputy Attorney General

AMANDA G. PLISNER
Deputy Attorney General

DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER

Case Name: **CPUC/PG&E**
No.:

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with **FedEx [Tracking Number 809451924128]**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On April 13, 2016, I served the attached

DOJ'S OPPOSITION TO CPUC'S MOTION TO QUASH

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

DLA Piper, San Diego
Attn: Pamela Naughton
401 B. Street, Suite 1700
San Diego, CA 92101
Email: pamela.naughton@dlapiper.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 13, 2016, at Los Angeles, California.

M. Moore	M. Moore
Declarant	Signature