

Reference: CPUC, Cal AG Seized Materials
Date: 8/19/2015

Client: DLA Piper
Order Number: 260425

Date of Production: 08/19/2015
QC Pre-Production: 08/19/2015
Encrypted with TrueCrypt
Relativity Load Files (DAT)
Bates Range: CPUC CALAG 1688902 -
CPUC CALAG 1689206

Reference: CPUC, CAL AG Seized Materials
Date: 8/19/2015

Client: DLA Piper
Order Number: 260426

Date of Production: 08/19/2015
QC Pre-Production Subpoena 2
Encrypted with TrueCrypt
Relativity Load Files (DAT)
Bates Range: CPUC CALAG 1689207 -
CPUC CALAG 1692236

EXHIBIT 13



DLA Piper LLP (US)
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Rebecca Roberts
rebecca.roberts@dlapiper.com
T 619.699.2776
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September 8, 2015
VIA UPS

OUR FILE NO. 393011-000001

Ms. Maggy Krell
Office of the Attorney General
1300 I Street
Sacramento, California 95814
maggy.krell@doj.ca.gov

CONFIDENTIAL/ SUBJECT TO GRAND JURY SECRECY

Re: CPUC Production in Response to SONGS Search Warrant

Dear Ms. Krell:

Enclosed please find a production drive which includes documents the California Public Utilities Commission (CPUC) is producing in response to the search warrant your office issued on June 5, 2015 concerning the San Onofre Nuclear Generating Station settlement agreement ("SONGS search warrant"). This drive contains documents Bates labeled CPUC CALAG 1692237 – CPUC CALAG 01870835. These documents contain SONGS references produced in prior productions to federal authorities. The CPUC will continue to produce, on a rolling basis, non-privileged documents which are responsive to the SONGS search warrant.

Some of the documents being produced in response to the SONGS search warrant may be subject to the deliberative process privilege. Both federal and state law recognize this privilege, which extends to a public agency's materials that reflect deliberative or decision making processes. See Cal. Gov't Code section 6255; FTC v. Warner Comms., Inc., 742 F.2d 1156, 1161 (9th Cir. 1984); Wilson v. Super. Ct., 51 Cal. App. 4th 1136, 1142 (1996). See also Office of Attorney General "Summary of the California Public Records Act 2004", Section X(A) (recognizing the "Deliberative Process Privilege.")

The CPUC is being compelled to produce these documents in response the SONGS search warrant. **This limited compelled production does not by any means constitute a waiver of the privilege, voluntary or otherwise.** Nor does it in any way hinder the CPUC's right or ability to assert this privilege in other proceedings. See, e.g., The Regents of University of California v. Super. Ct., 165 Cal. App. 4th 627 (2008); Regents of the University of California v. Workers' Comp. Appeals Bd., 226 Cal. App. 4th 1530 (2014).

As you well know, state grand jury proceedings are subject to strict secrecy requirements such that the information and evidence provided to a grand jury may only be further disclosed, by court order, in the limited contexts designated by the California Penal Code. See Goldstein v. Super. Ct., 45 Cal. 4th 218, 221 (2008). Thus, by law, the documents must be treated confidentially and not disseminated to any person without judicial or statutory authority. Indeed, grand jurors who unlawfully disclose information received by the grand jury may be subject to a misdemeanor. See, e.g., Cal. Penal Code sections 924.1,



Maggy Krell
September 8, 2015
Page Two

924.2. All of the documents herein produced, which have been designated "Confidential" in their footers, must be kept secret as required by the California Penal Code. The same is true of all other CPUC documents, whether initially seized by your office or produced by the CPUC.

Furthermore, CPUC's compelled production of documents protected by the deliberative process privilege should in no way be construed as a waiver of the attorney-client, work product or other applicable privileges. The CPUC reserves all rights to assert applicable privileges in response to the grand jury subpoenas and search warrants. Any inadvertent production of any privileged material does not in any way constitute a waiver of the applicable privilege.

Per the CPUC's agreement with your office, we will continue to produce non-privileged materials in response to the two search warrants and the second subpoena on a rolling basis. The encryption for the drive will be sent separately via email.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

DLA Piper LLP (US)

Rebecca Roberts
Associate

Enclosures

WEST\261221070.1

EXHIBIT 14



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Rebecca Roberts
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September 24, 2015
VIA UPS

OUR FILE NO. 393011-000001

Ms. Maggy Krell
Deputy Attorney General
California Department of Justice
Office of the Attorney General
1300 I Street
Sacramento, California 95814
maggy.krell@doj.ca.gov

CONFIDENTIAL/ SUBJECT TO GRAND JURY SECRECY

Re: CPUC Production in Response to First Cal. AG Search Warrant

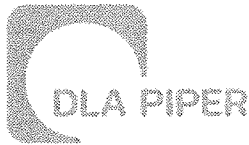
Dear Ms. Krell:

Enclosed please find a production drive which includes documents the California Public Utilities Commission (CPUC) is producing in response to the search warrant your office issued on November 5, 2014. This drive contains documents Bates labeled CPUC CALAG 1870836 – CPUC CALAG 2122870. Pursuant to our agreement with the Attorney General's office, the CPUC will continue to produce, on a rolling basis, documents which are responsive to the November 2014 search warrant.

Some of the documents being produced may be subject to the deliberative process privilege. Both federal and state law recognize this privilege, which extends to a public agency's materials that reflect deliberative or decision making processes. See Cal. Gov't Code section 6255; FTC v. Warner Comms., Inc., 742 F.2d 1156, 1161 (9th Cir. 1984); Wilson v. Super. Ct., 51 Cal. App. 4th 1136, 1142 (1996). See also Prime Healthcare Services, Inc. v. Office of the Attorney General, No. 5:15-cv-01934-GHK-DTB (C.D. Cal. Sept. 21, 2015).

The Attorney General's office seizure of these documents **does not by any means constitute a waiver of the privilege, voluntary or otherwise by the CPUC.** Nor does it in any way hinder the CPUC's right or ability to assert this privilege in other proceedings. See, e.g., The Regents of University of California v. Super. Ct., 165 Cal. App. 4th 627 (2008); Regents of the University of California v. Workers' Comp. Appeals Bd., 226 Cal. App. 4th 1530 (2014).

As you well know, state grand jury proceedings are subject to strict secrecy requirements such that the information and evidence provided to a grand jury may only be further disclosed, by court order, in the limited contexts designated by the California Penal Code. See Goldstein v. Super. Ct., 45 Cal. 4th 218, 221 (2008). Thus, by law, the documents must be treated confidentially and not disseminated to any person without judicial or statutory authority. Indeed, grand jurors who unlawfully disclose information received by the grand jury may be subject to a misdemeanor. See, e.g., Cal. Penal Code sections 924.1, 924.2. All of the documents herein produced, which have been designated "Confidential" in their footers,



Maggy Krell
September 24, 2015
Page Two

must be kept secret as required by the California Penal Code. The same is true of all other CPUC documents, whether initially seized by your office or produced by the CPUC.

Furthermore, CPUC's compelled production of documents protected by the deliberative process privilege should in no way be construed as a waiver of the attorney-client, work product or other applicable privileges. The CPUC reserves all rights to assert applicable privileges in response to the grand jury subpoenas and search warrants. Any inadvertent production of any privileged material does not in any way constitute a waiver of the applicable privilege.

Per the CPUC's agreement with your office, we will continue to produce materials in response the two search warrants and the second subpoena on a rolling basis. The encryption for the drive will be sent separately via email.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'Rebecca Roberts', with a stylized flourish at the end.

Rebecca Roberts
Associate

Enclosure

WEST261764069.1

EXHIBIT 15



DLA Piper LLP (US)
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F 619.764.6625

September 29, 2015

OUR FILE NO. 393011-000001

VIA EMAIL AND US MAIL

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

Re: California Public Utilities Commission

Dear Ms. Krell:

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

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

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

To date, the CPUC has produced well over a million documents to the Attorney General. Since January, the CPUC has continue to produce documents nearly every month, on a rolling basis. We have produced documents in response to each and every demand your office has issued. We have completed our production in response to subpoenas 1 and 3.

Now that you have received, and presumably reviewed, the over 1 million documents produced to date and, no doubt, have a better sense of the types of documents requested and how pertinent they may or may not be, it seems an appropriate time to evaluate the remaining document demands to make sure you truly need more documents and, if so, to explain how we intend to go about review and production in the most efficient way possible.

What follows is a summary of the status as to each document demand.

I. **Search Warrant Executed In November 2014**

In November 2014 state agents seized computers and hardware containing approximately 1.1 million live documents. Because of the likelihood of some of these documents containing privileged



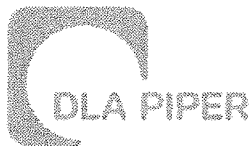
Maggy Krell
 September 29, 2015
 Page Three

It also specifies 22 custodians (8 of whom are CPUC employees) and requires the CPUC to further identify additional CPUC custodians who were involved in the implementation of the greenhouse gas research provisions and also gather hard copy documents from the identified custodians, which we are in the process of completing.

Section 5 of the search warrant further details what documents should be provided as to three of the demands:(1), (2) and (4):

Introductory Paragraph	Section 5 Further Specifications
(1) SONGS closure settlement agreement	(5)(a): (1)documents constituting or referring to communications with SCE about the OII prior to the execution of the settlement on March 27, 2014 (excluding on-the-record communications such as SCE pleadings filed with the CPUC); and (2) documents constituting communications with TURN or ORA referencing communications from Peevey regarding SONGS or UC in the context of the settlement negotiations up to March 27, 2014
(2) the 2013 meeting between Stephen PICKETT and Michael PEEVEY in Poland	(5)(b): As to documents pertaining to the Poland trip in March 2013, CPUC will produce documents constituting or referring to communications during that trip that relate to SONGS. These documents will include any communications or materials regarding SONGS made: (1) in anticipation of the trip, (2) any documents or communications regarding SONGS that occurred during the trip, and (3) any communications or material regarding SONGS created after the trip ended.
(4) commitment of monies for research as a result of the closure of SONGS	(5)(c): As to the documents regarding funding of research in connection with the SONGS settlement, CPUC will produce documents and all communications that: (1) constitute or refer to communications with SCE or UCLA regarding greenhouse gas research as part of the SONGS drafts of same; (2) refer to SCE's contributing to the UCLA Luskin Institute at UCLA, the University of California, UCLA's Institute of the Environment and Sustainability, or the California Center for Sustainable Communities at UCLA, in connection with the SONGS settlement; and (3) constitute advocacy directed to the CPUC by local governmental agencies in support of greenhouse gas research as part of the settlement.

However, the search warrant does not provide any further guidance as to demands (3) (communication(s) pertaining to the determination of when and why SONGS would be closed) and (5) (communication(s)



Maggy Krell
September 29, 2015
Page Four

pertaining to the settlement of the SONGS OII), which are very broad and vague. Practically anything produced or created for the OII proceeding could be considered to relate as to why SONGS would be closed or the ultimate settlement of the OII itself. Yet, subsection (5)(a) indicates that the CPUC is not required to produce public filings, at least as to the settlement agreement.

To respond to the search warrant, CPUC pulled emails and documents from its servers from the specified CPUC employees, plus other CPUC employees known to be involved with the SONGS OII settlement or greenhouse gas provisions. We also extracted communications to, from, and/or copying the SoCal Edison employees listed in the search warrant. This data was exported into a larger database. There are currently several million documents in this database.

To efficiently and effectively respond to the search warrant, the CPUC compiled SONGS search terms, based on the demands of the search warrant and the detailed requests of section 5, and applied these terms to the emails and other documents of the 22 identified custodians, plus the additional employees identified by the CPUC. This produced several hundred thousand documents which will be reviewed for relevance. We have also applied the agreed upon privileged terms to identify any potentially privileged documents and will review those documents for privilege. We are still in the process of collecting and processing documents from all possible sources. At this point, we do not have an estimate of the total volume, or anticipated completion date.

Finally, as we explained in our last telephone call with you, at least 20,000 of the documents **already produced** to the Attorney General's office in response to the first search warrant and earlier subpoenas triggered SONGS search terms. Moreover, on September 8, 2015, the CPUC produced approximately 19,335 additional documents to the Attorney General's office that referenced SONGS search terms and had been produced in prior productions to federal authorities. Thus, over 40,000 documents have been produced responsive to this search warrant. Since these facts clearly contradict agent Diaz's statement filed with the return of the search warrant, we ask that his affidavit be corrected and refiled with an errata.

III. Second Grand Jury Subpoena

The CPUC has already produced nearly two thousand documents in response to this subpoena. To fully respond to this subpoena, the CPUC has isolated all correspondence among all ALJs during the relevant time period and searched for all documents that trigger the term "assign" or "assignment". These search parameters encompassed over 17,000 documents, which will need to be reviewed for relevance and privilege.

We are open to discussing any suggestions you have as to how we could further prioritize or downsize the review tasks and get truly pertinent documents to you more quickly. We are happy to meet and confer regarding the scope of your requests and our productions.



Maggy Krell
September 29, 2015
Page Five

Please call me with any questions or concerns.

Very truly yours,

DLA Piper LLP (US)

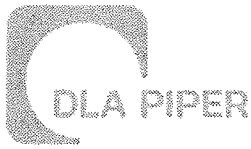
A handwritten signature in black ink, appearing to read 'Pamela Naughton', written over a horizontal line.

Pamela Naughton
Partner

PN:mev

WEST261656856.1

EXHIBIT 16



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October 16, 2015

OUR FILE NO. 393011-000001

CONFIDENTIAL

Ms. Maggy Krell, Deputy Attorney General
Ms. Deborah Halberstadt, Deputy Attorney General
Reye Diaz, Special Agent
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deborah.halberstadt@doj.ca.gov
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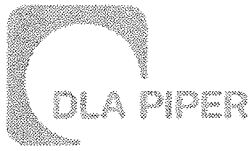
Dear All,

As we discussed with Special Agent Diaz and Ms. Halberstadt on Tuesday, October 13, below is a summary of the CPUC's production to date in response to the SONGS search warrant issued on June 5, 2015. Also below is a summary of our proposal to streamline the review and production of (1) the deleted emails recovered from the data seized pursuant to the first search warrant issued in November 2014 and (2) the approximately 100,000 documents that remain to be reviewed in response to this search warrant.

I. **Compliance with the SONGS Search Warrant**

First, as we informed you during our call and explained in our September 29, 2014 letter, the California Attorney General has a substantial volume of documents responsive to the SONGS search warrant (by our estimate, over 20,000 documents) already in its possession due to the fact that it initially seized a number of computers and hard drives as a result of the November 5, 2014 warrant. The items seized were computers, hard drives, and other devices of certain custodians such as former Commission President Michael Peevey, Michel Florio, Carol Brown, etc. Since your office seized these documents, it obtained everything on them, including any documents relating to SONGS. Per the CPUC's prior agreement with the Attorney General's office, you provided us with copies of everything initially seized and allowed us to review documents that triggered certain terms which may indicate that a document is privileged. Following this agreed upon protocol, we have produced over a million documents back to your office to date (approximately 845,000 which did not trigger any potentially privileged terms and approximately 131,000 which were reviewed for privilege and then produced.)

Using our document review platform tool, we applied relevant SONGS terms to the documents we had already produced back to you as of July 31, 2015 from the first search warrant. Our term search results identified approximately 20,373 documents. So, even before the CPUC made any production to your office specifically in response to the SONGS search warrant, your office already had a substantial volume of responsive documents in your possession. Please note that this search result does NOT include



Ms. Maggy Krell, Deputy Attorney General
October 16, 2015
Page Two

additional documents the CPUC produced to you in response to the November 5, 2014 search warrant on September 24, 2015. So, it is highly likely you have even more SONGS responsive documents in your possession.

Second, on September 8, 2015, the CPUC produced approximately 19,335 documents to your office in response to the SONGS search warrant. This production consisted of documents that referenced SONGS search terms that had been produced in prior productions to federal authorities.

Third, the CPUC intends to make another production in response to the SONGS search warrant by the end of the month. In order to respond to the SONGS search warrant, CPUC pulled emails and documents from its servers from the specified CPUC employees, plus other CPUC employees known to be involved with the SONGS Oil settlement or greenhouse gas provisions. We also extracted communications to, from, and/or copying the SoCal Edison employees listed in the search warrant. This data was exported into a larger database. There are currently several million documents in this database.

To efficiently and effectively respond to the search warrant, the CPUC applied SONGS search terms to the emails and other documents of the 22 identified custodians, plus the additional employees identified by the CPUC. We have also gathered hard copy documents from the identified custodians and will be producing these documents in the next production.

We will continue to produce documents responsive to the SONGS search warrant on a rolling basis, after we have completed our production in response to the November 2014 search warrant, per your instruction.

II. **Streamlining Production on the November 5, 2014 Search Warrant**

As we discussed on our call, the CPUC has identified approximately 321,000 deleted and recovered emails from the material initially seized pursuant to the November 5, 2014 search warrant. You agreed that the CPUC may limit its review and production of these documents to only those which trigger terms related to the first search warrant and the SONGS search warrant. Our proposed terms are attached as Exhibit A.

Additionally, we estimate that we have approximately 100,000 documents that remain to be reviewed in response to the November 2014 search warrant. It will greatly streamline the process and reduce expenses to filter those 100,000 documents using the terms in Exhibit A. We are open to discussing any additional search terms with you. In the meantime, we will proceed with the filtering process.

Once we finalize the most recent production on SONGS, our priority will be completing our review of the documents responsive to the first search warrant. Once we have completed that review, we will discuss



Ms. Maggy Krell, Deputy Attorney General
October 16, 2015
Page Three

our next steps for completing production in response to grand jury subpoena #2 and the SONGS search warrant.

Please let us know if you have any questions, concerns or comments regarding the proposed search terms. Thank you.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'Pamela Naughton', followed by a horizontal line.

Pamela Naughton
Partner

Admitted In California Bar

WEST262193877.1

EXHIBIT A

SONGS*

“San Onofre”

“12-10-013”

“1210013”

Unit2*

“Unit 2”

Poland

Warsaw

“Bristol Hotel”

“greenhouse”

(green* w/3 house)

“ghg”

(fund* w/3 research)

“UC”

“UCLA”

(University w/3 California)

“Luskin”

“IES”

(Institute w/3 Environment w/3 Sustainability)

((Institute w/3 Environment) w/2 Sustainability)

“CCSC”

(California w/3 Center w/3 Sustainable w/3 Communities)

((California w/3 Center) w/2 Sustainable) w/3 Communities)

“CFEE”

(California w/3 Foundation w/5 Environment w/5 Economy)

((California w/3 Foundation) w/2 Environment) w/3 Economy)

HECA

Annual w/3 dinner

Cherry

Judge w/3 Long

Judge w/3 Wong

*sce.com

*edisonintl.com

*sdge.com

*pge.com

*Semprautilities.com

EXHIBIT 17

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 322-0896
Facsimile: (510) 622-2270
E-Mail: Deborah.Halberstadt@doj.ca.gov

October 22, 2015

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

RE: California Public Utilities Commission

Dear Ms. Naughton:

Thank you for speaking with us last week, and for your follow up letter. We appreciate this ongoing conversation, as we have been deeply concerned regarding CPUC's compliance with our November 4, 2014 and June 5, 2015 search warrants.

We recognize that there are voluminous documents to be reviewed. To give you some background, as the third CPUC counsel we have worked with, in December of 2014 after waiting over a month for initial production from our first CPUC search warrant, we offered to create an internal "taint team" within the Office of the Attorney General, completely separate from the investigating team, to review the seized evidence for privilege. We have successfully used this methodology with other entities in this and in other cases. However, CPUC opposed this option and insisted that CPUC be the ones to conduct the review. Moreover, during these initial discussions, CPUC counsel committed to producing evidence efficiently on a rolling basis.

Concerned about CPUC's time table, we also proposed, drafted, and circulated a Confidentiality Agreement, whereby CPUC and the Office of the Attorney General would have agreed that any potentially privileged information obtained from CPUC by the Office of the Attorney General could be reviewed without waiver of any privilege, and that any privileged material would be maintained as confidential investigatory material. This solution too has worked in other cases. CPUC refused to agree to this option.

On March 2, 2015, Deputy Attorney General Maggy Krell personally met with President Picker to re-offer the Confidentiality Agreement and explain the difficulty we were having investigating this case while being delayed and hampered by the CPUC's lack of compliance. While expressing an interest in cooperating, on advice of several attorneys, President Picker would not agree to the Confidentiality Agreement.

October 22, 2015

Page 2

Over the subsequent months, we repeatedly requested the production of documents responsive to the November 4, 2014 search warrant. In February 2015 we were told we would receive a production of the potentially privileged documents that had already been screened, by the end of the month. No such production was made. In March, we requested an update and were informed that CPUC expected to begin a rolling production of materials responsive to the November search warrant in May. On May 26, 2015 we requested another update; at that point we still had not received any privilege-reviewed material in response to the search warrant. CPUC finally made its first production of privilege-reviewed material on May 29, 2015. In late June, CPUC notified us that it intended to make another partial production of potentially privileged material in late June or early July. Despite numerous requests from our office in June and July 2015 for a timeline as to when CPUC intended to complete its responses to the November search warrant, we were told only that CPUC was "well on its way." Meanwhile, CPUC was served with a further search warrant on June 5, 2015, where the court ordered CPUC to turn over records related to SONGS. Despite multiple requests, CPUC failed to provide any specific time line or production relevant to that search warrant, stating only that they "are working on it" and are "overwhelmed" with requests.

In late August, 2015, we received notification that CPUC had hired a new law firm, and that your firm, DLA Piper would now be representing CPUC. We renewed our request for a time line and specifics about how many documents were still in the queue to be privilege reviewed.

Finally, on September 29, 2015, we received your letter stating, "there is no way to streamline this process unless your office allows us to suspend our review and deem the search warrant complied with." As I noted in our call, given the history of CPUC's dilatory response to the search warrant, we do not intend to suspend review, and we do not deem the search warrant complied with. In order to streamline the process, we again offered to provide an internal taint team or to sign a confidentiality agreement. You appeared to decline both options. You stated that you believed CPUC could finalize its review of the 103,000 documents, and the additional 20,000 retrieved from deleted files, within 55 to 75 days. Consequently, we expect to receive, on a rolling basis, all relevant documents no later than December 28, 2015.

We also discussed the alternative of you providing a list of search terms for our review, which could limit the number of documents you must review. You have provided a list of 36 search terms, the vast majority of which relate to the second search warrant of June 5, 2015. We will provide you with any additional search terms relevant to both search warrants. In the meantime, we expect that you will continue reviewing the 103,000 documents in order to complete the review by December 28, 2015.

Regarding the June 5, 2015 search warrant, in our conversation you stated that some of the documents provided in response to the November 4, 2014 search warrant were also responsive to the June search warrant. We asked you to delineate which documents from the November search warrant you believed were responsive, so that we may inform the court. Please provide us with written documentation of the Bates numbers of the documents you believe are responsive to both search warrants.

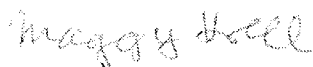
October 22, 2015

Page 3

You requested clarification regarding certain terms in the search warrant. We will be providing answers to your questions shortly. We also agreed to allow CPUC to complete its responses to the November 4, 2014 search warrant first, with the understanding that documents responsive to both search warrants will be identified as such.

In close, please understand that this investigation is a significant one. Asking us to suspend the search or be satisfied with 90% compliance is unacceptable in this context, where the integrity of a public agency is at stake. We will do everything we can to work with you and simplify our requests, but if deadlines continue to go unmet our only option will be to bring an Order to Show Cause. Please feel free to contact me at (916) 322-8096 with any questions you may have. Thanks very much and we look forward to working with you on this.

Sincerely,



DEBORAH R. HALBERSTADT
Deputy Attorney General

MAGGY KRELL
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

DRH:

LA2014118251
32253898

EXHIBIT 18



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November 12, 2015
VIA E-MAIL AND US MAIL

OUR FILE NO. 393011-1

Ms. Deborah Halberstadt
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

Re: Document Productions of the California Public Utilities Commission

Dear Ms. Halberstadt:

This responds to several statements made in your letter of October 22, 2015 and also further explains our compliance with the search warrants and subpoenas served by your office on the CPUC.

Your letter states that your office waited for "over a month" for the initial production on the first search warrant. This is not true. In November 2014, the same day your agents served the search warrant, they chose and physically took computers and electronic data from the premises of CPUC. The judge issuing the warrant and the parties all agreed that the data taken had to first be reviewed for privilege before investigating agents could examine them. We agreed that once you provided us with copies of what had been seized, we would run filters through the documents using search terms we mutually agreed upon. Those which contained privileged search terms, we would review and those which did not, we would produce in bulk without review. It took your office **more than two months** to produce to us the electronic data that had been seized. We received those three hard drives on January 14, 2015. The very next day we filtered the electronic data through the privileged search terms. Six days after receiving the three hard drives from you, on January 20, 2015, we processed, bates stamped and produced to you over 845,000 documents, just as we said we would. The vendor's records confirm your receipt. Therefore, our first production did not take months -- it took only six days.

Although it is true that your office proposed that the 1.1 million documents seized could be reviewed by a "taint" team from your office, it was never explained who would comprise the "taint team", their experience level, their numbers or their expenses. As I explained in our last telephone call, our review team is comprised of 14 attorneys -- 10 of whom have been working since the inception of this matter an average of 9 hours per day, 7 days per week in order to complete the review of a data base now containing over 6.5 million documents in order to respond to 5 formal document demands from your office and 5 from the federal grand jury. It is doubtful that any "taint team" would have included more resources than what the CPUC has itself devoted to this mission.

You also stated in your letter that this review would not have been necessary if the CPUC had simply given over privileged documents to your office upon entry into a Confidentiality Agreement.



Ms. Deborah Halberstadt
November 12, 2015
Page Two

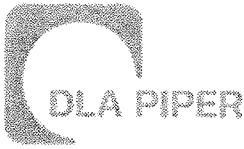
Unfortunately, even if a prosecutor agrees to keep privileged material confidential, the courts may deem the privileged waived by the producing party at the time it surrenders the material to the prosecutor. In re Pacific Pictures Corp., 679 F.3d 1121 (9th Cir. 2012). This can have serious repercussions in the civil and administrative arenas. As you are aware, the CPUC, in addition to being a party in countless civil disputes, is also a quasi-judicial body which renders decisions in very complex matters involving billions of dollars. It cannot risk a future adverse ruling that the waiver of privilege to your formal document demands constitutes a universal waiver, no matter how unintended by your office or by us. Finally, the investigatory leaks to the press, as demonstrated by the presence of TV cameras at the execution of the first search warrant, gives serious pause to valuing the promised confidentiality on either the waiver issue, or the taint team proposal.

Your letter goes on to claim that after the first production of the 845,000 documents, your entreaties to us regarding further production went unheeded. This also is not true. What your letter omits is that in February 2015 your office served on us 3 grand jury subpoenas each seeking more documents. Your office instructed us to first produce all documents that had been produced to the federal jury (in response to subpoena three) or already released to third parties. **Two days** after service of that subpoena, on February 17, 2015, we produced the documents called for in subpoena number two. **Two weeks** later, on March 3, 2015, we produced 16,000 documents in response to subpoena number three. This can hardly be called foot-dragging.

Therefore, by early March, the AG's office had in its possession over 935,000 to review. In correspondence, counsel for the CPUC explained in March that the requested shifting of resources from the first search warrant to the three subpoenas would result in a delay in producing the next batch of documents responsive to the first search warrant. Counsel twice informed your office to expect the next production in May 2015 -- which indeed occurred on May 28, 2015 in the form of tens of thousands of documents. Another 42,000 were produced approximately one month later, responsive to the first search warrant.

When we were served with the June 2015 search warrant related to SONGS, we asked in a lengthy correspondence of June 22, 2015 for guidance as to exactly the interpretation of some of the requests in the search warrant, and for guidance as to your priorities as to which of the document demands was most pressing. We did not receive the requested guidance.

Despite the change in counsel representing the CPUC in August, the document review and production continued with productions on August 27, 2015, September 8, 2015 and 55,000 documents on September 24. We certainly have not been dilatory. The problem has been the breadth of the requests and the volume of responsive documents. We appreciate you working with us in our last telephone conversation to apply the subject matter filters, which has decreased the number of documents to be



Ms. Deborah Halberstadt
November 12, 2015
Page Three

reviewed and increased the production efficiency. We believe now we can easily produce all of the remaining documents for the first search warrant by the deadline set in your letter.

You asked that we provide you with the Bates numbers of the documents already produced to you which included the SONGS search terms we provided to you. On November 12, 2015, I forwarded a list of all of those Bates numbers to you. As you can see, there are over 25,000 documents already in your possession which have the SONGS search terms in them. In addition to those, we earlier provided on September 8, 2015 approximately 19,000 documents which also contained the SONGS search terms and had already been produced to the federal grand jury. These were produced to you with Bates numbers.

In addition to the 44,000 SONGS related documents you already have, we anticipate producing several thousand more documents pertaining to SONGS by the end of this month.

Finally, you asked us to "identify" documents responsive to both search warrants. We are confused by this request. Each batch of documents that is produced specifies which search warrant or subpoena it relates to. However, keep in mind that as to the first search warrant, we did not search for documents nor review them for relevance. We only reviewed what your office chose to seize that contained potentially privileged material. Frankly, the overwhelming majority of those documents are likely irrelevant to your investigation, but we leave that to your capable determination.

Should Mr. Diaz need to file an update on the return of search warrant, or you communicate with the court for any other reason concerning the CPUC, we request that he/you include the contents of this letter and our letter of September 29, 2015 so that the judge will have a thorough and clear understanding of our compliance to date and our position in these matters.

Please call me with any questions or concerns.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in cursive script, appearing to read 'Pamela Naughton'.

Pamela Naughton
Partner

PN:bkI

EXHIBIT 19



DLA Piper LLP (US)
401 B Street, Suite 1700
San Diego, California 92101-4297
www.dlapiper.com

Rebecca Roberts
rebecca.roberts@dlapiper.com
T 619.699.2776
F 619.764.6626

December 11, 2015
Via UPS

OUR FILE NO. 393011-000001

Ms. Maggy Krell, Deputy Attorney General
Ms. Deborah Halberstadt, Deputy Attorney General
Mr. Reye Diaz, Special Agent
Office of the Attorney General
1300 I Street
Sacramento, California 95814
maggy.krell@doj.ca.gov
deborah.halberstadt@doj.ca.gov
reye.diaz@doj.ca.gov

CONFIDENTIAL/ SUBJECT TO GRAND JURY SECRECY

Re: CPUC Production in Response to SONGS Search Warrant and Energy Crisis Litigation

Dear Ms. Krell:

I. **SONGS PRODUCTION**

Enclosed please find a DVD which includes electronic and hard copy documents the California Public Utilities Commission ("CPUC") is producing in response to the search warrant your office issued on June 5, 2015 concerning the San Onofre Nuclear Generating Station settlement agreement ("SONGS search warrant"). This drive contains documents Bates labeled CPUC CALAG 02122877- CPUC CALAG 02130852. The CPUC will continue to produce, on a rolling basis, non-privileged documents which are responsive to the SONGS search warrant. Please note that the CPUC is producing these documents in native format. The native files are named the same as their Bates label. Confidentiality or other designations are included in the load file. We will send the password for the DVD in a separate email.

Some of the documents being produced in response to the SONGS search warrant may be subject to the deliberative process privilege. Both federal and state law recognize this privilege, which extends to a public agency's materials that reflect deliberative or decision making processes. See Cal. Gov't Code section 6255; FTC v. Warner Comms., Inc., 742 F.2d 1156, 1161 (9th Cir. 1984); Wilson v. Super. Ct., 51 Cal. App. 4th 1136, 1142 (1996). See also Office of Attorney General "Summary of the California Public Records Act 2004", Section X(A) (recognizing the "Deliberative Process Privilege.")

The CPUC is being compelled to produce these documents in response the SONGS search warrant. **This limited compelled production does not by any means constitute a waiver of the privilege, voluntary or otherwise.** Nor does it in any way hinder the CPUC's right or ability to assert this privilege in other proceedings. See, e.g., The Regents of University of California v. Super. Ct., 165 Cal. App. 4th 627 (2008); Regents of the University of California v. Workers' Comp. Appeals Bd., 226 Cal. App. 4th 1530 (2014).



Maggy Krell
December 11, 2015
Page Two

As you well know, state grand jury proceedings are subject to strict secrecy requirements such that the information and evidence provided to a grand jury may only be further disclosed, by court order, in the limited contexts designated by the California Penal Code. See Goldstein v. Super. Ct., 45 Cal. 4th 218, 221 (2008). Thus, by law, the documents must be treated confidentially and not disseminated to any person without judicial or statutory authority. Indeed, grand jurors who unlawfully disclose information received by the grand jury may be subject to a misdemeanor. See, e.g., Cal. Penal Code sections 924.1, 924.2. All of the documents herein produced, which have been designated "Confidential" in their footers, must be kept secret as required by the California Penal Code. The same is true of all other CPUC documents, whether initially seized by your office or produced by the CPUC.

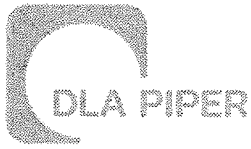
Furthermore, CPUC's compelled production of documents protected by the deliberative process privilege should in no way be construed as a waiver of the attorney-client, work product or other applicable privileges. The CPUC reserves all rights to assert applicable privileges in response to the grand jury subpoenas and search warrants. Any inadvertent production of any privileged material does not in any way constitute a waiver of the applicable privilege.

II. ENERGY CRISIS LITIGATION

Some of the documents that were previously produced to your office may concern the Western Energy Crisis litigation, which consists of dozens of cases before the Federal Energy Regulatory Commission ("FERC") and hundreds of appeals cases pending in federal court (collectively "the Energy Crisis Litigation"). In this litigation, the CPUC, the three utilities (PG&E, Edison and SDG&E), the California Department of Water Resources ("DWR"), and your office collectively sued 60+ power generators and other market participants on behalf of California's rate payers. These aligned parties, including your office, entered into joint litigation agreements as the "California Parties". Thus, communications and work product between the California Parties concerning the Energy Crisis Litigation are protected. While a substantial portion of this litigation has settled, several cases and appeals remain active. Public release of any of the joint litigation documents could compromise the California Parties' litigation and settlement positions, resulting in substantial harm to California ratepayers. It would also violate the terms of the agreements.

Documents concerning the Energy Crisis Litigation are not at all relevant to your investigation of the CPUC. Nevertheless, since your office initially seized computers and other devices from the CPUC without regard to subject matter, your office undoubtedly has in its possession documents concerning this litigation. These documents cannot be publically or otherwise released. We ask that your office adhere to its obligations under the joint litigation agreements.

Furthermore, as we have discussed with you, we are close to completing our review of the seized active files (which we further filtered using search terms identified in our October 16, 2015 letter) and intend to



Maggy Krell
December 11, 2015
Page Three

produce these documents to you shortly. A number of these documents pertain to the Energy Crisis Litigation. **Since your office was a party to these communications and they are irrelevant to your office's investigation of the CPUC as far as we can tell, do you want the CPUC to produce these documents?**

If your office insists on production of these documents, we ask that your office adhere to its obligations under the joint litigation agreements and ensure that they are not further released. We again emphasize that any further release of these documents could substantially compromise the California Parties' position in pending actions.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

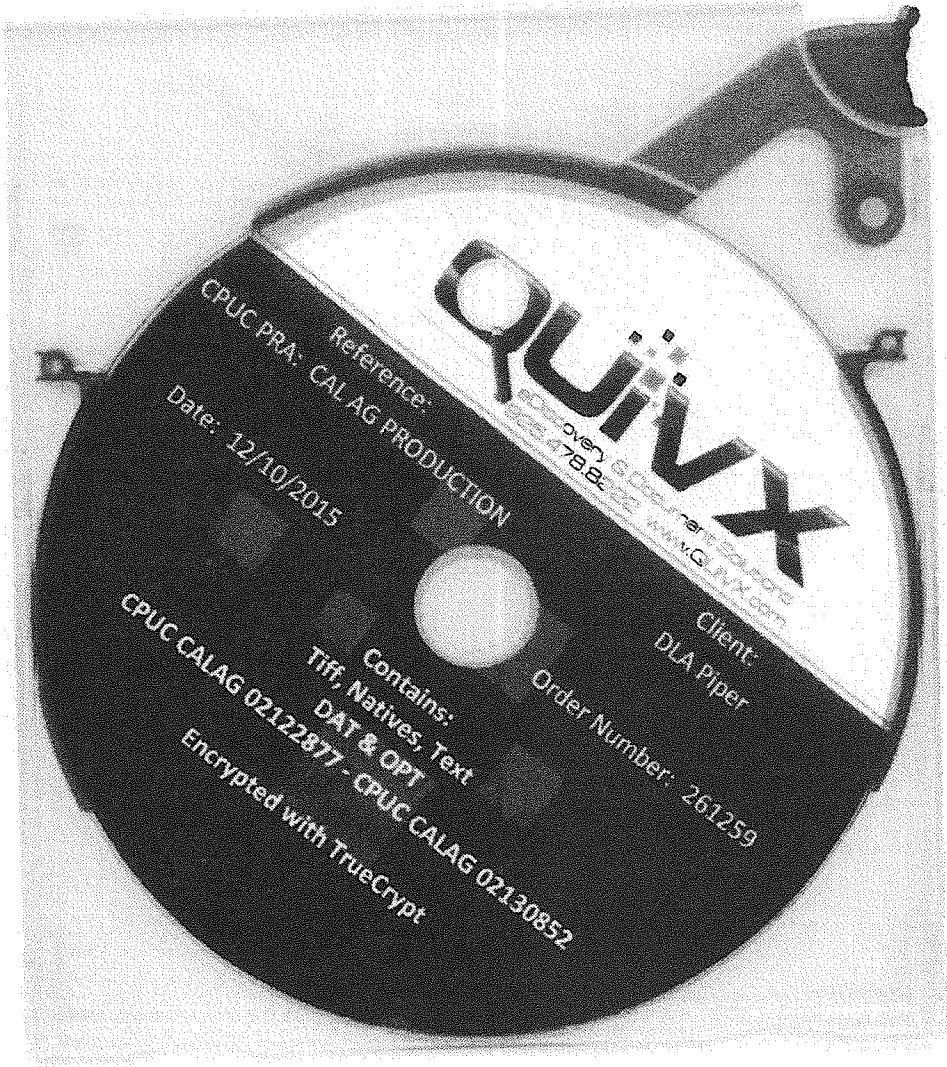
DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'Rebecca Roberts', with a long horizontal flourish extending to the right.

Rebecca Roberts
Associate

Enclosures

WEST266764148.1



QUIVIX
Discover & Capture the World's Best
www.Quivix.com

Reference: CPUC PRA- CAL AG PRODUCTION
Date: 12/10/2015

Client:
DLA Piper

Order Number: 261259

Contains:
Tiff, Natives, Text
DAT & OPT
CPUC CALAG 02122877 - CPUC CALAG 02130852
Encrypted with TrueCrypt

EXHIBIT 20



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F 619.764.6626

December 18, 2015
VIA UPS

OUR FILE NO. 393011-000001

Ms. Deborah Halberstadt, Deputy Attorney General
Office of the Attorney General
1300 I Street
Sacramento, California 95814
deborah.halberstadt@doj.ca.gov

CONFIDENTIAL/ SUBJECT TO GRAND JURY SECRECY

Re: CPUC Reproduction in Response to SONGS Search Warrant

Dear Ms. Halberstadt:

On Monday, December 14, 2015, we spoke on the phone and you requested that the CPUC reproduce documents that it had already produced in response to the November 5, 2014 search warrant ("November 2014 Search Warrant") in response to the June 5, 2015 search warrant ("SONGS Search Warrant"). In prior correspondence to you and specifically in the list and letter we sent to you on November 12, 2015, we identified over 25,000 documents by Bates label that the CPUC produced in response to the November 2014 search warrant which also triggered SONGS terms. You explained that since the search warrants issued out of different courts, San Francisco Superior Court and Los Angeles Superior Court respectively, your office needed two separate productions for procedural reasons.

Pursuant to your request, the CPUC is herein reproducing the documents it previously produced in response to the November 2014 search warrant which also triggered SONGS terms and thus, are also responsive to the SONGS search warrant. These documents are on the enclosed hard drive and Bates labeled CPUC CALAG 00001781 – CPUC CALAG 2122826. These numbers are not consecutive since we are only reproducing the documents that triggered SONGS terms. These are the same documents we identified by Bates label in our November 12 list.

Please note that the CPUC is producing these documents in native format. The native files are named the same as their Bates label. Confidentiality or other designations are included in the load file. We will send the password for the hard drive in a separate email. The CPUC has made three voluminous productions in response to the SONGS search warrant.

Some of the documents being produced in response to the SONGS search warrant may be subject to the deliberative process privilege. Both federal and state law recognize this privilege, which extends to a public agency's materials that reflect deliberative or decision making processes. See Cal. Gov't Code section 6255; *FTC v. Warner Comms., Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Wilson v. Super. Ct.*, 51 Cal. App. 4th 1136, 1142 (1996). See also Office of Attorney General "Summary of the California Public Records Act 2004", Section X(A) (recognizing the "Deliberative Process Privilege.")



Deborah Halberstadt
December 18, 2015
Page Two

The CPUC is being compelled to produce these documents in response to the SONGS search warrant. This limited compelled production does not by any means constitute a waiver of the privilege, voluntary or otherwise. Nor does it in any way hinder the CPUC's right or ability to assert this privilege in other proceedings. See, e.g., *The Regents of University of California v. Super. Ct.*, 165 Cal. App. 4th 627 (2008); *Regents of the University of California v. Workers' Comp. Appeals Bd.*, 226 Cal. App. 4th 1530 (2014).

As you well know, state grand jury proceedings are subject to strict secrecy requirements such that the information and evidence provided to a grand jury may only be further disclosed, by court order, in the limited contexts designated by the California Penal Code. See *Goldstein v. Super. Ct.*, 45 Cal. 4th 218, 221 (2008). Thus, by law, the documents must be treated confidentially and not disseminated to any person without judicial or statutory authority. Indeed, grand jurors who unlawfully disclose information received by the grand jury may be subject to a misdemeanor. See, e.g., Cal. Penal Code sections 924.1, 924.2. All of the documents herein produced, which have been designated "Confidential" in their footers, must be kept secret as required by the California Penal Code. The same is true of all other CPUC documents, whether initially seized by your office or produced by the CPUC.

Furthermore, CPUC's compelled production of documents protected by the deliberative process privilege should in no way be construed as a waiver of the attorney-client, work product or other applicable privileges. The CPUC reserves all rights to assert applicable privileges in response to the grand jury subpoenas and search warrants. Any inadvertent production of any privileged material does not in any way constitute a waiver of the applicable privilege.

Also on our call, you agreed that the CPUC does not need to produce any documents concerning the Energy Crisis Litigation. Accordingly, we will withhold these documents from our productions.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'Rebecca Roberts', written over a white rectangular background.

Rebecca Roberts
Associate

Enclosures

WEST268862590.1

UPS CampusShip: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. Fold the printed label at the solid line below. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. GETTING YOUR SHIPMENT TO UPS
Customers with a Daily Pickup
 Your driver will pickup your shipment(s) as usual.

Customers without a Daily Pickup

Take your package to any location of The UPS Store[®], UPS Access Point(TM) location, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot[®] or Staples[®]) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.


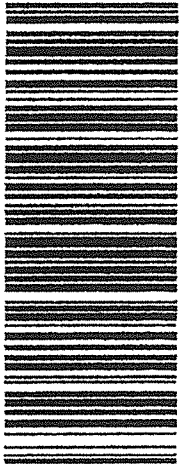

Hand the package to any UPS driver in your area.

UPS Access Point[™]
THE UPS STORE
501 W BROADWAY
SAN DIEGO ,CA 92101

UPS Access Point[™]
THE UPS STORE
1041 MARKET ST
SAN DIEGO ,CA 92101

UPS Access Point[™]
THE UPS STORE
333 W HARBOR DR
SAN DIEGO ,CA 92101

FOLD HERE

REBECCA ROBERTS, ESQ. 6196992700 DLAPPER LLP (US) 401 B STREET, STE 1700 SAN DIEGO CA 92101	2 LBS DWT: 13.11.2 1 OF 1	SHIP TO: DEBORAH HALBERSTADT, DEPUTY AG OFFICE OF THE ATTORNEY GENERAL 1300 I STREET SACRAMENTO CA 95814-2919	CA 958 9-03 	UPS NEXT DAY AIR SAVER 1P TRACKING #: 1Z 02Y 747 13 9920 2715		BILLING: P/P Client-Matter: 393011-000001 Attorney ID: 36566  <small>CS 17A.04. WVENVS0 09.04.10.2015</small>
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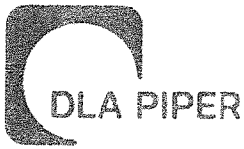
1539-C Third Ave.
Walnut Creek, CA 94597
925-478-8222

Quivx Job #: 261301

Client Matter: CPUC: CALAG Seized Materials

Contains: TIFF\Native\Text File Production
With Relativity Load Files (DAT)
CPUC CALAG 00001781 - CPUC CALAG 2122826

EXHIBIT 21



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San Diego, California 92101-4297
www.dlapiper.com

Rebecca Roberts
rebecca.roberts@dlapiper.com
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F 619.764.6626

December 18, 2015
VIA UPS

OUR FILE NO. 393011-000001

Ms. Deborah Halberstadt, Deputy Attorney General
Office of the Attorney General
1300 I Street
Sacramento, California 95814
deborah.halberstadt@doj.ca.gov

CONFIDENTIAL/ SUBJECT TO GRAND JURY SECRECY

Re: CPUC Production in Response to First Search Warrant

Dear Ms. Halberstadt:

Enclosed please find a DVD of the remaining filtered active files responsive to the November 5, 2014 search warrant, Bates labeled CPUC CALAG 02130833 – CPUC CALAG 02144600. As we discussed and explained in our October 16, 2015 letter, we further culled the remaining documents to be reviewed in response to the November 2014 search warrant using search terms identified in Exhibit A of that letter. We are producing these documents 10 days ahead of the deadline you set in your October 22, 2015 letter - December 28, 2015. Please note that the CPUC is producing these documents in native format. The native files are named the same as their Bates label. Confidentiality or other designations are included in the load file. We will send the password for the DVD in a separate email. This completes our production of active files in response to the November 2014 search warrant.

The only documents which remain to be produced in response to the November 2014 search warrant are the documents we forensically recovered from the copy of the seized material you provided us. As we discussed and you agreed, we further culled this volume down as well using the search terms identified in Exhibit A of the October 16 letter. We are in the process of finalizing this production.

Some of the documents being produced in response to the SONGS search warrant may be subject to the deliberative process privilege. Both federal and state law recognize this privilege, which extends to a public agency's materials that reflect deliberative or decision making processes. See Cal. Gov't Code section 6255; *FTC v. Warner Comms., Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Wilson v. Super. Ct.*, 51 Cal. App. 4th 1136, 1142 (1996). See also Office of Attorney General "Summary of the California Public Records Act 2004", Section X(A) (recognizing the "Deliberative Process Privilege.")

The CPUC is being compelled to produce these documents in response the November 2014 search warrant. This limited compelled production does not by any means constitute a waiver of the privilege, voluntary or otherwise. Nor does it in any way hinder the CPUC's right or ability to assert this privilege in other proceedings. See, e.g., *The Regents of University of California v. Super. Ct.*, 165 Cal .App. 4th 627



Deborah Halberstadt
December 18, 2015
Page Two

(2008); *Regents of the University of California v. Workers' Comp. Appeals Bd.*, 226 Cal. App. 4th 1530 (2014).

As you well know, state grand jury proceedings are subject to strict secrecy requirements such that the information and evidence provided to a grand jury may only be further disclosed, by court order, in the limited contexts designated by the California Penal Code. *See Goldstein v. Super. Ct.*, 45 Cal. 4th 218, 221 (2008). Thus, by law, the documents must be treated confidentially and not disseminated to any person without judicial or statutory authority. Indeed, grand jurors who unlawfully disclose information received by the grand jury may be subject to a misdemeanor. *See, e.g.*, Cal. Penal Code sections 924.1, 924.2. All of the documents herein produced, which have been designated "Confidential" in their footers, must be kept secret as required by the California Penal Code. The same is true of all other CPUC documents, whether initially seized by your office or produced by the CPUC.

Furthermore, CPUC's compelled production of documents protected by the deliberative process privilege should in no way be construed as a waiver of the attorney-client, work product or other applicable privileges. The CPUC reserves all rights to assert applicable privileges in response to the grand jury subpoenas and search warrants. Any inadvertent production of any privileged material does not in any way constitute a waiver of the applicable privilege.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in black ink that reads 'Rebecca Roberts'.

Rebecca Roberts
Associate

Enclosures

WEST266868052.1

UPS CampusShip: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. Fold the printed label at the solid line below. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**
Customers with a Daily Pickup
 Your driver will pickup your shipment(s) as usual.

Customers without a Daily Pickup

Take your package to any location of The UPS Store[®], UPS Access Point(TM) location, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot[®] or Staples[®]) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.


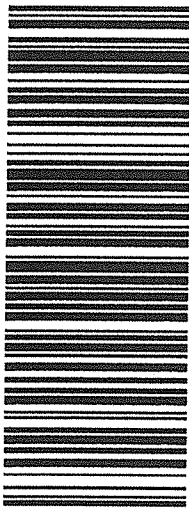

Hand the package to any UPS driver in your area.

UPS Access Point[™]
THE UPS STORE
501 W BROADWAY
SAN DIEGO ,CA 92101

UPS Access Point[™]
THE UPS STORE
1041 MARKET ST
SAN DIEGO ,CA 92101

UPS Access Point[™]
THE UPS STORE
333 W HARBOR DR
SAN DIEGO ,CA 92101

FOLD HERE

REBECCA ROBERTS, ESQ. 6196992700 DLA PIPER LLP (US) 401 B STREET, STE 1700 SAN DIEGO CA 92101	0.0 LBS LTR 1 OF 1	SHIP TO: DEBORAH HALBERSTADT, DEPUTY AG OFFICE OF THE ATTORNEY GENERAL 1300 I STREET SACRAMENTO CA 95814-2919	CA 958 9-03 	UPS NEXT DAY AIR SAVER 1P TRACKING #: 1Z 02Y 747 13 9909 1327		BILLING: P/P Client-Matter: 393011-000001 Attorney ID: 36566  <small>CS 17.6.06. WNTD159 69.0A.10/2015</small>
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QUIVX

eDiscovery & Document Solutions
925.478.8222 www.QUIVX.com

Reference:

CPUC: CAL AG Seized Materials
PRODUCTION

Client:

DLA Piper

Date: 12/17/2015

Order Number: 261311

Contains: Natives, Tiff, Text
DAT & OPT

CPUC CALAG 02130833 - CPUC CALAG 02144600

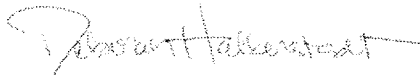
Encrypted with TrueCrypt

EXHIBIT 22

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

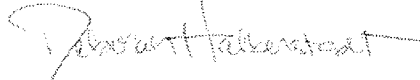
DRH:

LA2014118251

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 23



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February 24, 2016
VIA UPS

OUR FILE NO. 393011-000001

Ms. Maggy Krell, Deputy Attorney General
Ms. Amanda Plisner, Deputy Attorney General
Mr. Reye Diaz, Special Agent
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reye.diaz@doj.ca.gov

CONFIDENTIAL/ SUBJECT TO GRAND JURY SECRECY

Re: CPUC Production in Response to SONGS Search Warrant

Dear Ms. Krell:

Enclosed please find a DVD which includes electronic and hard copy documents the California Public Utilities Commission ("CPUC") is producing in response to the search warrant your office issued on June 5, 2015 concerning the San Onofre Nuclear Generating Station settlement agreement ("SONGS Search Warrant"). This disk contains documents Bates labeled CPUC CALAG 02144601 – CPUC CALAG 02153033. This production consists of the remaining documents we identified as responsive to the SONGS Search Warrant using the search terms provided to you in our October 2015 correspondence. This represents the fourth production the CPUC has made to you in response the SONGS Search Warrant. (The prior productions were made on September 8, 2015, December 11, 2015 and December 18, 2015.) The CPUC has now produced approximately 59,546 documents in response to the SONGS Search Warrant and approximately 1,072,937 documents in total to you.

Please note that the CPUC is producing these documents in native format. The native files are named the same as their Bates label. Confidentiality or other designations are included in the load file. We will send the password for the DVD in a separate email.

Some of the documents being produced in response to the SONGS search warrant may be subject to the deliberative process privilege. Both federal and state law recognize this privilege, which extends to a public agency's materials that reflect deliberative or decision making processes. See Cal. Gov't Code section 6255; *FTC v. Warner Comms., Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Wilson v. Super. Ct.*, 51 Cal. App. 4th 1136, 1142 (1996). See also Office of Attorney General "Summary of the California Public Records Act 2004", Section X(A) (recognizing the "Deliberative Process Privilege.")

The CPUC is being compelled to produce these documents in response the SONGS search warrant. **This limited compelled production does not by any means constitute a waiver of the privilege.**



Maggy Krell
February 24, 2016
Page Two

voluntary or otherwise. Nor does it in any way hinder the CPUC's right or ability to assert this privilege in other proceedings. See, e.g., *The Regents of University of California v. Super. Ct.*, 165 Cal. App. 4th 627 (2008); *Regents of the University of California v. Workers' Comp. Appeals Bd.*, 226 Cal. App. 4th 1530 (2014).

As you well know, state grand jury proceedings are subject to strict secrecy requirements such that the information and evidence provided to a grand jury may only be further disclosed, by court order, in the limited contexts designated by the California Penal Code. See *Goldstein v. Super. Ct.*, 45 Cal. 4th 218, 221 (2008). Thus, by law, the documents must be treated confidentially and not disseminated to any person without judicial or statutory authority. Indeed, grand jurors who unlawfully disclose information received by the grand jury may be subject to a misdemeanor. See, e.g., Cal. Penal Code sections 924.1, 924.2. All of the documents herein produced, which have been designated "Confidential" in their footers, must be kept secret as required by the California Penal Code. The same is true of all other CPUC documents, whether initially seized by your office or produced by the CPUC.

Furthermore, CPUC's compelled production of documents protected by the deliberative process privilege should in no way be construed as a waiver of the attorney-client, work product or other applicable privileges. The CPUC reserves all rights to assert applicable privileges in response to the grand jury subpoenas and search warrants. Any inadvertent production of any privileged material does not in any way constitute a waiver of the applicable privilege.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'Rebecca Roberts'.

Rebecca Roberts
Associate

Enclosure

WEST\268350721.1



401 B Street, Suite 1700
San Diego, CA 92101 USA
T: (619) 699-2700

2/24/2016

Production in Response to SONGS June 2015 Search
Warrant No. 70763
CPUC CALAG 02144601 – CPUC CALAG 02153033

EXHIBIT 24



DLA Piper LLP (US)
401 B Street, Suite 1700
San Diego, California 92101-4297
www.dlapiper.com

Rebecca Roberts
rebecca.roberts@dlapiper.com
T 619.699.2776
F 619.764.6626

March 3, 2016
VIA UPS

OUR FILE NO. 393011-000001

Ms. Maggy Krell, Deputy Attorney General
Ms. Amanda Plisner, Deputy Attorney General
Mr. Reye Diaz, Special Agent
Office of the Attorney General
1300 I Street
Sacramento, California 95814
maggy.krell@doj.ca.gov
amanda.plisner@doj.ca.gov
reye.diaz@doj.ca.gov

CONFIDENTIAL / SUBJECT TO GRAND JURY SECRECY

Re: CPUC Production in Response to Grand Jury Subpoena # 2

Dear Ms. Krell:

Enclosed please find a DVD which includes electronic documents the California Public Utilities Commission ("CPUC") is producing in response to the grand jury subpoena your office issued on February 5, 2015 concerning ALJ assignments ("Grand Jury Subpoena #2"). This disk contains documents Bates labeled CPUC CALAG 02153034 – CPUC CALAG 02153740. The CPUC has made three prior productions in response to this subpoena. This production consists of the remaining documents we identified as responsive to Grand Jury Subpoena #2 and thus completes our response.

Please note that the CPUC is producing these documents in native format. The native files are named the same as their Bates label. Confidentiality or other designations are included in the load file. We will send the password for the DVD in a separate email.

Some of the documents being produced in response to the SONGS search warrant may be subject to the deliberative process privilege. Both federal and state law recognize this privilege, which extends to a public agency's materials that reflect deliberative or decision making processes. See Cal. Gov't Code section 6255; *FTC v. Warner Comms., Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Wilson v. Super. Ct.*, 51 Cal. App. 4th 1136, 1142 (1996). See also Office of Attorney General "Summary of the California Public Records Act 2004", Section X(A) (recognizing the "Deliberative Process Privilege.")

The CPUC is being compelled to produce these documents in response the SONGS search warrant. **This limited compelled production does not by any means constitute a waiver of the privilege, voluntary or otherwise.** Nor does it in any way hinder the CPUC's right or ability to assert this privilege in other proceedings. See, e.g., *The Regents of University of California v. Super. Ct.*, 165 Cal. App. 4th 627 (2008); *Regents of the University of California v. Workers' Comp. Appeals Bd.*, 226 Cal. App. 4th 1530 (2014).



Maggy Krell
March 3, 2016
Page Two

As you well know, state grand jury proceedings are subject to strict secrecy requirements such that the information and evidence provided to a grand jury may only be further disclosed, by court order, in the limited contexts designated by the California Penal Code. See *Goldstein v. Super. Ct.*, 45 Cal. 4th 218, 221 (2008). Thus, by law, the documents must be treated confidentially and not disseminated to any person without judicial or statutory authority. Indeed, grand jurors who unlawfully disclose information received by the grand jury may be subject to a misdemeanor. See, e.g., Cal. Penal Code sections 924.1, 924.2. All of the documents herein produced, which have been designated "Confidential" in their footers, must be kept secret as required by the California Penal Code. The same is true of all other CPUC documents, whether initially seized by your office or produced by the CPUC.

Furthermore, CPUC's compelled production of documents protected by the deliberative process privilege should in no way be construed as a waiver of the attorney-client, work product or other applicable privileges. The CPUC reserves all rights to assert applicable privileges in response to the grand jury subpoenas and search warrants. Any inadvertent production of any privileged material does not in any way constitute a waiver of the applicable privilege.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'Rebecca Roberts', with a horizontal line extending to the right.

Rebecca Roberts
Associate

Enclosure

WEST268427440.1

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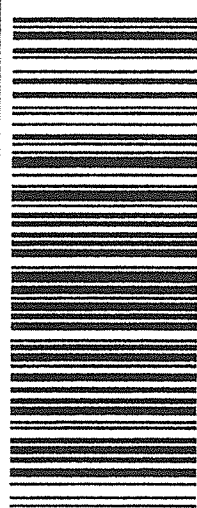

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SAN DIEGO ,CA 92101

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THE UPS STORE
333 W HARBOR DR
SAN DIEGO ,CA 92101

FOLD HERE

<p>REBECCA ROBERTS 6196992700 DLA PAPER LLP (US) 401 B STREET, STE 1700 SAN DIEGO CA 92101</p> <p>SHIP TO: MAGGY KRELL, A. PLISNER, R. DIAZ OFFICE OF THE ATTORNEY GENERAL 1300 I STREET SACRAMENTO CA 95814-2919</p>	<p>0.0 LBS LTR</p> <p>1 OF 1</p>	<p>CA 958 9-03</p> 	<p>UPS NEXT DAY AIR</p> <p>TRACKING #: 1Z 02Y 747 01 9584 3633</p> <p>1</p>		<p>BILLING: P/P</p> <p>Client-Matter: 393011-000001 Attorney ID: 365566</p> <p>CS 18.0.22. WNTNV50 72.0A 01/2016</p> 
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DLA PIPER

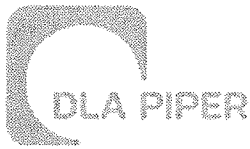
401 B Street, Suite 1700
San Diego, CA 92101 USA

T: (619) 699-2700

3/3/2016

Production in Response to Grand Jury Subpoena #2
CPUC CALAG 02153034 - CPUC CALAG 02153740

EXHIBIT 25



DLA Piper LLP (US)
401 B Street, Suite 1700
San Diego, California 92101-4297
www.dlapiper.com

Rebecca Roberts
rebecca.roberts@dlapiper.com
T 619.699.2776
F 619.764.6626

March 7, 2016
Via UPS

OUR FILE NO. 393011-000001

Ms. Maggy Krell, Deputy Attorney General
Ms. Amanda Plisner, Deputy Attorney General
Mr. Reye Diaz, Special Agent
Office of the Attorney General
1300 I Street
Sacramento, California 95814
maggy.krell@doj.ca.gov
amanda.plisner@doj.ca.gov
reye.diaz@doj.ca.gov

CONFIDENTIAL/ SUBJECT TO GRAND JURY SECRECY

Re: CPUC Production of Recovered Emails in Response to Search Warrant No. 1

Dear Ms. Krell:

Enclosed please find a DVD which includes electronic documents the California Public Utilities Commission ("CPUC") is producing in response to the November 2014 search warrant issued by your office. This production consists of the documents we forensically recovered from the data you provided to us, subject to the agreed upon term filters. Your office agreed to the scope of this production on October 13, 2015, which is also further documented in our October 16, 2015 correspondence. This disk contains documents Bates labeled CPUC CALAG 02153741 - CPUC CALAG 02200118. The CPUC has now produced approximately 1,119,968 documents to you in response to your various demands and has produced all documents it indicated it would in our October 2015 correspondence.

Please note that the CPUC is producing these documents in native format. The native files are named the same as their Bates label. Confidentiality or other designations are included in the load file. We will send the password for the DVD in a separate email.

Some of the documents being produced in response to the November search warrant may be subject to the deliberative process privilege. Both federal and state law recognize this privilege, which extends to a public agency's materials that reflect deliberative or decision making processes. See Cal. Gov't Code section 6255; *FTC v. Warner Comms., Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Wilson v. Super. Ct.*, 51 Cal. App. 4th 1136, 1142 (1996). See also Office of Attorney General "Summary of the California Public Records Act 2004", Section X(A) (recognizing the "Deliberative Process Privilege.")

The CPUC is being compelled to produce these documents in response to the SONGS search warrant. **This limited compelled production does not by any means constitute a waiver of the privilege, voluntary or otherwise.** Nor does it in any way hinder the CPUC's right or ability to assert this privilege in other proceedings. See, e.g., *The Regents of University of California v. Super. Ct.*, 165 Cal. App. 4th



Ms. Maggy Krell, Deputy Attorney General
Ms. Amanda Plisner, Deputy Attorney General
Mr. Reye Diaz, Special Agent
March 7, 2016
Page Two

627 (2008); *Regents of the University of California v. Workers' Comp. Appeals Bd.*, 226 Cal. App. 4th 1530 (2014).

As you well know, state grand jury proceedings are subject to strict secrecy requirements such that the information and evidence provided to a grand jury may only be further disclosed, by court order, in the limited contexts designated by the California Penal Code. See *Goldstein v. Super. Ct.*, 45 Cal. 4th 218, 221 (2008). Thus, by law, the documents must be treated confidentially and not disseminated to any person without judicial or statutory authority. Indeed, grand jurors who unlawfully disclose information received by the grand jury may be subject to a misdemeanor. See, e.g., Cal. Penal Code sections 924.1, 924.2. All of the documents herein produced, which have been designated "Confidential" in their footers, must be kept secret as required by the California Penal Code. The same is true of all other CPUC documents, whether initially seized by your office or produced by the CPUC.

Furthermore, CPUC's compelled production of documents protected by the deliberative process privilege should in no way be construed as a waiver of the attorney-client, work product or other applicable privileges. The CPUC reserves all rights to assert applicable privileges in response to the grand jury subpoenas and search warrants. Any inadvertent production of any privileged material does not in any way constitute a waiver of the applicable privilege.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

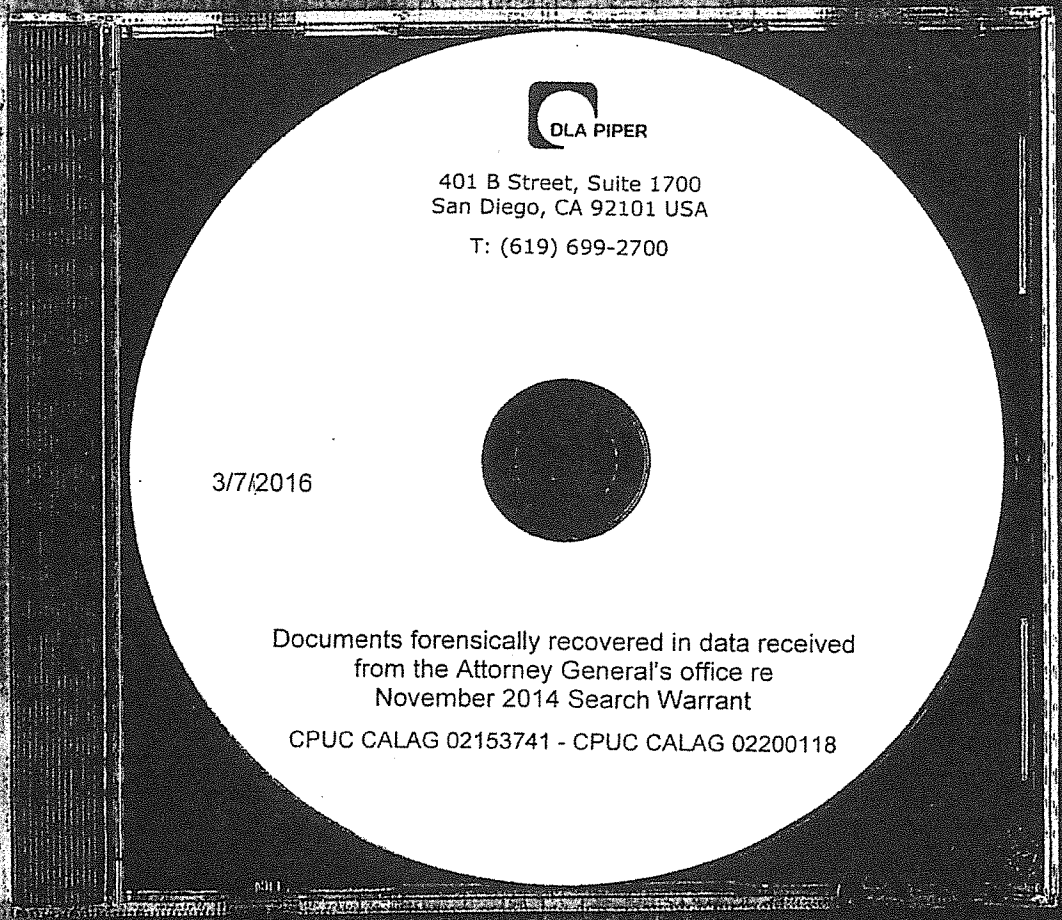
DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'Rebecca Roberts'.

Rebecca Roberts
Associate

Enclosure

WEST268451945.1



401 B Street, Suite 1700
San Diego, CA 92101 USA
T: (619) 699-2700

3/7/2016

Documents forensically recovered in data received
from the Attorney General's office re
November 2014 Search Warrant
CPUC CALAG 02153741 - CPUC CALAG 02200118

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 Your driver will pickup your shipment(s) as usual.

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Take your package to any location of The UPS Store®, UPS Access Point™ location, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

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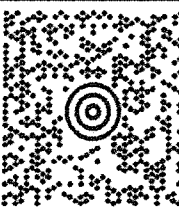
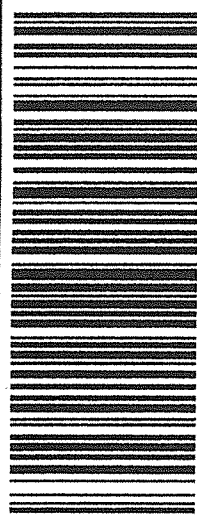

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 THE UPS STORE
 1041 MARKET ST
 SAN DIEGO ,CA 92101

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REBECCA ROBERTS, ESQ. 6196992700 DLA PIPER LLP (US) 401 B STREET, STE 1700 SAN DIEGO CA 92101	0.0 LBS LTR 1 OF 1 SHIP TO: MAGGY KRELL, A. PLISNER, R. DIAZ OFFICE OF THE ATTORNEY GENERAL 1300 I STREET SACRAMENTO CA 95814-2919	CA 958 9-03 		UPS NEXT DAY AIR TRACKING #: 1Z 02Y 747 01 9532 5498 1		BILLING: P/P Client-Matter: 393011-000001 Attorney ID: 36566  <small>CS 18.0.33. WNTNVS0 72.0A.01/2016</small>
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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

FILED
Superior Court of California
County of Los Angeles

APR 11 2016

SHERYL RICHHEY, CLERK OF COURT
BY Sheryl Richey Humber Deputy
Sheryl Richey Humber

7
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

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

Date: April 18, 2016

Time: 10:00 a.m.

Place: Department 56

Judge: Hon. William C. Ryan

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

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18 Here is what the Attorney General failed to tell this Court:

- 19
- 20 • To date, the CPUC has produced over 1.1 million documents to the Attorney General and
21 over 1.7 million documents in total to government authorities.
 - 22 • The CPUC has produced documents every single month since the start of these
23 investigations.
 - 24 • The CPUC has repeatedly requested in writing that the Attorney General prioritize which
25 search warrants or subpoenas they wish the CPUC to comply with first, second, etc. The
26 Attorney General has consistently refused to answer this question.
 - 27 • The CPUC has produced approximately 60,000 documents to the Attorney General in
28 response to the SONGS search warrant.

ORIGINAL

- 1 • Contrary to the “return” filed by the agent, the CPUC did not refuse to produce documents
2 for the SONGS search warrant. The CPUC responded timely, and in writing to the
3 Attorney General requesting guidance for priorities and definitions.
- 4 • The CPUC’s review team, which on average consists of 9 contract attorneys billed at a
5 rate of \$45.00 an hour, has been reviewing documents 7 days a week, 8-12 hours day.
- 6 • The CPUC has exhausted the funds designated to pay for the document collection, review
7 and production.
- 8 • The most recently issued search warrant – March 9, 2016 – is the last one of 11 demands
9 for documents served on the CPUC by various government authorities.
- 10 • The CPUC has kept the Attorney General fully informed as to how it was conducting its
11 searches, review, its progress, and provided estimates as to time of completion. During
12 the fall of 2015, the CPUC put all resources towards completing the outstanding Attorney
13 General demands, and diverted all its resources away from the federal grand jury
14 subpoenas in order to satisfy the Attorney General’s staff. However, the Attorney
15 General recently altered the search terms and demanded even more documents – requiring
16 the CPUC to search for and review additional documents that go way beyond the
17 parameters of the search warrant order and affidavit.
- 18 • The Deputy Attorney General admitted that the Special Agent investigating this matter is
19 not actually looking at each document produced, but merely scanning and running
20 searches. Why, then has the CPUC been forced to endlessly produce, and re-produce,
21 documents that no one is looking at?

22
23 As explained in its motion to quash, the CPUC believes that the search warrant lacks probable
24 cause because there is no factual or legal basis for a criminal violation. Regardless of the
25 outcome of that motion, the CPUC believes that it has fully complied with all outstanding
26 demands for documents by the Attorney General and requests that the Court deny the Attorney


27 ////

28 ////

1 General's motion to compel and deem its production in response to the SONGS search warrant
2 complete.

3
4 Dated: April 11, 2016

DLA PIPER LLP (US)

5
6 By 
7 PAMELA NAUGHTON
8 REBECCA ROBERTS
9 Attorneys for Movant
10 California Public Utilities Commission
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MEMORANDUM OF POINTS AND AUTHORITIES

I.
BACKGROUND OF DOCUMENT DEMANDS

The specific search warrant at issue here was signed on March 9, 2016 and is the latest of eleven demands for documents issued by various government entities. On November 5, 2014, the Attorney General executed a search warrant, which issued out of San Francisco Superior Court and seized hard drives and other devices from the CPUC’s headquarters in San Francisco and another Los Angeles location. (Declaration of Rebecca Roberts (“Roberts Decl.”) ¶2, Ex. 1.) Several months later, in February 2015, the Attorney General served 3 more grand jury subpoenas for documents on the CPUC. (Roberts Decl. ¶2, Exs. 2-4.) Then, on June 5, 2015, the Attorney General sought and obtained a second search warrant against the CPUC which issued out of this Court. (*Id.* Ex. 5.) When the CPUC filed its motion for in camera inspection of the affidavit and alleged the warrant likely lacked probable cause, the Attorney General reacted by striking one sentence of that affidavit and then sought a new search warrant in March 2016. (*Id.* ¶2, Ex. 6.)

The Attorney General’s investigation has actually come on the heels of the federal investigation. The first document demand served on the CPUC was issued by the federal grand jury in the Northern District of California in October 2014. Upon receiving the subpoena, the CPUC wrote to the Attorney General requesting to be represented, since the Attorney General typically represents the CPUC in litigation. The Attorney General refused to represent the CPUC, instead informing the CPUC that the Attorney General’s office had decided to conduct its own criminal investigation. Thus, the CPUC was forced to retain outside counsel with experience in state and federal criminal proceedings and document production. The U.S. Department of Justice (“DOJ”) served 5 very broad grand jury subpoenas on the CPUC. Specifically, these subpoenas were served on the CPUC on October 7, 2014, October 17, 2014, November 13, 2014, November 20, 2014, and June 3, 2015. (Roberts Decl. ¶3.) So, the DOJ’s demands largely predate the Attorney General’s demands.

1 Following on the heels of the federal action, the Attorney General applied for a search
 2 warrant in San Francisco Superior Court. The CPUC is based in San Francisco. The Attorney
 3 General's office did not simply serve the warrant and wait for production, but instead sent
 4 numerous agents to raid the offices of the CPUC, naturally attracting television news crews. The
 5 agents physically seized computers, cell phones and other documents. Because the CPUC is an
 6 adjudicatory body and involved in numerous litigations and policy decisions, the parties
 7 recognized that the electronic data that was seized likely contained some privileged data.
 8 Specifically, the parties agreed that the Attorney General would provide the CPUC with copies of
 9 all the data that had been seized and the CPUC would run filters through the documents using
 10 mutually agreed upon search terms that would likely identify any that were potentially privileged.
 11 (Roberts Decl. ¶4, Ex. 7.) The documents which contained privileged search terms would be
 12 reviewed by the CPUC's review team (approximately 247,646 documents) and those which did
 13 not would be produced in bulk. (*Id.* Exs. 7-8.)

14 It took the Attorney General's office more than two months to produce a copy of
 15 electronic data that had been seized. The CPUC received the hard drives on January 14, 2015 and
 16 filtered the data the very next day. Six days after receiving the three hard drives, on January 20,
 17 2015, the CPUC processed, bates stamped and produced to the Attorney General over 845,000
 18 documents. (*Id.* Ex. 8.) Thus, the CPUC produced a substantial volume of documents to the
 19 Attorney General within days of receiving the data to filter.

20 Shortly after the CPUC produced over 845,000 documents in response to the first search
 21 warrant, the Attorney General issued three grand jury subpoenas, two on February 5 and one on
 22 February 18. Following the Attorney General's instructions, CPUC gave priority to complying
 23 with the subpoenas and produced over 20,000 additional documents by mid-March. (Roberts
 24 Decl. ¶4, Ex. 9.) The CPUC explained in correspondence that because the Attorney General
 25 requested resources to be shifted from the first search warrant to the grand jury subpoenas, the
 26 rolling production of documents that needed to be reviewed for privilege in response to the first
 27 search warrant would be delayed and that it could expect the next production in May 2015. (*Id.*)
 28 True to its word, the CPUC produced nearly 34,000 documents to the Attorney General at the end

1 of May 2015 and continued rolling productions on a monthly basis. Meanwhile, the CPUC's
2 review team was also processing, reviewing, and producing hundreds of thousands of documents
3 on a monthly basis to the federal DOJ. (Roberts Decl. ¶5.)

4 Shortly after the Attorney General served its fifth demand for documents, i.e. the SONGS
5 search warrant in June 2105, CPUC counsel provided the Attorney General with an update as to
6 the status of the overall document production and requested guidance from the Deputy Attorney
7 General as to how to prioritize responding to its various demands as well as clarification of the
8 breadth and scope of the new search warrant. On June 21, 2015, CPUC counsel wrote:

9 [A]s you are further aware, since the execution of the search
10 warrant, your office has served three subpoenas, and an additional
11 search warrant (served on June 5, 2015) on the CPUC. We are
12 continuing to work diligently on these requests. However, given
13 the large volume of materials sought and the overlapping requested
14 due dates, **we are requesting additional guidance from you on**
15 **your prioritization of these requests. Importantly, we have**
16 **significant concerns and questions about the breadth and scope**
17 **of your June 5, 2015 Search Warrant.** As we advised Agent
18 Diaz, my former partner, Pam Naughton, will be handling the
19 CPUC's response to the warrant and will contact you directly to
20 discuss the various questions we have about the requests. As it
21 currently stands, the new requests in the June 5 search warrant will
22 delay our review and productions of Grand Jury Subpoenas #1 and
23 #2, as well as the remaining documents that were previously
24 identified as "potentially privileged" from the execution of your
25 2014 search warrant.

26 In sum, as stated previously, we are continuing to work diligently to
27 review and produce the materials you are requesting, given limited
28 resources and the concurrent demands of federal subpoenas and
Public Records Act requests. **However, we would benefit greatly**
from a dialogue with you about how best to prioritize the
requested materials.

29 (Roberts Decl. ¶6, Ex. 10.) (Emphasis added.) Nowhere did CPUC counsel ever say the CPUC
30 could not or would not produce the SONGS documents.

31 The Attorney General did not provide any response or further guidance. Instead, on
32 June 24, 2015, the special agent filed a completely erroneous "return" of search warrant stating
33 that CPUC was refusing to produce documents because of lack of resources. Specifically, the
34 return reads:

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Unable to obtain evidence at this time. 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. Despite requests, CPUC has still not provided a specific time frame as to when documents will be provided as ordered by the Court. Your affiant will update the Court with a filing of an additional search warrant return.

(Roberts Decl. ¶6, Ex. 11.) News outlets were apparently alerted to this publically filed "return" because stories appeared the following days alleging CPUC non-compliance.

Regardless, the CPUC continued to produce documents to the Attorney General, producing over 42,000 documents in July 2015 in response to the first search warrant, and documents in response to the first and second grand jury subpoenas on August 19, 2015.

(Roberts Decl. ¶¶5, 7, Ex. 7.)

Several weeks later, on September 8, 2015, the CPUC produced over 19,000 documents to the Attorney General in response to the SONGS Search Warrant. (*Id.* ¶8, Ex. 13.) Moreover, as CPUC counsel explained to the Attorney General on the phone in mid-September and again in correspondence on September 29, the Attorney General **already had** over 20,000 documents responsive to the SONGS search warrant in its possession since the data the Attorney General initially seized (and which the CPUC had already reproduced back) was not topic specific. In other words, since the Attorney General had all of Peevey's emails because they seized his devices (and the CPUC had reproduced them after the filtering process), it already had any SONGS related correspondence attributed to Peevey.¹ So, by the end of September 2015, the Attorney General had over 40,000 documents responsive to the SONGS Search Warrant in its possession. (Roberts Decl. ¶8, Exs. 13,15.) Moreover, at the same time, the CPUC produced nearly 55,000 documents to the Attorney General in response to the first search warrant on September 24, 2015. (Roberts Decl. ¶8, Ex. 14.)

The CPUC kept the Attorney General fully informed of its progress and its plans for completing the review, repeatedly emphasized the substantial financial and labor burden its demands imposed, and presented ways the process could be streamlined, in writing and in phone

¹ The CPUC ran SONGS search terms across the documents that had already been produced to Attorney General to identify these documents. In response to the Attorney General's requests, the CPUC identified these documents by Bates label and then later reproduced them. (Roberts Decl. ¶10, Ex. 20.)

1 conversations. (Roberts Decl. ¶¶8-9, Exs. 15-18.) Specifically, the CPUC explained in detail
2 what had been produced, what remained to be produced, how it was conducting the review
3 (including a list of search terms used to identify possibly relevant material), and informed the
4 Attorney General that it would prioritize completing production in response to the first search
5 warrant (since it was first in time) and then turn to finalizing productions in response to the grand
6 jury subpoenas and the SONGS Search Warrant. (*Id.*)

7 Going above and beyond in its cooperation, the CPUC informed that Attorney General
8 that it had been able to forensically recover several hundred thousand deleted documents from the
9 copy of the seized devices the Attorney General provided (“Recovered Documents”) and
10 requested instruction as to how these documents should be reviewed. (*Id.* ¶9, Exs. 16-18.) The
11 CPUC suggested that these documents, as well as the documents remaining to be reviewed in
12 response to the first search warrant, be filtered using search terms related to both search warrants,
13 e.g., “SONGS”, “greenhouse gas”, ALJ “Wong”, etc. and provided a list of the suggested terms
14 to the Attorney General on October 16, 2016. (Roberts Decl. ¶9, Ex. 16.) **The Attorney**
15 **General agreed that the CPUC could use this filtering process to streamline production on**
16 **the Recovered Documents.** (*Id.* Exs. 16-18.)

17 Believing that it had reached a resolution with the Attorney General, the CPUC review
18 team, during the fall of 2015, focused entirely on the Attorney General’s demands, to the
19 exclusion of the federal productions, and produced: (1) all of the search term filtered documents
20 remaining to be reviewed in response to the first search warrant, (2) all of the search term filtered
21 Recovered Documents, (3) all remaining documents responsive to the three grand jury subpoenas,
22 and (4) all responsive documents that triggered the identified SONGS search terms. Thus, to
23 date, the CPUC has produced over **1.1 million documents** to the Attorney General, **nearly**
24 **60,000** in response to the SONGS search warrant. The CPUC Review team has produced over
25 **1.7 million** documents in total to government entities. (Roberts Decl. ¶¶9-10, 12, Exs. 19-21,
26 23-25.)

27 On December 18, 2015, **two months** after the parties’ discussion as to how to complete
28 the review using the term filtering process and weeks after the CPUC made substantial

1 productions following the exact terms specified, the Attorney General reversed course and
2 demanded that the CPUC: (1) produce all remaining unfiltered documents responsive to the first
3 search warrant (the CPUC estimates this volume is around 86,000 documents) and (2) apply 14
4 additional search terms to its database and review any further documents that trigger these terms.
5 (Roberts Decl. ¶11, Ex. 22.)

6 While the dispute concerning CPUC's production to the first search warrant is not subject
7 to this motion since the first search warrant was issued by the San Francisco Superior Court, not
8 this Court (the CPUC herein reserves all rights to object to this warrant), it is notable that the
9 Attorney General did not object to the filtering process as applied to the Recovered Documents
10 but does as to the remaining active files from the first search warrant. This position is
11 inconsistent and does not make sense.

12 The additionally proposed SONGS search terms exceed the scope of the search warrant.
13 For example, the Attorney General's terms include "Aguirre", a reference to Michael Aguirre, a
14 civil attorney who claims to represent state rate payers and has civilly sued the CPUC concerning
15 various requests he has issued under the California Public Records Request Act (the California
16 Court Appeals recently stayed his case), and who has been a sounding board for various media
17 outlets covering the investigation.

18 The same is true for the other generic terms proposed by Attorney General, such as
19 "ORA", "TURN", "Japan", "Mitsubishi", "25 million" and "20 million." Rate payer public
20 interest groups such as ORA and TURN, and ANR, appear in many different proceedings before
21 the CPUC, not just the SONGS OII, and thus these terms are more likely to pull countless waves
22 of irrelevant documents rather than produce anything new. Moreover, the term TURN will pull
23 in any iteration of the word "turn", such as "turn around" or "turn right". The same is true for "25
24 million" or "20 million", which will pull in any document that references these amounts. "Japan"
25 and "Mitsubishi" are also broad in scope and likely to pull in a substantial volume of documents
26 that have no relationship at all to the SONGS OII or the Attorney General's allegations.
27 Moreover, like the terms "Aguirre" and "Geesman", it is not at all clear how "Japan" and
28 "Mitsubishi", which are likely meant to target the dispute Edison had with Mitsubishi concerning

1 the faulty tubing which caused the San Onofre power plant to be shut down, have anything to do
2 with the alleged ex parte communications or settlement terms. These additional terms proposed
3 by the Attorney General are nothing more than a fishing expedition for documents that are not
4 even called for by the underlying search warrant.

5 The Attorney General complains that the CPUC rejected its proposal for a “taint team”
6 from its office to review for and exclude privileged documents. The Attorney General has never
7 explained who would comprise the “taint team”, their experience level, their numbers or their
8 expenses. The CPUC’s review team, which on average consists of 9 contract attorneys billed at a
9 rate of \$45.00 an hour, has been reviewing documents 7 days a week, 8-12 hours day in order to
10 complete the review of a database now containing over 6.5 million documents. It is doubtful that
11 any “taint team” would have included more resources than what the CPUC has itself devoted to
12 this mission. Thus, the “taint team” notion is a non-starter.

13 The Attorney General also complains that the CPUC rejected its proposal to sign a
14 confidentiality agreement and just turn over all documents and not review for privilege. This is
15 not feasible for several reasons. First, it is well settled that privileged documents may be
16 withheld from a government investigation, even if those documents are subject to a search
17 warrant. *People v. Sup. Ct.*, 25 Cal. 4th 703 (2001) (government not entitled to documents
18 protected by the attorney-client privilege and/or work product doctrine that were seized pursuant
19 to a search warrant). Indeed, when subpoenaed, the Attorney General’s Office itself withholds its
20 own documents on the grounds of deliberative process and attorney-client privilege. *Prime*
21 *Healthcare Serv. v. Harris*, No. 5:15-cv-01934-GHK-DTB (C.D. Cal. Sept. 21, 2015); *Coleman*
22 *v. Schwarzenegger*, No. C01-1351 THE 2007, WL 4328476 (E.D. Cal. 2007); *Coito v. Sup. Ct.*,
23 54 Cal. 4th 480 (2012).

24 Second, even if a prosecutor agrees to keep privileged material confidential, the courts
25 have deemed the privileged waived by the producing party at the time it surrenders the material to
26 the prosecutor. *In re Pacific Pictures Corp.*, 679 F.3d 1121 (9th Cir. 2012). This can have serious
27 repercussions in the civil and administrative arenas. The CPUC, in addition to being a party in
28 countless civil disputes, is also a quasi-judicial body which holds hearings, receives evidence,

1 deliberates and renders decisions in very complex matters involving billions of dollars. It cannot
2 risk a future adverse ruling that the waiver of privilege to the Attorney General's formal
3 document demands constitutes a universal waiver, no matter how unintended. The CPUC is a
4 quasi-judicial body. Requiring it to produce its privileged communications and work product
5 would be like requiring the California superior court system to produce the privileged
6 communications and deliberative work product of its judges, law clerks and staff. Finally, the
7 investigatory leaks to the press, as demonstrated by the presence of TV cameras at the execution
8 of the first search warrant as well as the recent media coverage shortly after the CPUC filed its
9 sealed motion to quash, gives serious pause as to the sincerity of the Attorney General's promises
10 of confidentiality.

11 **II.**
12 **IF THE COURT GRANTS THE MOTION, IT OUGHT TO SHIFT COSTS OF**
13 **PRODUCTION TO THE ATTORNEY GENERAL'S OFFICE**

14 The CPUC has had to cut over \$5 million from its operation budget in the past fiscal year
15 to comply with these unreasonable and unending document demands. That money could have
16 been better spent on safety inspections, green initiatives and other far more worthwhile
17 endeavors. This court has powers in equity allowing it to shift the costs of compliance to the
18 prosecuting agency. Prosecuting agencies must pay 10 cents a copy for bank records, for hospital
19 records, etc. There is no reason why the Attorney General's Office ought not to pay here. They
20 are insisting that all of the remaining documents seized in the first search warrant be produced
21 without filtering them for any relevance. Complying with that unreasonable demand would force
22 the CPUC to pay for the review of another approximately 86,000 documents. Over the course of
23 the document review, the cost of first level review has been roughly an average of \$.83 per
24 document (not page). Thus, to satisfy the Attorney General on the first search warrant would cost
25 an additional \$71,380. As to the SONGS search warrant, if the CPUC is forced to search for,
26 collect, review and produce every single document that mentions "Japan" or "ORA" or "TURN",
27 etc., the cost would be inestimable. If the CPUC is ordered to apply those 14 new search filter

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1 terms, but allowed to exclude unique² hits for terms "ORA," "TURN," "Japan," and "Mitsubishi"
 2 as the Attorney General agreed, the additional number of documents that must be reviewed totals
 3 approximately 74,000 at a cost of roughly \$61,420.

4 **III.**
 5 **CONCLUSION**

6 Enough is enough. The Court should stop this runaway train, deny the Attorney General's
 7 petition to compel, and deem the SONGS search warrant to be satisfied.

8
 9 Dated: April 11, 2016

10 DLA PIPER LLP (US)

11 By 
 12 _____
 13 PAMELA NAUGHTON
 14 REBECCA ROBERTS
 15 Attorneys for Movant
 16 California Public Utilities Commission

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 29 ²"Unique Hits" refers to documents that only hit these terms and none of the other SONGS terms.

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FILED
Superior Court of California
County of Los Angeles

APR 11 2016

EXECUTIVE OFFICER/CLERK
Deputy
Number

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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ORIGINAL

By Fax

1 I, Bonnie K. Lott, declare:

2 I am a citizen of the United States and employed in San Diego County, California. I am
3 over the age of eighteen years and not a party to the within-entitled action. My business address
4 is DLA Piper LLP (US), 401 B Street, Suite 1700, San Diego, California 92101-4297. On
5 April 11, 2016, I served a copy of the within document(s):

6 **CPUC OPPOSITION TO PETITION FOR AN ORDER COMPELLING**
7 **CALIFORNIA PUBLIC UTILITIES COMMISSION TO COMPLY WITH**
8 **SEARCH WARRANT;**

9 **DECLARATION OF REBECCA ROBERTS IN SUPPORT OF CPUC**
10 **OPPOSITION FOR AN ORDER COMPELLING CALIFORNIA PUBLIC**
11 **UTILITIES COMMISSION TO COMPLY WITH SEARCH WARRANT**

- 12 by transmitting via facsimile the document(s) listed above to the fax number(s) set
13 forth below on this date before 5:00 p.m.
- 14 by placing the document(s) listed above in a sealed envelope with postage thereon
15 fully prepaid, the United States mail at San Diego, California addressed as set forth
16 below.
- 17 by placing the document(s) listed above in a sealed Delivery Service envelope and
18 affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery
19 Service agent for delivery.
- 20 by personally delivering the document(s) listed above to the person(s) at the
21 address(es) set forth below.
- 22 by transmitting via e-mail or electronic transmission the document(s) listed above
23 to the person(s) at the e-mail address(es) set forth below.

24 Persons Served

25 Maggy Krell, Esq.
26 Deputy Attorney General
27 1300 I Street
28 Sacramento, CA 95814
Tel: 916.445.0896

Amanda Plisner, Esq.
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Office of Attorney General
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1 I am readily familiar with the firm's practice of collection and processing correspondence
 2 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
 3 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
 4 motion of the party served, service is presumed invalid if postal cancellation date or postage
 5 meter date is more than one day after date of deposit for mailing in affidavit.

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

8 Executed on April 11, 2016, at San Diego, California.

9 

10 _____
 Bonnie K. Lott

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By Fax

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County of Los Angeles

APR 05 2016

SHERRIE CARTER, EXECUTIVE OFFICER/CLERK
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5 Attorneys for Movant
6 California Public Utilities Commission

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

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

CASE NO. SW-70763

11 **CPUC NOTICE OF MOTION AND MOTION
12 TO QUASH SEARCH WARRANT**

13 Date: April 18, 2016
14 Time: 10:00 a.m.
Place: Department 56
Judge: Hon. William C. Ryan

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

17
18 PLEASE TAKE NOTICE that on April 18, 2016 at the hour of 10:00 a.m. or as soon
19 thereafter as counsel may be heard, the California Public Utilities Commission (“the CPUC” or
20 “the Commission”) will move the Court to quash the search warrant issued by the Attorney
21 General’s office on June 5, 2015 (“SONGS Search Warrant”) on the grounds that there is no
22 probable cause that a crime has been committed. The conduct alleged is simply not criminal.

23 After the CPUC filed its previous motion pointing out that the affidavit filed in support of
24 a similar search warrant contained materially false statements that *ex parte* communications were
25 prohibited in the SONGS proceedings, the Attorney General obtained a new search warrant which
26 allegedly excised the “misstatements.” **However, the new affidavit is even weaker than the**
27 **prior one because it does not allege that the *ex parte* communications violated any rule,**
28 **much less a criminal statute.** Since there is no alleged criminal violation, there can be no basis

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1 for a misdemeanor or for a criminal felony conspiracy. There is also no probable cause for an
2 obstruction of justice charge when the alleged conduct does not even violate a CPUC rule, much
3 less a criminal law. The Attorney General's position raises substantial due process concerns. The
4 decision as to whether justice was allegedly "obstructed" or denied, e.g., whether ex parte
5 communications regarding the SONGS settlement discussions violated any CPUC rule or statute
6 governing the conduct of the CPUC proceedings, is one that is squarely before the CPUC itself
7 and rightfully so. The law gives the CPUC exclusive jurisdiction over that decision. Since the
8 affidavit points to no rule, order, statute, investigation, or other proceeding that was allegedly
9 violated or obstructed, there exists no probable cause to support a search warrant.

10 To date, the CPUC has produced over 1.1 million documents to the Attorney General and
11 59,546 documents specifically in response to the SONGS search warrant. The CPUC's contract
12 attorneys have reviewed approximately 1.5 million documents at the expense of millions of
13 dollars of public funds. The CPUC fully informed the Attorney General how it would conduct
14 and complete the search and review and, has done exactly what it indicated it would do. The
15 Attorney General now seeks to compel the CPUC to search for and review tens of thousands of
16 more documents that trigger search terms that go well beyond the terms of the search warrant.
17 Should the Court deny the CPUC's motion to quash, the CPUC requests that the Court modify the
18 search warrant so as to deem its production complete or, in the alternative, order the Attorney
19 General to pay for all additional costs that will be incurred to complete the demanded review.

20 This motion will be based on this notice of motion and supporting memorandum of points
21 and authorities, all the papers and records on file in this action including but not limited the prior
22 papers filed in support of its March 28, 2016 motion to view the affidavit *in camera*, and on such
23 oral and documentary evidence as may be presented at any hearing on this motion.

24 Dated: April 4, 2016

DLA PIPER LLP (US)

By 

PAMELA NAUGHTON

REBECCA ROBERTS

Attorneys for Movant

California Public Utilities Commission

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I.
ARGUMENT

A. The Search Warrant Lacks Probable Cause

Search warrants should be quashed when there is no probable cause to support the issuance of the search warrant. Cal. Penal Code § 1538.5(a); *People v. Alcorn*, 15 Cal. App. 4th 652 (1993). The requirement that the affidavit supporting a search warrant must contain facts establishing probable cause is contained in both the United States Constitution, the California Constitution and is codified in the Penal Code. U.S. Const. Amend. IV; Cal. Const., art. I, § 13; Cal. Penal Code § 1525. Probable cause exists when, based on the totality of circumstances described in the affidavit, “there is a fair probability that contraband or evidence **of a crime** will be found in a particular place” at the time of the search. *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983); *Zurcher v. Stanford Daily*, 436 U.S. 547, 556, 98 S. Ct. 1970, 56 L. Ed. 2d 525 (1978)). There are two probable cause prerequisites for the issuance of a search warrant. The first is the “commission element,” that is, **probable cause to believe a crime has been committed** and, second, the “nexus” element, that is, a factual showing that evidence related to the suspected criminal activity probably will be found at the location to be searched at the time of the search and not some other time. *U.S. v. Zayas-Diaz*, 95 F.3d 105, 111 (1st Cir. 1996); *U.S. v. Grubbs*, 547 U.S. 90, 95, 126 S. Ct. 1494, 164 L. Ed. 2d 195 (2006); *Zurcher v. Stanford Daily*, 436 U.S. 547, 556, 98 S. Ct. 1970, 56 L. Ed. 2d 525 (1978); *United States v. Rubio*, 727 F.2d 786 (9th Cir. 1983) (search warrant lacked probable cause when there was no evidence of a nexus between criminal activity and the defendant’s association with a motorcycle club).

B. The Affidavit Does Not Allege That the Ex Parte Communications Violated Anything

The background facts concerning the SONGS OII, the issuance of the SONGS search warrant, and initial misrepresentations contained in the Diaz Affidavit concerning the nature of the CPUC’s ex parte rules and the mischaracterization of the SONGS OII as adjudicatory, not ratesetting, are described in detail in the CPUC’s motion for in camera review of the supporting

1 affidavit and supporting papers, which are herein incorporated. After the CPUC filed its motion, 2 the Attorney General obtained a new warrant, which allegedly excised the misstatements. On 3 March 28, 2016, this Court allowed CPUC counsel to review both affidavits *in camera*. 4 Both affidavits allege that there is probable cause for the search warrant for 2 reasons: 5 (1) Peevey and Pickett knowingly engaged and conspired to engage in prohibited ex parte 6 communications, and (2) Peevey utilized his position to influence SCE to commit research 7 monies to UCLA as part of the settlement negotiations. In its pertinent part, the new affidavit 8 alleges:

9 1. There is probable cause to believe Stephen Pickett, former 10 Executive President of External Relations at SCE and Michael 11 Peevey, former President of CPUC, knowingly engaged in and 12 conspired to engage in prohibited ex parte communications 13 regarding the closure of a nuclear facility to the advantage of SCE 14 and to the disadvantage of other interested parties. And there is 15 probable cause to believe the evidence showing that Pickett 16 knowingly engaged in prohibited ex parte communications will 17 be found.

18 2. There is probable cause to believe Peevey utilized 19 his position to influence SCE's commitment of millions of dollars 20 to UCLA to fund the research program and there is probable cause 21 to believe such evidence documenting the commitment of research 22 money to UCLA or University of California as part of settlement 23 negotiations associated with closure of the nuclear facility will be 24 found. (Diaz Affidavit in Support of Search Warrant Issued on March 9, 2016) (Emphasis added.)

25 The affidavits conclude:

26 Based on the above evidence and facts, there is probable cause to 27 believe that PICKETT knowingly engaged and conspired to engage 28 in a reportable ex parte communication with PEEVEY in 29 POLAND to the overall advantage of SCE...”

30 The facts indicate that PEEVEY conspired to obstruct justice by 31 illegally engaging in ex parte communications, concealed ex 32 parte communications and inappropriately interfered with the 33 settlement process on behalf of the California Center for 34 Sustainable Communities at UCLA's Luskin Institute.

35 _____

36 ' The Attorney General did not provide the CPUC with a copy of the affidavit, CPUC counsel was only allowed to 37 review the affidavits *in camera*. The quoted passages were recorded in counsel's handwritten notes during the *in* 38 camera review and thus the affidavit itself has not been attached as an exhibit here.

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PEEVEY executed this plan through back channel communications and exertion of pressure, in violation of CPUC ex parte rules, and in obstruction of the due administration of laws.

Unlike the first affidavit, which at least (wrongly) claimed that the alleged ex parte communications violated CPUC rules and constituted a misdemeanor under Public Utilities Code section 2110, the new affidavit simply alleges and concludes that the ex parte communications were "prohibited" and "illegal" without citing any rule, law, or regulations prohibiting them. The applicable portion of the "Legal Framework" section, which was the only section the Attorney General revised to address the misstatements, only defines what an ex parte communication is; it does not cite any authority at all indicating that such communications were prohibited, much less criminal. The revised section solely provides:

Public Utilities Code Prohibitions on Ex Parte Communications

Ex parte communications are defined in the Public Utilities Code as "any oral or written communication between a decision maker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter." (Pub. Util. Code §1701.1(c)(4)).

The section is a non sequitur: it concludes that the ex parte communications were prohibited but provides absolutely no authority or reason for this point. There cannot be

probable cause to justify a search warrant when the affidavit completely fails to identify what rule the alleged conduct violated, much less a basis for why this constitutes a crime. The affidavit claims that there is probable cause that a crime was committed because Pevey and Pickett engaged in "unlawful" ex parte communications in Warsaw, Poland concerning what the terms of the SONGS settlement should cover. However, it utterly fails to establish that the ex parte communications were unlawful (as explained in the CPUC's original motion, they weren't) or how this amounts to criminal conduct.

The affidavit also fails to acknowledge that California Public Utilities Code 1701.3(c) and CPUC Rules of Practice and Procedure 8.3(c) permit ex parte communications in ratesetting cases such as the SONGS proceedings, with certain notice requirements to other parties, and that

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1 it is the sole responsibility of the party, not the CPUC Decision-maker such as a Commissioner,
2 to file and serve notice of the ex parte communication.

3 The Diaz Affidavit asserts that Peevey and Pickett allegedly “conspired to engage in a
4 reportable ex parte communication.” Assuming for the sake of argument they did agree to engage
5 in a reportable communication, this is not illegal. The California Public Utilities Code and CPUC
6 rules permit ex parte communications and require the party, not the CPUC official, to file notice
7 to other parties following the communication about the substance of the party’s, not the CPUC
8 Decision maker’s, communication or its content. Cal. Pub. Util. Code § 1701.1(c)(iii). In its
9 December 2015 Decision, the CPUC fined SCE \$16,740,000 for failing to report ex parte
10 communications, including the March 2013 discussion between Pickett and Peevey, and for
11 failing to serve the handwritten notes on the other parties. (Roberts Decl. ¶10, Ex. G.) SCE was
12 fined for failing to report, not for engaging in, the communications, further confirming that the
13 communication itself was permitted and not illegal. It is a legal impossibility that the
14 communications between Peevey and Pickett were a crime as the communications were permitted
15 when they took place. *People v. Jerome*, 160 Cal. App. 3d 1087, 1094 (1984) (“It follows that if
16 the statute only prohibited certain conduct, it is legally impossible to violate it by engaging in
17 different conduct.”)

18 Ex parte meetings in CPUC ratesetting proceedings are commonplace. In fact, there were
19 72 reportable ex parte communications between the Commissioners and various parties to the
20 SONGS settlement. (Roberts Decl. ¶9.) They were entirely proper. One cannot commit a crime
21 by agreeing to do something which is not a crime. **“It is fundamental that no one can be held**
22 **criminally liable for conspiracy to do acts that are perfectly lawful and to which there is no**
23 **criminal objective.”** *Fleming v. Superior Court*, 191 Cal. App. 4th 73, 101 (2010). Parties
24 cannot specifically intend to conspire or intend to commit an offense that is not illegal. *People v.*
25 *Redd*, 228 Cal. App. 4th 449, (2014); *People v. Jurado*, 38 Cal. 4th 72, 123 (2006); *U.S. v.*
26 *Vaghela*, 169 F.3d 729, 732 (11th Cir. 1999); *United States v. Galardi*, 476 F.3d 1072, 1079 (9th
27 Cir. 1973) (holding that when the statute does not apply to the alleged unlawful conduct, the
28 defendant cannot be charged with conspiracy to violate it).

1 The alleged ex parte meetings are lawful as determined by the state legislature and the
2 CPUC under California Public Utilities Code section 1701.3(c) and the CPUC Rules of Practice
3 and Procedure 8.3. The Attorney General cannot transmogrify a lawful meeting into a crime.
4 Thus, there is no criminal predicate for the search warrant.

5 **C. There is No Probable Cause for Obstruction of Justice**

6 Since it appears that the Attorney General has abandoned Public Utilities Code section
7 2110 as a predicate for the search warrant, the only other alleged criminal basis for the search
8 warrant is “obstruction of justice” pursuant to Cal. Penal Code section 182(a)(5), which makes it
9 a felony “to commit any act injurious to public health, to public morals, or to pervert or obstruct
10 justice, or the due administration of laws.” The affidavit alleges there is probable cause that
11 Peevey obstructed justice by: (1) engaging in prohibited ex parte communications with Pickett
12 concerning the possible SONGS settlement terms; and (2) pressuring SCE to include a
13 commitment of \$25 million to fund greenhouse gas research after the settlement had been fully
14 negotiated and agreed to by all parties. The extra money for the greenhouse gas research was
15 provided by SCE and its shareholders, not by ratepayers. Since none of this alleged conduct
16 violated any rule or law, administrative, civil or criminal, it cannot serve as a basis for an
17 obstruction of justice charge.

18 The California Supreme Court in *Lorenson v. Superior Court*, 35 Cal. 2d 49 (1950)
19 defined “obstruction of justice” by looking at common law and Title 7 of the Penal Code, which
20 addresses offenses such as bribery, escapes, rescues, perjury, and falsifying evidence:

21 Generally speaking, conduct which constitutes an offense against
22 public justice, or the administration of law includes both
23 malfeasance and nonfeasance by an officer in connection with the
24 administration of his public duties, and also anything done by a
25 person in hindering or obstructing an officer in the performance of
26 his official obligations.

25 In California, the statutes relating to ‘Crimes Against Public
26 Justice’ are found in part I, title [7], of the Penal Code. Bribery,
27 escapes, rescues, perjury, falsifying evidence, and other acts which
28 would have been considered offenses against the administration of
justice at common law are made criminal by legislative enactment.
Section 182, subdivision 5,^[7] is a more general section making
punishable a conspiracy to commit any offense against public
justice. The meaning of the words ‘to pervert or obstruct justice, or

1 the due administration of the laws' is easily ascertained by reference
2 either to the common law or to the more specific crimes enumerated
in part I, title [7].

3 *Lorenson v. Superior Court*, 35 Cal. 2d 49, 60 (1950) (upholding conviction of police officer who
4 conspired with other officers and criminal organization to assault and rob a victim and then hide
5 evidence of their collaboration concluding “[a] conspiracy with or among public officials not to
6 perform their official duty to enforce criminal laws is an obstruction of justice and an indictable
7 offense at common law .”) Thus, an obstruction of justice charge requires a criminal objective to
8 commit a specified unlawful act. *See People v. Redd*, 228 Cal. App. 4th 449, 457 (2014)
9 (explaining the limitations of obstruction of justice charges as outline in *Lorenson* and *Davis*).
10 Courts are clear that section 182(a)(5) is not so expansive as to criminalize any conspiracy to
11 commit an unlawful act, especially when the underlying conduct is not criminal. *See Redd*, 228
12 Cal. App. 4th at 463-64 (reversing conviction of conspiracy to obstruct justice charge based on
13 prisoner’s alleged conspiracy with prison cook to smuggle cell phones and tobacco into prison
14 because act of smuggling tobacco was not a crime under title 7 of the Penal Code or common law
15 and there was no evidence that the act perverted or obstructed justice or the due administration of
16 the laws).

17 *Fleming vs. Superior Court* is insightful. In this case, a school superintendent was
18 charged with misusing public funds and conspiracy to obstruct justice per Penal Code section
19 182(a)(5) for compiling lists of individuals who were circulating petitions to recall school district
20 board members. The Court concluded that because the superintendent was within his lawful
21 authority as superintendent to research the nature of the discontent and unrest within the district,
22 his conduct was not criminal and could not serve as a basis for a conspiracy to obstruct justice
23 charge, regardless of his political motive for gathering the information. The Court held:

24 [T]he conspiracy allegations under Penal Code section 182,
25 subdivision (a)(5) fails because Fleming and his assistant
26 superintendent agreed to do nothing more than acts which (1) they
27 had a legal right do in the first place, (2) they had no criminal
objective in doing, and (3) do not come anywhere near to
obstructing justice or the due administration of law in the first
place.

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The district attorney’s office has presented no evidence whatsoever that the lists were used in any political campaign, or that they were used to intimate anybody, or that any child in the District was in any way affected by those lists or their preparation. Their compilation was *not criminal*.

Id. at 105. *See also United States v. Goyal*, 629 F.3d 912, 922 (9th Cir. 2010) (conc. Opn. Of Kozinski, J.) (“This case has consumed an inordinate amount of taxpayer resources, and has no doubt devastated the defendant’s personal and professional life This is just one of a string of recent cases in which courts have found that federal prosecutors overreached by trying to stretch criminal law beyond its proper bounds. [Citations Omitted.] This is not the way criminal law is supposed to work. Civil law often covers conduct that falls in gray area of arguable legality. But criminal law should clearly separate conduct that is criminal from conduct that is legal.”)

The same concerns arise here. The affidavit fails to cite any authority which even suggests the alleged *ex parte* communications violated any rule, much less a criminal one. There is also nothing unlawful about a Commissioner, who is a gubernatorial appointee appointed to a policy position to lead and run the Commission, engaging in settlement discussions. No section of the *ex parte* rules or the settlement rules in the Public Utilities Code or the CPUC Rules of Practice and Procedure prohibit *ex parte* communications with a Commissioner about settlements. Neither does a Commissioner’s participation in an *ex parte* discussion regarding settlement dictate his recusal from voting on any proposed settlement. *See Decision Adopting Settlements On Marginal Cost, Revenue Allocation, and Rate Design*, No. 09-08-028 (August 20, 2009) at pp. 50-51 available at http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/106088.PDF; *Morongo Band of Mission Indians v. State Water Resources Control Bd.*, 45 Cal. 4th 731, 737 (2009) (decision-makers at administrative agencies are accorded a presumption of impartiality); *Assoc. of Nat. Advertisers, Inc. v. Fed. Trade Comm’n*, 627 F.2d 1151, 1170 (D.C. Cir. 1979). Indeed, even in civil court proceedings, judges engage in settlement discussions all the time. Are they obstructing justice?

It should also be noted that the affidavit fails to reveal the truth: that the utilities, SCE and SDG&E negotiated an arms-length settlement with the settling parties, which was reached on

1 March 27, 2014. See *Joint Motion of SCE, SDG&E, TURN, ORA, Friends of the Earth and*
2 *Coalition of California Utility Employees for Adoption of Settlement Agreement*, Investigation
3 No. 12-10-013 (April 3, 2014), Attachment 1 available at
4 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M089/K640/89640857.PDF>. The rate to be
5 paid by ratepayers had already been determined by the settling parties and was not changed. The
6 affidavit does not allege anywhere that Peevey, or anyone else, interfered with the settlement
7 negotiations among the parties. Rather, the Attorney General's complaint is that after the
8 settlement agreement was reached, Peevey further pressured the utilities to contribute an
9 additional \$25 million of shareholder funds towards funding existing greenhouse gas emission
10 research and that this was a modification suggested by the CPUC, prior to its approval of the
11 settlement agreement. See *Proposed Decision Approving Settlement Agreement As Amended and*
12 *Restated by Settling Parties*, Investigation No. 12-10-013 (October 9, 2014) available at
13 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M119/K054/119054541.PDF>. All of the
14 settling parties agreed to this term, which was a cost the utilities, e.g. SCE and SDG&E, not the
15 ratepayers absorbed. This provision was to fund greenhouse gas emission research since these
16 harmful emissions would increase due to the shutdown of the nuclear power plant and the
17 increased reliance on electric power plants, and thus served to benefit state residents. This
18 alleged conduct reflected the policy judgment of then-Commissioner Peevey, which was
19 ultimately supported by all of the CPUC Commissioners in their unanimous vote finding that the
20 amendment requiring SCE and SDG&E to pay for the research was in the public interest. See
21 *Decision Approving Settlement Agreement As Amended and Restated by Settling Parties* No.14-
22 11-040 (November 20, 2014) available at
23 <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M143/K336/143336799.PDF>; CPUC
24 Rules of Practice and Procedure 13.1(d) ("The Commission will not approve settlements, whether
25 contested or uncontested, unless the settlement is reasonable in light of the whole record,
26 consistent with the law, and in the public interest.")

27 The Attorney General does not allege that then-Commissioner Peevey's communications
28 about the greenhouse gas research were an illegal quid pro quo and cites no law or rules that

1 prohibit a Commissioner from suggesting amendments to a settlement to ensure that it serves the
2 public interest. The alleged conduct simply does not amount to criminal obstruction of justice.

3 The Attorney General's position that the alleged conduct, e.g., engaging in ex parte
4 communications and settlement negotiations, constitutes a crime raises serious due process
5 concerns. It is well established that due process is violated when a criminal statute does not give
6 fair warning of the conduct it intends to punish or when it is expanded to an interpretation beyond
7 what it says on its face. *Rogers v. Tennessee*, 532 U.S. 451, 457 (2001) ("A criminal statute must
8 give fair warning of the conduct it makes a crime.") (citing *Bouie v. City of Columbia*, 378 U.S.
9 347, 350 (1964)). *Marks v. United States*, 430 U.S. 188, 191-92 (1977) ("Deprivation of the right
10 to fair warning can result both from vague statutory language and from an unforeseeable and
11 retroactive judicial expansion of statutory language that appears narrow and precise on its face.
12 That persons have a right to fair warning of that conduct which will give rise to criminal penalties
13 is fundamental to our concept of constitutional liberty. As such, that right is protected against
14 judicial action by the Due Process Clause of the Fifth Amendment."); *Rathert v. Galaza*, 203 F.
15 App'x 97, 99 (9th Cir. 2006).

16 The Attorney General's attempt to transform lawful conduct, e.g., ex parte
17 communications permitted by statute and the CPUC rules, into the basis for alleging unlawful
18 conduct, distorts civil laws that permit ex parte meetings, into a mistaken basis for criminal
19 charges. These civil laws give no warning that failure to comply would result in criminal charges
20 for engaging in conduct the civil law permits. The Attorney General's assertion that a search
21 warrant should be issued based on its mischaracterization of the permissible nature of conduct at
22 issue under civil law presents grave due process concerns, and is at odds with the California and
23 U.S. Constitution bedrock concepts of constitutional and civil liberty.

24 **D. The CPUC, not Superior Court, Is the Appropriate Forum For Any Claims that the**
25 **Settlement Impeded Justice**

26 The "administration of justice" which was allegedly obstructed was a CPUC
27 administrative proceeding. The CPUC is unaware of any authority holding that the obstruction of
28 an administrative process can serve as a basis for a criminal obstruction of justice charge. Quite

1 the contrary. *See United States v. Meltsaf*, 435 F.3d 754, 756 (9th Cir. 1970) (federal obstruction
2 of justice charge is limited to pending **judicial** proceedings).²

3 The question of whether justice was obstructed or denied to non-participating parties or
4 the settling parties in the SONGS OII due to Peevey's conversations with SCE officials is one
5 currently and squarely before the CPUC. The legislature has invested the CPUC with the power
6 to enforce laws affecting public utilities. *Southern Cal. Edison Co. v. Peevey*, 31 Cal. 4th 781,
7 800 (2003) ("The PUC's authority derives not only from statute but from the California
8 Constitution which creates the agency and expressly gives it the power to fix rates for public
9 utilities.")

10 The California Public Utilities Code and the CPUC Rules of Practice and Procedure
11 expressly provide that a CPUC decision can be challenged by either an Application for
12 Rehearing, CPUC Rules 16.1-16.3, or a Petition for Modification, CPUC Rule 16.4, which
13 provides that an Application for Rehearing "shall set forth specifically the grounds on which the
14 applicant considers the order or decision of the Commission to be **unlawful or erroneous**, and
15 must make specific references to the record or law." (emphasis added); *see also* CPUC Rule
16 16.1(c); Cal. Pub. Util. Code §§ 1701, 1731-1733, 1735. A Petition for Modification "asks the
17 Commission to **make changes to an issued decision**" and "must concisely state the justification
18 for the requested relief." (emphasis added) CPUC Rules 16.4(a) and (b), *see also* Cal. Pub. Util.
19 Code §§ 1701 and 17-8, Cal. Const., art. XII, § 2. The Commission "may at any time, upon
20 notice to the parties, and with opportunity to be heard as provided in the case of complaints,
21 rescind, alter or amend any order or decision made by it." Cal. Pub. Util. Code § 1708.

22 Two parties to the SONGS OII proceedings have filed Petitions for Modifications seeking
23 to undo the settlement based on the very same ex parte communications between Peevey and SCE
24 officials. These petitions are currently pending before the CPUC. *See Alliance for Nuclear*

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26 ² The Ninth Circuit in *Meltsaf* held that, **although the statute refers to the broad range of "administration of**
27 **justice," it only prohibits specific types of impending acts and "[T]hus, not only must the broad term**
28 **administration of justice be limited to pending judicial proceedings, but also the manner in which the statute may**
be violated would only seem to be limited to intimidating actions. This conclusion would appear necessarily to
follow from the proposition that Section 1503, since it is a criminal statute, must be, and should be, construed
narrowly so that it can be upheld against the charges of vagueness. *Meltsaf*, 435 F.2d at 757.

1 *Responsibility's Petition for Modification of D.14-11-040*, Investigation No. 12-10-103 (April 27,
2 2015) available at
3 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M151/K340/151340427.PDF>; *Office of*
4 *Ratepayer Advocates Petition for Modification of D.14-11-04*, Investigation No. 12-10-104
5 (August 11, 2015) available at
6 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K072/154072678.PDF>.

7 In December 2015, after President Peevey's term had ended, the CPUC severely
8 sanctioned SCE in the amount of \$16,740,000 for failing to report (but not for engaging in) the ex
9 parte communications with Peevey. (Roberts Decl. ¶10, Ex. G.) The pending administrative
10 challenges to the Decision will not be heard by former Commissioner Peevey, who has served his
11 term and has been replaced by Commissioner Liane M. Randoph. The Commission thus has the
12 authority to determine the propriety of the ex parte communications and can rescind or amend the
13 Decision approving the settlement if it finds its process or justice to have been impeded, or that
14 the settlement was not "reasonable in light of the whole record, consistent with law, and in the
15 public interest." CPUC Rules of Practice and Procedure 12.1(d). Indeed, how incongruous
16 would it be if a prosecutor could unilaterally conclude, using a heightened criminal standard, that
17 a conversation obstructed justice, when the very body conducting the proceeding itself concluded,
18 using a lesser civil standard of proof, that the conversation did not even impede or affect its
19 administration of justice?

20 Notably, the only state courts having jurisdiction to review, correct, or annul a CPUC
21 decision are the Courts of Appeal and Supreme Court. Public Utilities Code section 1759
22 expressly provides:

23 **No court of this state, except the Supreme Court and the court**
24 **of appeal, to the extent specific in this article, shall have**
25 **jurisdiction to review, reverse, correct, or annul any order or**
26 **decision of the commission or to suspend or delay the execution**
or operation thereof, or to enjoin, restrain, or interfere with the
commission in the performance of its official duties, as provided
by law and the rules of court.

27 Thus, the proper forum for determining whether Peevey's communications with SCE
28 officials were at all improper or caused an unfair result is the CPUC, not the superior court. If the

1 parties are unhappy with the settlement, they can file with the CPUC a petition for modification,
2 as two parties have already done. After the CPUC determines the disposition of those pending
3 motions and petitions, those parties can appeal through the channels the state legislature has
4 deemed appropriate – the Court of Appeal or the California Supreme Court.

5 **E. The CPUC Has Fully Complied With the Search Warrant**

6 To date, the CPUC has produced over 1.1 million documents to the Attorney General,
7 nearly 60,000³ of which have been produced in response to the SONGS search warrant. Its
8 review team has reviewed nearly 1.5 million documents. This production has cost the CPUC
9 millions of dollars. Throughout the entire process, the CPUC has kept the Attorney General fully
10 informed as to the status of its review and production, explained in detail how it was conducting
11 the review, and completed what it said it would within the time frame it specified. (*See* Roberts
12 Decl. ¶¶11-16, Exs. H-P.) The Attorney General now requests that the CPUC search for and
13 review tens of thousands of additional documents, using fourteen additional search terms – only
14 recently provided the Attorney General. Many of these terms are not even called for by the
15 search warrant. For example, the Attorney General demands that the CPUC now search for and
16 review documents that trigger terms like “Aguirre”, “TURN”, “ORA”, “Japan” and “Mitsubishi”,
17 which extend **well beyond** the scope of the search warrant itself. (*Cf.* Roberts Decl. ¶4, Ex. C
18 with ¶16, Ex. P.) These new demands are nothing more than a fishing expedition by the Attorney
19 General, a last ditch effort to try to find some piece of evidence to justify a lengthy and expensive
20 investigation into conduct which was simply not criminal. Moreover, the Deputy Attorney
21 General admitted that the Special Agent investigating this matter is not actually looking at each
22 document produced, but merely scanning and running searches. Why, then has the CPUC been
23 forced to endlessly produce, and re-produce, documents that **no one** is looking at?

24 Currently, the outside attorney vendor charges \$45 an hour for attorney review of
25 documents. At the current rate of review, the charge comes to about \$.83 to review and
26 categorize a document. This is a per document, not per page rate. The CPUC estimates that the

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28 ³ 20,000 of these were documents the AG already had through another CPUC search warrant, but the AG insisted on
the CPUC re-producing.

1 most recent demands by the Attorney General will require review of an additional 160,000
2 documents. We estimate the cost to review these documents will approximate \$132,800. These
3 costs should be borne by the Attorney General if the CPUC is compelled to further review and
4 produce these documents. Cal. Civ. Proc. Code § 1033.5(c)(4). The CPUC also requests that any
5 further demands for documents by the Attorney General be presented to and approved by this
6 Court.

7
8 **II.**
CONCLUSION

9 For the reasons discussed above, the CPUC requests that the Court quash the SONGS
10 search warrant. Alternatively, the CPUC requests that the Court order the Attorney General to
11 pay for any additional costs incurred to review the remaining documents demanded and for the
12 Court to approve and monitor any additional demands made by the Attorney General.

13 Dated: April 4, 2016

DLA PIPER LLP (US)

14 By 

PAMELA NAUGHTON

REBECCA ROBERTS

Attorneys for Movant

California Public Utilities Commission

Last Day:

Superior Court of California		CASE ACTION SUMMARY			Clerk: Sheryl Humber # 282371	
Defendant's Name IN RE: SEARCH WARRANT CPUC					Case Number: SW-70763	
Date: 3/24/16	Div: 56W	Judge: William C. Ryan # R0158	Prosecutor:	Defense Atty:	Reporter:	Inter/ Language

Defendant In Court _____

Defendant 977(A) _____

Case called for: 1) MOTION TO VIEW SEARCH WARRANT AFFIDAVIT
IN CAMERA
2) MOTION TO SEAL PLEADINGS AND RECORDS , EACH
FILED BY MOVANT, CALIFORNIA PUBLIC UTILITIES
COMMISSION

3) ^{PEITION} ~~MOTION~~ TO ORDER PUC to comply w/ SEARCH WARRANT. —
Set for 4/18/16

#1 o/c as moot.

#2 granted



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FILED
Superior Court of California
County of Los Angeles

MAR 21 2016

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

14 **IN RE: JUNE 5, 2015 SEARCH WARRANT**
15 **NO. 70763 ISSUED TO CALIFORNIA**
16 **PUBLIC UTILITIES COMMISSION**

Case No.

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

Date: April 18, 2016
Time: 10:00 a.m.
Department: 56
Judge: Hon. David V. Herriford

FILED UNDER SEAL

21 **TO THE HONORABLE JUDGE OF THE SUPERIOR COURT OF LOS ANGELES,**
22 **AND TO RESPONDENT AND ITS ATTORNEY OF RECORD:**

23 The California Department of Justice, representing the People of the State of California,
24 hereby petitions the Court for an Order Compelling the California Public Utilities Commission to
25 comply with the search warrants issued by this Court on June 5, 2015, and March 9, 2016.

26 ///

27 ///

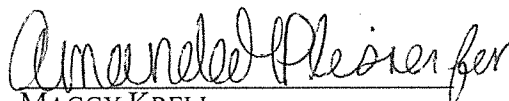
ORIGINAL

1 Under Penal Code section 1523, a "search warrant is an order in writing, in the name of the
2 people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a
3 person or persons, a thing or things, or personal property, and, in the case of a thing or things or
4 personal property, bring the same before the magistrate." By virtue of the warrant, CPUC is
5 obligated to produce the evidence described therein.

6 Therefore, the Attorney General's Office respectfully requests that this Court compel
7 CPUC to allow DOJ to complete its search of property described in the warrant, and to provide a
8 privilege log to DOJ describing which documents are being withheld.

9
10 Dated: March 21, 2016

Respectfully Submitted,

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12 
13 MAGGY KRELL
14 Deputy Attorney General

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27 LA2014118251
61919174.doc

1 KAMALA D. HARRIS
Attorney General of California
2 AMANDA PLISNER
Deputy Attorney General
3 MAGGY KRELL
Deputy Attorney General
4 State Bar No. 226675
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 327-1995
7 Fax: (916) 322-2368
E-mail: Maggy.Krell@doj.ca.gov

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

11
12 **IN RE: JUNE 5, 2015 SEARCH WARRANT**
13 **NO. 70763 ISSUED TO CALIFORNIA**
14 **PUBLIC UTILITIES COMMISSION**

Case No.

DECLARATION OF SPECIAL AGENT
REYE DIAZ
FILED UNDER SEAL

15
16 I declare as follows:

17 1. That I, REYE DIAZ, am a Special Agent with the California Department of Justice
18 currently assigned to investigate whether crimes were committed by individuals employed by the
19 California Public Utilities Commission and others.

20 2. That on June 5, 2015, I served the CPUC and their legal representatives with search
21 warrant #70763, signed by this Court. (See Exhibit A, June 5, 2015 Search Warrant.)

22 3. That as of June 24, 2015, I reported to the Court that CPUC's legal counsel advised of
23 its inability to comply with the search warrant because of limited resources and concurrent
24 demands of federal subpoenas and public records act requests. (See Exhibit B, Search Warrant
25 Return and Inventory.)

26 4. That as of August 7, 2015, I reported to the Court that CPUC's legal counsel advised
27 that CPUC was still unable to comply with the search warrant. (See Exhibit C, Search Warrant
28 Return and Inventory.)

1 5. That as of September 8, 2015, CPUC's new legal representatives, DLA Piper,
2 submitted documents and records responsive to search warrant #70763. Counsel for CPUC also
3 indicated that they would continue reviewing documents and provide additional records to the
4 Attorney General's Office. (See Exhibit D, Search Warrant Return and Inventory.)

5 6. That on October 13, 2015, I participated in a call with CPUC legal representatives to
6 discuss their lack of compliance with the search warrant. In response, DLA Piper sent our office
7 a summary of evidence produced responsive to other search warrants and subpoenas, claiming
8 that at least 20,373 previously produced documents were responsive to search warrant #70763. In
9 their letter, CPUC's counsel proposed a list of search terms and stated that they would finish
10 production of an earlier search warrant, and then produce the remaining evidence responsive to
11 search warrant #70763 on a rolling basis. (See Exhibit E, October 16, 2015 letter from DLA
12 Piper.)

13 7. That on October 22, 2015, our office sent CPUC legal representatives a letter
14 memorializing our October 13, 2015 conversation, and laying out our expectation that the
15 remaining evidence be produced in a timely manner. (See Exhibit F, October 22, 2015 letter to
16 DLA Piper)

17 8. That on December 21, 2015, CPUC produced evidence related to search warrant
18 #70763 using the search terms provided in Exhibit E. (See Exhibit G, Search Warrant Return and
19 Inventory.)

20 9. That following an earlier discussion of the search terms used by DLA Piper, and
21 based on our review of the evidence, the Attorney General's Office provided CPUC's legal
22 representatives with additional search terms. (See Exhibit H, December 22, 2015 letter to DLA
23 Piper.)

24 10. That following our December 22, 2015 letter, I was advised by Deputy Attorney
25 General Deborah Halberstadt of a phone call she had with CPUC counsel on January 4, 2016.
26 During that call, counsel for CPUC stated that she was moving our search warrant to "the end of
27 the line." She refused to agree to a timeline for production on our additional search terms, and
28

1 refused our alternative proposal that CPUC forego search terms and send us all non-privileged
2 evidence responsive to our warrant.

3 11. That on February 17, 2016, CPUC legal counsel served the Attorney General's Office
4 with a sealed motion to view the affidavit for search warrant #70763 indicating that they planned
5 to challenge this warrant based on an incorrect statement contained therein.

6 12. That on February 24, 2016, CPUC's legal counsel mailed the Attorney General's
7 office what it characterized as "the remaining documents we identified as being responsive to the
8 SONGS search warrant" referring to search warrant #70763. (See Exhibit I, February 24, 2016
9 letter from DLA Piper.) However, the enclosed evidence did not include documents responsive
10 to the search terms provided by the Attorney General on December 22, 2015. (See Exhibit H,
11 December 22, 2015 letter to DLA Piper.)

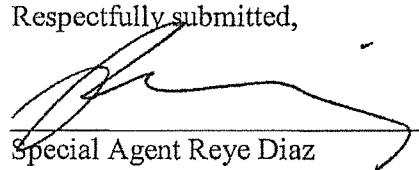
12 13. That on March 9, 2016, the Attorney General's deputies met with DLA Piper
13 attorneys in person to discuss their sealed motion and whether CPUC was still refusing to finish
14 compliance with search warrant #70763. I was not present during this discussion, but our Deputy
15 Attorneys General informed me that the CPUC attorneys indicated that they would not comply,
16 and that they intended to challenge the underlying search warrant, based on a misstatement
17 contained within the warrant.

18 14. That on March 9, 2016, the Attorney General's Office obtained a new search warrant
19 from this Court for the same records sought in warrant #70763. The new warrant excluded the
20 statement that CPUC counsel had alleged was incorrect. (See Exhibit J, March 9, 2016 Search
21 Warrant.)

22 15. That after serving CPUC legal representatives with the new search warrant, CPUC
23 counsel stated unequivocally that they still did not intend to comply with either warrant.
24

25 Dated: March 21, 2016

Respectfully submitted,

26
27 
Special Agent Reye Diaz

28 LA2014118251/12174264.doc

EXHIBIT A

SW No. 70763

STATE OF CALIFORNIA - COUNTY OF LOS ANGELES

SEARCH WARRANT AND AFFIDAVIT

(AFFIDAVIT)

Special Agent Reye Diaz, California Department of Justice, swears under oath that the facts expressed by him/her in this Search Warrant, and in the attached and incorporated statement of probable cause consisting of 20 pages, are true and that based thereon he/she has probable cause to believe and does believe that the property and/or person described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

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

[Signature] 6/5/15
(Signature of Affiant)

FILED
JUN 24 AM 9 16
CENTRAL CALIFORNIA
LOS ANGELES SUPERIOR COURT

(SEARCH WARRANT)

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

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

YOU ARE THEREFORE COMMANDED TO SEARCH:

See attached Exhibit "A"

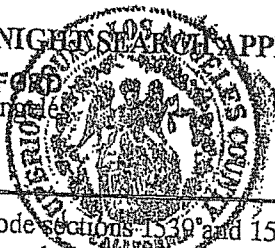
FOR THE FOLLOWING PROPERTY:

See attached Exhibit "A"

SEARCH WARRANT (Page 2)

AND TO SEIZE IT IF FOUND and bring it forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to as true and subscribed before me this 5th day of June, 2015, at 10:57 AM P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

[Signature], NIGHT SEARCH APPROVED: YES [] NO [X]
(Signature of Magistrate) DAVID V. HERRIFORD (Magistrate's Initials)
Judge of the Superior Court - County of Los Angeles



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

For further information concerning this search warrant, contact the officer whose name appears on the warrant, Special Agent Reye Diaz at (916) 916-322-2686 or at reye.diaz@doj.ca.gov

EXHIBIT "A"

California Public Utilities Commission
San Francisco Office (Headquarters)
Or Legal Representatives of CPUC
505 Van Ness Avenue
San Francisco, CA 94102
MAY BE SERVED VIA EMAIL or FAX

FOR THE FOLLOWING PROPERTY:

Any and all records from January 31, 2012 until January 31, 2015, involving the San Onofre Nuclear Generating Station (SONGS) closure settlement agreement, the 2013 meeting between Stephen PICKETT and Michael PEEVEY in Poland, communication(s) pertaining to the determination of when and why SONGS would be closed, commitment of monies for research as a result of the closure of SONGS, and communication(s) pertaining to the settlement of the SONGS Order Instituting Investigation (OII). These records are to include:

1. CPUC will search emails to or from the following individuals:
 - a. Robert Adler – General Counsel, Edison International (now retired)
 - b. Ted Craver – Chairman, President, and Chief Executive Officer, Edison International
 - c. Laura Genao – Director, Regulatory Affairs, SCE
 - d. Michael Hoover – Senior Director of State Energy Regulation, SCE
 - e. Ron Litzinger – President, SCE (now President of Edison Energy)
 - f. R.O. Nichols – Senior Vice President for Regulatory Affairs, SCE
 - g. Stephen Pickett – Executive Vice President, External Relations, SCE (now retired)
 - h. Gary Schoonyan – Director, Strategic Policy Analysis, SCE (now retired)
 - i. Jim Scilacci – Chief Financial Officer, Edison International
 - j. Les Starck – Senior Vice President Regulatory Policy & Affairs, SCE (now retired)
 - k. Bert Valdman – Senior Vice President, Strategic Planning, Edison International (no longer employed)
 - l. Gaddi Vasquez – Senior Vice President, Government Affairs, Edison International
 - m. Russ Worden – Director of External Relations, SCE
 - n. Ron Olson, former Board member, Edison and Edison International
 - o. Michael Peevey (former President of CPUC)
 - p. Michel Florio (Commissioner, CPUC)
 - q. Melanie Darling (ALJ, CPUC)
 - r. Sepideh Khosrowjahi (Chief of Staff, Commissioner Florio)
 - s. Paul Clanon (Executive Director, CPUC)
 - t. Carol Brown (former Chief of Staff to President Peevey)
 - u. Audrey Lee (former Advisor to President Peevey)
 - v. Edward Randolph (Director of Energy, CPUC)
2. CPUC will identify employees who were involved in the implementation of the greenhouse gas research provisions of the SONGS OII settlement, specifically with respect to CPUC's understandings or intentions with regard to directing funding to UCLA. CPUC will propose to the

SEARCH WARRANT (Page 4)

Attorney General's Office additional employees whose email they will collect for this purpose.

3. CPUC will collect and review emails from the above 22 custodians, plus any other custodians identified pursuant to paragraph 2, that are dated from January 31, 2012 through January 31, 2015.
4. Handwritten notes, documents saved to a hard drive or to a network location, and data on smart phones that is not believed to exist in other locations. CPUC will advise the Attorney General's Office of its progress and plan for collection and review of any such documents.
5. With respect to the categories of documents specified in the search warrant, CPUC will search for, review and produce responsive documents as follows:
 - a. As to documents involving the SONGS settlement, CPUC will produce (1) documents constituting or referring to communications with SCE about the OII prior to execution of the settlement on March 27, 2014 (excluding on-the-record communications such as SCE pleadings filed with the CPUC); and (2) documents constituting communications with TURN or ORA referencing communications from Peevey regarding SONGS or UC in the context of the settlement negotiations up to March 27, 2014.
 - b. As to documents pertaining to the Poland trip in March 2013, CPUC will produce documents constituting or referring to communications during that trip that relate to SONGS. These documents will include any communications or materials regarding SONGS made in anticipation of the trip, any documents or communications regarding SONGS that occurred during the trip, and any communications or materials regarding SONGS created after the trip ended.
 - c. As to the documents regarding funding of research in connection with the SONGS settlement, CPUC will produce documents and all communications that (1) constitute or refer to communications with SCE or UCLA regarding greenhouse gas research as part of the SONGS settlement (excluding on-the-record communications such as pleadings filed with the CPUC and drafts of same; (2) refer to SCE's contributing to the UCLA Luskin Institute at UCLA, the University of California, UCLA's Institute of the Environment and Sustainability, or the California Center for Sustainable Communities at UCLA, in connection with the SONGS settlement; and (3) constitute advocacy directed to the CPUC by local governmental agencies in support of greenhouse gas research as part of the SONGS settlement.

LOCATION #1:

**California Public Utilities Commission
San Francisco Office (Headquarters)
Or Legal Representatives of CPUC
505 Van Ness Avenue
San Francisco, CA 94102
MAY BE SERVED VIA EMAIL or FAX**

FOR THE FOLLOWING PROPERTY:

Any and all records from January 31, 2012 until January 31, 2015, involving the San Onofre Nuclear Generating Station (SONGS) closure settlement agreement, the 2013 meeting between Stephen PICKETT and Michael PEEVEY in Poland, communication(s) pertaining to the determination of when and why SONGS would be closed, commitment of monies for research as a result of the closure of SONGS, and communication(s) pertaining to the settlement of the SONGS Order Instituting Investigation (OI). These records are to include:

1. CPUC will search emails to or from the following individuals:
 - a. Robert Adler – General Counsel, Edison International (now retired)
 - b. Ted Craver – Chairman, President, and Chief Executive Officer, Edison International
 - c. Laura Genao – Director, Regulatory Affairs, SCE
 - d. Michael Hoover – Senior Director of State Energy Regulation, SCE
 - e. Ron Litzinger – President, SCE (now President of Edison Energy)
 - f. R.O. Nichols – Senior Vice President for Regulatory Affairs, SCE
 - g. Stephen Pickett – Executive Vice President, External Relations, SCE (now retired)
 - h. Gary Schoonyan – Director, Strategic Policy Analysis, SCE (now retired)
 - i. Jim Scilacci – Chief Financial Officer, Edison International
 - j. Les Starck – Senior Vice President Regulatory Policy & Affairs, SCE (now retired)
 - k. Bert Valdman – Senior Vice President, Strategic Planning, Edison International (no longer employed)
 - l. Gaddi Vasquez – Senior Vice President, Government Affairs, Edison International
 - m. Russ Worden – Director of External Relations, SCE
 - n. Ron Olson, former Board member, Edison and Edison International
 - o. Michael Peevey (former President of CPUC)
 - p. Michel Florio (Commissioner, CPUC)
 - q. Melanie Darling (ALJ, CPUC)
 - r. Sepideh Khosrowjah (Chief of Staff, Commissioner Florio)
 - s. Paul Cianon (Executive Director, CPUC)
 - t. Carol Brown (former Chief of Staff to President Peevey)
 - u. Audrey Lee (former Advisor to President Peevey)

v. Edward Randolph (Director of Energy, CPUC)

2. CPUC will identify employees who were involved in the implementation of the greenhouse gas research provisions of the SONGS OII settlement, specifically with respect to CPUC's understandings or intentions with regard to directing funding to UCLA. CPUC will propose to the Attorney General's Office additional employees whose email they will collect for this purpose.
3. CPUC will collect and review emails from the above 22 custodians, plus any other custodians identified pursuant to paragraph 2, that are dated from January 31, 2012 through January 31, 2015.
4. Handwritten notes, documents saved to a hard drive or to a network location, and data on smart phones that is not believed to exist in other locations. CPUC will advise the Attorney General's Office of its progress and plan for collection and review of any such documents.
5. With respect to the categories of documents specified in the search warrant, CPUC will search for, review and produce responsive documents as follows:
 - a. As to documents involving the SONGS settlement, CPUC will produce (1) documents constituting or referring to communications with SCE about the OII prior to execution of the settlement on March 27, 2014 (excluding on-the-record communications such as SCE pleadings filed with the CPUC); and (2) documents constituting communications with TURN or ORA referencing communications from Peevey regarding SONGS or UC in the context of the settlement negotiations up to March 27, 2014.
 - b. As to documents pertaining to the Poland trip in March 2013, CPUC will produce documents constituting or referring to communications during that trip that relate to SONGS. These documents will include any communications or materials regarding SONGS made in anticipation of the trip, any documents or communications regarding SONGS that occurred during the trip, and any communications or materials regarding SONGS created after the trip ended.
 - c. As to the documents regarding funding of research in connection with the SONGS settlement, CPUC will produce documents and all communications that (1) constitute or refer to communications with SCE or UCLA about greenhouse gas research as part of the SONGS settlement (excluding on-the-record communications such as pleadings filed with the CPUC and drafts of same); (2) refer to SCE's contributing to the UCLA Luskin Institute at UCLA, the University of California, UCLA's Institute of the Environment and Sustainability, or the California Center for Sustainable Communities at UCLA, in connection with the SONGS settlement; and (3) constitute advocacy directed to the CPUC by local governmental agencies in support of greenhouse gas research as part of the SONGS settlement.

I declare under penalty of perjury, under the laws of the State of California, that foregoing facts are true and correct to the best of my knowledge and belief.

Reviewed by Deborah Halberstadt
Deputy Attorney General
California Department of Justice


 6/5/15
Special Agent Reye Eugene Diaz
Criminal Law Division
California Department of Justice

EXHIBIT B

70763

SUPERIOR COURT OF CALIFORNIA

County of LOS ANGELES

Search Warrant
Sealing Order

FILED
2015 JUN 24 AM 9 16
LOS ANGELES SUPERIOR COURT

Warrant No. _____

Place to be searched: CALIFORNIA PUBLIC UTILITIES COMMISSION
505 VAN NUSS AVE. SF, CA 94102

Application for Sealing Order: I hereby request that the following document(s) submitted in support of the requested search warrant be sealed pending further order of the court:

Affidavit

Grounds for order: I believe that the sealing of the above document(s) is warranted for the following reasons:

PUBLIC INTEREST: Sealing serves the following public interest:

- Protect a confidential informant (Evid. Code § 1041)
- Conceal official information: (Evid. Code § 1040)

PREJUDICE TO PUBLIC INTEREST: There exists a substantial probability that this public interest would be prejudiced if the information contained in this document(s) is not sealed.

NARROWLY TAILORED: I do not believe it would be possible to release any of the sealed information without prejudicing this public interest.

Declaration: I declare under penalty of perjury that the above information is true.

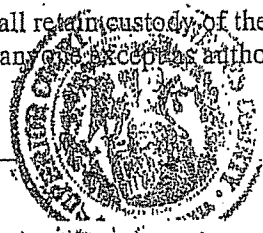
Date 6/15/15

Affiant [Signature]

Order: Pursuant to Rule 2.550 of the California Rules of Court, the document(s) identified above shall be sealed and retained in the following manner pending further order of the court:

- (1) The document(s) shall be sealed in an envelope with a copy of this Order affixed to the front of the envelope; and
- (2) The Clerk of the Court shall retain custody of the envelope in a secure place and shall not permit it to be opened by anyone except as authorized by written order of the Court.

Date June 5, 2015



[Signature]
Judge of the Superior Court
DAVID V. HERRIFORD

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA

70763

County of Los Angeles

SEARCH WARRANT RETURN
and
INVENTORY

Search Warrant No.
Issuing Magistrate: David V. Herriford
Date warrant issued: 6/5/15
Date warrant executed: 6/5/15
Location/Vehicles/Persons served and title:
California Public Utilities Commission
San Francisco Office (HQ)
505 Van Ness Ave.
San Francisco, CA 94102
Manner of service: Served CPUC Legal Counsel/Sheppard Mullin via email.

I, Special Agent Reye Diaz, Office of the Attorney General, the affiant for this search warrant, state: The information listed above is correct and during the execution of the search warrant, the following property was seized:

Unable to obtain evidence at this time. 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. Despite requests, CPUC has still not provided a specific time frame as to when documents will be provided as ordered by the Court. Your affiant will update the Court with a filing of an additional search warrant return.

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

Date: 6/24/2015

Reye Diaz AG #10
Special Agent Reye Diaz AG#10
Affiant

DAVID R. FIELDS
Judge of the Court

Penal Code § 1537

DAVID R. FIELDS



FILED
2015 JUN 24 AM 9 16
CENTRAL CRIMINAL
LOS ANGELES SUPERIOR COURT

Reviewed by: Deputy Attorney General Maggy Krell

SUPERIOR COURT OF CALIFORNIA

County of Los Angeles

Rollback
10763

SEARCH WARRANT RETURN
and
INVENTORY

Search Warrant No. 70763

Issuing Magistrate: David V. Herriford

Date warrant issued: 6/5/15

Date warrant executed: 6/5/15

Location/Vehicles/Persons served and title:

California Public Utilities Commission
San Francisco Office (HQ)
505 Van Ness Ave.
San Francisco, CA 94102

Manner of service: Served CPUC Legal Counsel/Sheppard Mullin via email.

FILED
2015 AUG 7 AM 9 28
CENTRAL CRIMINAL
LOS ANGELES SUPERIOR COURT

I, Special Agent Reye Diaz, Office of the Attorney General, the affiant for this search warrant, state: The information listed above is correct and during the execution of the search warrant, the following property was seized:

On June 24, 2015, your affiant reported to the court: Unable to obtain evidence at this time. 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. Despite requests, CPUC has still not provided a specific time frame as to when documents will be provided as ordered by the Court. Your affiant will update the Court with a filing of an additional search warrant return.

As of August 7, 2015, after multiple requests, and two months after the search warrant was served on CPUC, no records have been produced to your affiant as required by California law. No extension has been requested and no indication has been given as to when the records will be produced to your affiant. Your affiant will update the Court with a filing of an additional search warrant return.

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

Date: 8/7/2015



Special Agent Reye Diaz AG#10
Affiant

Michael E. Pastor
Judge of the Court
MICHAEL E. PASTOR

Penal Code § 1537

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA

County of Los Angeles

ROLLBACK
70763

SEARCH WARRANT RETURN
and
INVENTORY

Search Warrant No. 70763

Issuing Magistrate: David V. Herriford

Date warrant issued: 6/5/15

Date warrant executed: 6/5/15

Location/Vehicles/Persons served and title:

California Public Utilities Commission
San Francisco Office (HQ)
505 Van Ness Ave.
San Francisco, CA 94102

Manner of service: Served CPUC Legal Counsel/Sheppard Mullin via email.

FILED
2015 SEP 25 AM 9 51
GENERAL
LOS ANGELES COUNTY COURT

I, Special Agent Reye Diaz, Office of the Attorney General, the affiant for this search warrant, state: The information listed above is correct and during the execution of the search warrant, the following property was seized:

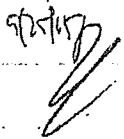
On June 24, 2015, your affiant reported to the court: Unable to obtain evidence at this time. CPUC legal counsel advises that due to limited resources, and the concurrent demands of federal subpoenas and public records act requests, the evidence is not currently available. Despite requests, CPUC has still not provided a specific time frame as to when documents will be provided as ordered by the Court. Your affiant will update the Court with a filing of an additional search warrant return.

As of August 7, 2015, after multiple requests, and two months after the search warrant was served on CPUC, no records have been produced to your affiant as required by California law. No extension has been requested and no indication has been given as to when the records will be produced to your affiant. Your affiant will update the Court with a filing of an additional search warrant return.

On September 10, 2015, CPUC legal representatives, DLA Piper US LLP, in response to this search warrant, submitted documents and records to the California Attorney General's Office. As more documents are received, your affiant will update the Court with a filing of an additional search warrant return.

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

Date: 9/24/2015



Special Agent Reye Diaz AG#10

Judge of the Court



M.L. VILLAS

Penal Code § 1537

EXHIBIT E



DLA Piper LLP (US)
401 B Street, Suite 1700
San Diego, California 92101-4297
www.dlapiper.com

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

October 16, 2015

OUR FILE NO. 393011-000001

CONFIDENTIAL

Ms. Maggy Krell, Deputy Attorney General
Ms. Deborah Halberstadt, Deputy Attorney General
Reye Diaz, Special Agent
Office of the Attorney General
1300 I Street
Sacramento, California 95814
maggy.krell@doj.ca.gov
deborah.halberstadt@doj.ca.gov
reye.diaz@doj.ca.gov

Dear All,

As we discussed with Special Agent Diaz and Ms. Halberstadt on Tuesday, October 13, below is a summary of the CPUC's production to date in response to the SONGS search warrant issued on June 5, 2015. Also below is a summary of our proposal to streamline the review and production of (1) the deleted emails recovered from the data seized pursuant to the first search warrant issued in November 2014 and (2) the approximately 100,000 documents that remain to be reviewed in response to this search warrant.

I. **Compliance with the SONGS Search Warrant**

First, as we informed you during our call and explained in our September 29, 2014 letter, the California Attorney General has a substantial volume of documents responsive to the SONGS search warrant (by our estimate, over 20,000 documents) already in its possession due to the fact that it initially seized a number of computers and hard drives as a result of the November 5, 2014 warrant. The items seized were computers, hard drives, and other devices of certain custodians such as former Commission President Michael Peevey, Michel Florio, Carol Brown, etc. Since your office seized these documents, it obtained everything on them, including any documents relating to SONGS. Per the CPUC's prior agreement with the Attorney General's office, you provided us with copies of everything initially seized and allowed us to review documents that triggered certain terms which may indicate that a document is privileged. Following this agreed upon protocol, we have produced over a million documents back to your office to date (approximately 845,000 which did not trigger any potentially privileged terms and approximately 131,000 which were reviewed for privilege and then produced.)

Using our document review platform tool, we applied relevant SONGS terms to the documents we had already produced back to you as of July 31, 2015 from the first search warrant. Our term search results identified approximately 20,373 documents. So, even before the CPUC made any production to your office specifically in response to the SONGS search warrant, your office already had a substantial volume of responsive documents in your possession. Please note that this search result does NOT include



Ms. Maggy Krell, Deputy Attorney General
October 16, 2015
Page Two

additional documents the CPUC produced to you in response to the November 5, 2014 search warrant on September 24, 2015. So, it is highly likely you have even more SONGS responsive documents in your possession.

Second, on September 8, 2015, the CPUC produced approximately 19,335 documents to your office in response to the SONGS search warrant. This production consisted of documents that referenced SONGS search terms that had been produced in prior productions to federal authorities.

Third, the CPUC intends to make another production in response to the SONGS search warrant by the end of the month. In order to respond to the SONGS search warrant, CPUC pulled emails and documents from its servers from the specified CPUC employees, plus other CPUC employees known to be involved with the SONGS Oil settlement or greenhouse gas provisions. We also extracted communications to, from, and/or copying the SoCal Edison employees listed in the search warrant. This data was exported into a larger database. There are currently several million documents in this database.

To efficiently and effectively respond to the search warrant, the CPUC applied SONGS search terms to the emails and other documents of the 22 identified custodians, plus the additional employees identified by the CPUC. We have also gathered hard copy documents from the identified custodians and will be producing these documents in the next production.

We will continue to produce documents responsive to the SONGS search warrant on a rolling basis, after we have completed our production in response to the November 2014 search warrant, per your instruction.

II. **Streamlining Production on the November 5, 2014 Search Warrant**

As we discussed on our call, the CPUC has identified approximately 321,000 deleted and recovered emails from the material initially seized pursuant to the November 5, 2014 search warrant. You agreed that the CPUC may limit its review and production of these documents to only those which trigger terms related to the first search warrant and the SONGS search warrant. Our proposed terms are attached as Exhibit A.

Additionally, we estimate that we have approximately 100,000 documents that remain to be reviewed in response to the November 2014 search warrant. It will greatly streamline the process and reduce expenses to filter those 100,000 documents using the terms in Exhibit A. We are open to discussing any additional search terms with you. In the meantime, we will proceed with the filtering process.

Once we finalize the most recent production on SONGS, our priority will be completing our review of the documents responsive to the first search warrant. Once we have completed that review, we will discuss



Ms. Maggy Krell, Deputy Attorney General
October 16, 2015
Page Three

our next steps for completing production in response to grand jury subpoena #2 and the SONGS search warrant.

Please let us know if you have any questions, concerns or comments regarding the proposed search terms. Thank you.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'Pamela Naughton', written over the printed name.

Pamela Naughton
Partner

Admitted In California Bar

WEST262193877.1

EXHIBIT A

SONGS*

"San Onofre"

"12-10-013"

"1210013"

Unit2*

"Unit 2"

Poland

Warsaw

"Bristol Hotel"

"greenhouse"

(green* w/3 house)

"ghg"

(fund* w/3 research)

"UC"

"UCLA"

(University w/3 California)

"Luskin"

"IES"

(Institute w/3 Environment w/3 Sustainability)

((Institute w/3 Environment) w/2 Sustainability)

"CCSC"

(California w/3 Center w/3 Sustainable w/3 Communities)

((((California w/3 Center) w/2 Sustainable) w/3 Communities)

"CFEE"

(California w/3 Foundation w/5 Environment w/5 Economy)

((((California w/3 Foundation) w/2 Environment) w/3 Economy)

HECA

Annual w/3 dinner

Cherry

Judge w/3 Long

Judge w/3 Wong

*sce.com

*edisonintl.com

*sdge.com

*pge.com

*Semprautilities.com

EXHIBIT F

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: (510) 622-2270
E-Mail: Deborah.Halberstadt@doj.ca.gov

October 22, 2015

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

RE: California Public Utilities Commission

Dear Ms. Naughton:

Thank you for speaking with us last week, and for your follow up letter. We appreciate this ongoing conversation, as we have been deeply concerned regarding CPUC's compliance with our November 4, 2014 and June 5, 2015 search warrants.

We recognize that there are voluminous documents to be reviewed. To give you some background, as the third CPUC counsel we have worked with, in December of 2014 after waiting over a month for initial production from our first CPUC search warrant, we offered to create an internal "taint team" within the Office of the Attorney General, completely separate from the investigating team, to review the seized evidence for privilege. We have successfully used this methodology with other entities in this and in other cases. However, CPUC opposed this option and insisted that CPUC be the ones to conduct the review. Moreover, during these initial discussions, CPUC counsel committed to producing evidence efficiently on a rolling basis.

Concerned about CPUC's time table, we also proposed, drafted, and circulated a Confidentiality Agreement, whereby CPUC and the Office of the Attorney General would have agreed that any potentially privileged information obtained from CPUC by the Office of the Attorney General could be reviewed without waiver of any privilege, and that any privileged material would be maintained as confidential investigatory material. This solution too has worked in other cases. CPUC refused to agree to this option.

On March 2, 2015, Deputy Attorney General Maggy Krell personally met with President Picker to re-offer the Confidentiality Agreement and explain the difficulty we were having investigating this case while being delayed and hampered by the CPUC's lack of compliance. While expressing an interest in cooperating, on advice of several attorneys, President Picker would not agree to the Confidentiality Agreement.

October 22, 2015

Page 2

Over the subsequent months, we repeatedly requested the production of documents responsive to the November 4, 2014 search warrant. In February 2015 we were told we would receive a production of the potentially privileged documents that had already been screened, by the end of the month. No such production was made. In March, we requested an update and were informed that CPUC expected to begin a rolling production of materials responsive to the November search warrant in May. On May 26, 2015 we requested another update; at that point we still had not received any privilege-reviewed material in response to the search warrant. CPUC finally made its first production of privilege-reviewed material on May 29, 2015. In late June, CPUC notified us that it intended to make another partial production of potentially privileged material in late June or early July. Despite numerous requests from our office in June and July 2015 for a timeline as to when CPUC intended to complete its responses to the November search warrant, we were told only that CPUC was "well on its way." Meanwhile, CPUC was served with a further search warrant on June 5, 2015, where the court ordered CPUC to turn over records related to SONGS. Despite multiple requests, CPUC failed to provide any specific time line or production relevant to that search warrant, stating only that they "are working on it" and are "overwhelmed" with requests.

In late August, 2015, we received notification that CPUC had hired a new law firm, and that your firm, DLA Piper would now be representing CPUC. We renewed our request for a time line and specifics about how many documents were still in the queue to be privilege reviewed.

Finally, on September 29, 2015, we received your letter stating, "there is no way to streamline this process unless your office allows us to suspend our review and deem the search warrant complied with." As I noted in our call, given the history of CPUC's dilatory response to the search warrant, we do not intend to suspend review, and we do not deem the search warrant complied with. In order to streamline the process, we again offered to provide an internal taint team or to sign a confidentiality agreement. You appeared to decline both options. You stated that you believed CPUC could finalize its review of the 103,000 documents, and the additional 20,000 retrieved from deleted files, within 55 to 75 days. Consequently, we expect to receive, on a rolling basis, all relevant documents no later than December 28, 2015.

We also discussed the alternative of you providing a list of search terms for our review, which could limit the number of documents you must review. You have provided a list of 36 search terms, the vast majority of which relate to the second search warrant of June 5, 2015. We will provide you with any additional search terms relevant to both search warrants. In the meantime, we expect that you will continue reviewing the 103,000 documents in order to complete the review by December 28, 2015.

Regarding the June 5, 2015 search warrant, in our conversation you stated that some of the documents provided in response to the November 4, 2014 search warrant were also responsive to the June search warrant. We asked you to delineate which documents from the November search warrant you believed were responsive, so that we may inform the court. Please provide us with written documentation of the Bates numbers of the documents you believe are responsive to both search warrants.

October 22, 2015
Page 3

You requested clarification regarding certain terms in the search warrant. We will be providing answers to your questions shortly. We also agreed to allow CPUC to complete its responses to the November 4, 2014 search warrant first, with the understanding that documents responsive to both search warrants will be identified as such.

In close, please understand that this investigation is a significant one. Asking us to suspend the search or be satisfied with 90% compliance is unacceptable in this context, where the integrity of a public agency is at stake. We will do everything we can to work with you and simplify our requests, but if deadlines continue to go unmet our only option will be to bring an Order to Show Cause. Please feel free to contact me at (916) 322-8096 with any questions you may have. Thanks very much and we look forward to working with you on this.

Sincerely,



DEBORAH R. HALBERSTADT
Deputy Attorney General

MAGGY KRELL
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

DRH:

LA2014118251
32253898

EXHIBIT G

ROLLBACK 70763

SUPERIOR COURT OF CALIFORNIA

County of Los Angeles

SEARCH WARRANT RETURN
and
INVENTORY

Search Warrant No. 70763

Issuing Magistrate: David V. Herriford

Date warrant issued: 6/5/15

Date warrant executed: 6/5/15

Location/Vehicles/Persons served and title:

California Public Utilities Commission
San Francisco Office (HQ)
505 Van Ness Ave.
San Francisco, CA 94102

Manner of service: Served CPUC Legal Counsel/Sheppard Mullin via email.

FILED 2
2015 DEC 22 AM 11 36
LOS ANGELES SUPERIOR COURT

I, Special Agent Rey Diaz, Office of the Attorney General, the affiant for this search warrant, state: The information listed above is correct and during the execution of the search warrant, the following property was seized:

On November 12, 2015, CPUC legal representatives, DLA Piper US LLP, delineated 25,156 documents previously provided to the Office of the Attorney General which were responsive to this search warrant served on June 5, 2015.

On December 21, 2015 the Office of the Attorney General received numerous records related to: The San Onofre Nuclear Generating Station (SONGS) closure. The Office of the Attorney General continues to work with CPUC on obtaining all records until full compliance with the June 5, 2015 search warrant. Your affiant will continue to update the court on this matter.

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

Date: 12/22/2015

Rey Diaz
Special Agent Rey Diaz AG#10
Affiant

Michael Tynan
Judge of the Court

Penal Code § 1537

MICHAEL TYNAN



12/22/15

EXHIBIT H

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
Pincefl
Aguirre

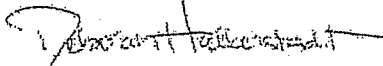
December 22, 2015
Page 2

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:

LA2014(1825)

EXHIBIT I



DLA Piper LLP (US)
401 B Street, Suite 1700
San Diego, California 92101-4297
www.dlapiper.com

Rebecca Roberts
rebecca.roberts@dlapiper.com
T 619.699.2776
F 619.764.6626

February 24, 2016
VA, UPS

OUR FILE NO. 393011-000001

Ms. Maggy Krell, Deputy Attorney General
Ms. Amanda Plisner, Deputy Attorney General
Mr. Reye Diaz, Special Agent
Office of the Attorney General
1300 I Street
Sacramento, California 95814
maggy.krell@doj.ca.gov
amanda.plisner@doj.ca.gov
reye.diaz@doj.ca.gov

e>V\ '1-

CONFIDENTIAL/ SUBJECT TO GRAND JURY SECRECY

Re: CPUC Production in Response to SONGS Search Warrant

Dear Ms. Krell:

Enclosed please find a DVD which includes electronic and hard copy documents the California Public Utilities Commission ("CPUC") is producing in response to the search warrant your office issued on June 5, 2015 concerning the San Onofre Nuclear Generating Station settlement agreement ("SONGS Search Warrant"). This disk contains documents Bates labeled CPUC CALAG 02144601 - CPUC CALAG 02153033. This production consists of the remaining documents we identified as responsive to the SONGS Search Warrant using the search terms provided to you in our October 2015 correspondence. This represents the fourth production the CPUC has made to you in response the SONGS Search Warrant. (The prior productions were made on September 8, 2015, December 11, 2015 and December 18, 2015.) The CPUC has now produced approximately 59,546 documents in response to the SONGS Search Warrant and approximately 1,072,937 documents in total to you.

Please note that the CPUC is producing these documents in native format. The native files are named the same as their Bates label. Confidentiality or other designations are included in the load file. We will send the password for the DVD in a separate email.

Some of the documents being produced in response to the SONGS search warrant may be subject to the deliberative process privilege. Both federal and state law recognize this privilege, which extends to a public agency's materials that reflect deliberative or decision making processes. See Cal. Gov't Code section 6255; *FTC v. WarnerComms., Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Wilson v. Super. Ct.*, 51 Cal. App. 4th 1136, 1142 (1996). See also Office of Attorney General "Summary of the California Public Records Act 2004", Section X(A) (recognizing the "Deliberative Process Privilege.")

The CPUC is being compelled to produce these documents in response the SONGS search warrant. This limited compelled production does not by any means constitute a waiver of the privilege.



Maggy Krell
February 24, 2016
Page Two

voluntary or otherwise. Nor does it in any way hinder the CPUC's right or ability to assert this privilege in other proceedings. See, e.g., *The Regents of University of California v. Super. Ct.*, 165 Cal. App. 4th 627 (2008); *Regents of the University of California v. Workers' Comp. Appeals Bd.*, 226 Cal. App. 4th 1530 (2014).

As you well know, state grand jury proceedings are subject to strict secrecy requirements such that the information and evidence provided to a grand jury may only be further disclosed, by court order, in the limited contexts designated by the California Penal Code. See *Goldstein v. Super. Ct.*, 45 Cal. 4th 218, 221 (2008). Thus, by law, the documents must be treated confidentially and not disseminated to any person without judicial or statutory authority. Indeed, grand jurors who unlawfully disclose information received by the grand jury may be subject to a misdemeanor. See, e.g., Cal. Penal Code sections 924.1, 924.2. All of the documents herein produced, which have been designated "Confidential" in their footers, must be kept secret as required by the California Penal Code. The same is true of all other CPUC documents, whether initially seized by your office or produced by the CPUC.

Furthermore, CPUC's compelled production of documents protected by the deliberative process privilege should in no way be construed as a waiver of the attorney-client, work product or other applicable privileges. The CPUC reserves all rights to assert applicable privileges in response to the grand jury subpoenas and search warrants. Any inadvertent production of any privileged material does not in any way constitute a waiver of the applicable privilege.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'R. Roberts', followed by a period and the text 'ft 11 11'.

Rebecca Roberts
Associate

Enclosure

WEST268350721.1

tlJIPER

401 B Street, Suite 1700
San Diego, CA 92101 USA
T: (619) 699-2700

2/24/2016

Production *in* Response to SONGS June 2015 Search
Warrant No. 70763
CPUC CALAG 02144601 - CPUC CALAG 02153033

STATE OF CALIFORNIA – COUNTY OF LOS ANGELES

SEARCH WARRANT AND AFFIDAVIT

(AFFIDAVIT)

Special Agent Reye Diaz, California Department of Justice, swears under oath that the facts expressed by him/her in this Search Warrant, and in the attached and incorporated statement of probable cause consisting of 20 pages, are true and that based thereon he/she has probable cause to believe and does believe that the property and/or person described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

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

Reye Diaz 3/9/16
(Signature of Affiant)

(SEARCH WARRANT)

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

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

YOU ARE THEREFORE COMMANDED TO SEARCH:

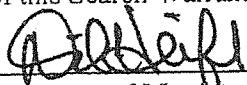
See attached Exhibit "A"

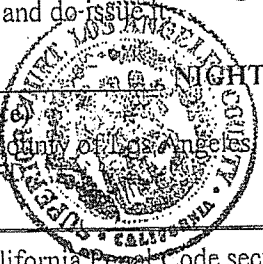
FOR THE FOLLOWING PROPERTY:

See attached Exhibit "A"

SEARCH WARRANT (Page 2)

AND TO SEIZE IT IF FOUND and bring it forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to as true and subscribed before me this 9th day of March, 2016, at 11:25 A.M./P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.


(Signature of Magistrate)
Judge of the Superior Court – County of Los Angeles
DAVID V. HERRIFORD



NIGHT SEARCH APPROVED: YES [] NO [X]
(Magistrate's Initials)

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

For further information concerning this search warrant, contact the officer whose name appears on the warrant, Special Agent Reye Diaz at (916) 916-322-2686 or at reye.diaz@doj.ca.gov

SEARCH WARRANT (Page 3)

EXHIBIT "A"

LOCATION #1:

California Public Utilities Commission
San Francisco Office (Headquarters)
505 Van Ness Avenue
San Francisco, CA 94102
MAY BE SERVED VIA EMAIL or FAX

FOR THE FOLLOWING PROPERTY:

Any and all records from January 31, 2012 until January 31, 2015, involving the San Onofre Nuclear Generating Station (SONGS) closure settlement agreement, the 2013 meeting between Stephen PICKETT and Michael PEEVEY in Poland, communication(s) pertaining to the determination of when and why SONGS would be closed, commitment of monies for research as a result of the closure of SONGS, and communication(s) pertaining to the settlement of the SONGS Order Instituting Investigation (OII). These records are to include:

1. CPUC will search emails to or from the following individuals:

- a. Robert Adler – General Counsel, Edison International (now retired)
- b. Ted Craver – Chairman, President, and Chief Executive Officer, Edison International
- c. Laura Genao – Director, Regulatory Affairs, SCE
- d. Michael Hoover – Senior Director of State Energy Regulation, SCE
- e. Ron Litzinger – President, SCE (now President of Edison Energy)
- f. R.O. Nichols – Senior Vice President for Regulatory Affairs, SCE
- g. Stephen Pickett – Executive Vice President, External Relations, SCE (now retired)
- h. Gary Schoonyan – Director, Strategic Policy Analysis, SCE (now retired)
- i. Jim Scilacci – Chief Financial Officer, Edison International
- j. Les Starck – Senior Vice President Regulatory Policy & Affairs, SCE (now retired)
- k. Bert Valdman – Senior Vice President, Strategic Planning, Edison International (no longer employed by EIX)
- l. Gaddi Vasquez – Senior Vice President, Government Affairs, Edison International
- m. Russ Worden – Director of External Relations, SCE
- n. Ron Olson, former Board member, Edison and Edison International
- o. Michael Peevey (former President of CPUC)
- p. Michel Florio (Commissioner, CPUC)
- q. Melanie Darling (ALJ, CPUC)
- r. Sepideh Khosrowjah (Chief of Staff, Commissioner Florio)
- s. Paul Clanon (Executive Director, CPUC)
- t. Carol Brown (former Chief of Staff to President Peevey)
- u. Audrey Lee (former Advisor to President Peevey)
- v. Edward Randolph (Director of Energy, CPUC)

2. CPUC will identify employees who were involved in the implementation of the greenhouse gas research provisions of the SONGS OII settlement, specifically with respect to CPUC's understandings or intentions with regard to directing funding to UCLA. CPUC will propose to the Attorney General's

SEARCH WARRANT (Page 4)

Office additional employees whose email they will collect for this purpose.

3. CPUC will collect and review emails from the above 22 custodians, plus any other custodians identified pursuant to paragraph 2, that are dated from January 31, 2012 through January 31, 2015.

4. Handwritten notes, documents saved to a hard drive or to a network location, and data on smart phones that is not believed to exist in other locations. CPUC will advise the Attorney General's Office of its progress and plan for collection and review of any such documents.

5. With respect to the categories of documents specified in the search warrant, CPUC will search for, review and produce responsive documents as follows:

a. As to documents involving the SONGS settlement, CPUC will produce (1) documents constituting or referring to communications with SCE about the OII prior to execution of the settlement on March 27, 2014 (excluding on-the-record communications such as SCE pleadings filed with the CPUC); and (2) documents constituting communications with TURN or ORA referencing communications from Peevey on settlement or UC in the context of the settlement negotiations up to March 27, 2014.

b. As to documents pertaining to the Poland trip in March 2013, CPUC will produce documents constituting or referring to communications during that trip that relate to SONGS. These documents will include any communications or materials regarding SONGS made in anticipation of the trip, any documents or communications regarding SONGS that occurred during the trip, and any communications or materials regarding SONGS created after the trip ended.

c. As to the documents regarding funding of research in connection with the SONGS settlement, CPUC will produce documents that (1) constitute or refer to communications with SCE or UCLA about greenhouse gas research as part of the SONGS settlement that occurred prior to November 25, 2014 (excluding on-the-record communications such as pleadings filed with the CPUC and drafts of same; (2) refer to SCE's contributing to the UCLA Luskin Institute at UCLA, the University of California, UCLA's Institute of the Environment and Sustainability, or the California Center for Sustainable Communities at UCLA, in connection with the SONGS settlement; and (3) constitute advocacy directed to the CPUC by local governmental agencies in support of greenhouse gas research as part of the SONGS settlement.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **CPUC/PG&E**

No.:

I declare:


I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 21, 2016, I served the attached **PETITION FOR AN ORDER COMPELLING CALIFORNIA PUBLIC UTILITIES COMMISSION TO COMPLY WITH SEARCH WARRANT; DECLARATION OF SPECIAL AGENT REYE DIAZ, FILED UNDER SEAL** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

DLA Piper, San Diego
Attn: Pamela Naughton
401 B. Street, Suite 1700
San Diego, CA 92101

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 March 21, 2016, at Los Angeles, California.

M. Moore
Declarant


Signature