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FILED
 LOS ANGELES SUPERIOR COURT

MAR 21 2016

Sherri R. Carter, Executive Officer/Clerk
 By B. Perez Deputy

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

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

Case No.

**NO OPPOSITION TO CALIFORNIA
 PUBLIC UTILITY COMMISSION'S
 MOTIONS TO VIEW SEARCH
 WARRANT AFFIDAVIT *IN CAMERA*
 AND TO SEAL ALL DOCUMENTS AND
 HEARINGS RELATED TO ITS MOTION**

UNDER SEAL FILING

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

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

Case No.

**NO OPPOSITION TO CALIFORNIA
PUBLIC UTILITY COMMISSION'S
MOTIONS TO VIEW SEARCH
WARRANT AFFIDAVIT *IN CAMERA*
AND TO SEAL ALL DOCUMENTS AND
HEARINGS RELATED TO ITS MOTION**

Date: March 24, 2016
Time: 8:30 a.m.
Dept: 100
Judge: Hon. James Brandlin

FILED UNDER SEAL

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20 **INTRODUCTION**

21 On June 5, 2015, the California Department of Justice (DOJ) served a search warrant on the
22 California Public Utilities Commission (CPUC) seeking documents relevant to a pending criminal
23 investigation regarding the shutdown of San Onofre Nuclear Generating Station (SONGS). The
24 warrant was signed by the Honorable David V. Herriford of the Los Angeles Superior Court after
25 presentation by DOJ Special Agent Reye Diaz. CPUC has partially complied with the warrant,
26 however responsive documents remain outstanding. Special Agent Diaz filed warrant returns on
27 June 24, 2015, August 7, 2015, September 24, 2015, and December 22, 2015.
28

1 **II. The Department of Justice Does Not Oppose California Public Utility's Motion to**
2 **Seal All Documents and Hearings Related to its Motion to View Search Warrant**
3 **Affidavit *in Camera***

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

9 **III. California Public Utility's Assertion that the Department of Justice's June 5, 2015**
10 **Warrant Lacks Probable Cause is Not Properly Before This Court**

11 CPUC, throughout its moving papers, suggests that DOJ's June 5, 2015 search
12 warrant is not supported by adequate probable cause. While DOJ does not contest that the
13 warrant does contain a misstatement, it strongly opposes the argument that the error negates the
14 probable cause in support of the warrant. DOJ maintains that its June 5, 2015 warrant is valid
15 and, in an effort to demonstrate this fact, has obtained a new warrant supported by an affidavit
16 from which the misstatement is excised. If, despite the issuance of the March 9, 2016 warrant,
17 CPUC wishes to challenge the probable cause in support of the June 5, 2015 warrant, it must do
18 so through the appropriate motion.

19 Dated: March 21, 2016

Respectfully Submitted,

20 KAMALA D. HARRIS
21 Attorney General of California
22 JIM ROOT
23 Supervising Assistant Attorney General

24 

25 AMANDA PLISNER
26 Deputy Attorney General

27 LA2014118251
28 61899112.doc

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 **NO OPPOSITION TO CALIFORNIA PUBLIC UTILITY COMMISSION'S MOTIONS TO VIEW SEARCH WARRANT AFFIDAVIT *IN CAMERA* AND TO SEAL ALL DOCUMENTS AND HEARINGS RELATED TO ITS MOTION** 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

ORIGINAL

FILED
LOS ANGELES SUPERIOR COURT

FEB 17 2016

Sherri R. Carter, Executive Officer/Clerk
By [Signature] Deputy
M. Seals

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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF LOS ANGELES

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

CASE NO. SW-70763

14 NOTICE OF MOTION AND MOTION TO
15 VIEW SEARCH WARRANT AFFIDAVIT
16 *IN CAMERA*; MEMORANDUM OF POINTS
17 AND AUTHORITIES

18 Date: ^{24 mg} 3/18/16
19 Time: 8:30 am
20 Place: Department 100

21 FILED UNDER SEAL

22 PLEASE TAKE NOTICE that on ^{24 mg} 3/18/16 at the hour of ^{8:30} 8:30 or as soon thereafter as
23 AM
24 counsel may be heard, the California Public Utilities Commission (“the CPUC” or “the
25 Commission”) will move the Court to allow its counsel to view *in camera* the sealed affidavit
26 filed in support of a June 5, 2015 search warrant served on the CPUC (“SONGS Search
27 Warrant”). The Attorney General is investigating whether *ex parte* settlement discussions
28 between a Commissioner and a company executive violated any order or rule of the CPUC such
that they could be charged with a misdemeanor (Cal. Penal Code §2110) and perhaps even felony
conspiracy to commit the misdemeanor (Cal. Penal Code §182(a)(1)).

Recently, an affidavit written by California Department of Justice Special Agent Reye
Diaz (“Agent Diaz Affidavit”) was published in the media. This affidavit supported a similar
search warrant issued for the company executive’s personal emails. The same criminal statutes

No opposition

1 cited in that affidavit serve as the criminal predicate for the SONGS Search Warrant.
2 Unfortunately, the Agent Diaz Affidavit contains several material, uninformed and incorrect
3 statements and assertions regarding CPUC rules pertaining to *ex parte* communications. The
4 CPUC requests to view the sealed affidavit in support of the SONGS Search Warrant in order to
5 determine if it contains the same inaccuracies and flaws.

6 Because the CPUC is a public agency working in the public interest, it feels compelled to
7 file this motion in order to inform this Court of these inaccuracies which form the basis for the
8 warrant.

9 Furthermore, complying with this very broad warrant (and the companion three subpoenas
10 and additional search warrant) has so far cost the CPUC millions of dollars and diverted its
11 resources from its mandated functions. The CPUC has already produced over one million
12 documents to the Attorney General and believed its compliance to be substantially completed.
13 However, the Attorney General recently made further demands on the CPUC for yet more
14 searches, review, and production of documents, ostensibly pursuant to this warrant.
15 Before expending more public funds and launching into yet another round of searching for and
16 reviewing hundreds of thousands of documents, the Court should understand and consider the
17 possibility that the allegations and underpinnings in the affidavit supporting the search warrant
18 are legally baseless. Alternatively, the CPUC requests an *in camera* hearing pursuant to *People v.*
19 *Hobbs*, 7 Cal. 4th 948 (1994).

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 and on such oral and documentary
22 evidence as may be presented at any hearing on this motion.

23 Dated: February 17, 2016

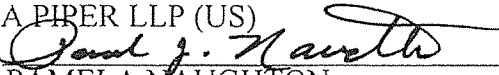
24 DLA PIPER LLP (US)
By 
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28 California Public Utilities Commission

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1 Decision". Under Public Utilities Code section 1701.1(b), the Commission is directed to
2 designate an Assigned Commissioner to each proceeding to manage the overall scope of the
3 proceeding and work directly with the ALJ. A prehearing conference is scheduled and, after it is
4 held, a "Scoping Memo" is issued which describes the issues to be considered and the applicable
5 timetable for resolution.

6 After all evidence is received and arguments made by the parties, the Proposed Decision
7 is then considered by all of the Commissioners who vote on it or offer amendments. A
8 Commissioner may also draft an Alternative Proposed Decision for consideration by the other
9 Commissioners.

10 **B. The SONGS OII**

11 In 2012, the San Onofre Nuclear Generating Station ("SONGS") experienced leaks of
12 contaminated steam. The facility was temporarily shut down and the CPUC filed an Order
13 Instituting Investigation ("SONGS OII") (Declaration of Rebecca Roberts ("Roberts Decl.") ¶2,
14 Ex. A.) The scope of the OII included rates, operations, practices, replacement energy, services,
15 and facilities associated with the closure of SONGS. The OII was subsequently consolidated with
16 other SONGS cost-related proceedings. The OII itself, as well as the following consolidated
17 "Scoping Memo", clearly categorized the proceeding as ratesetting - not adjudicatory. Pursuant
18 to this categorization, *ex parte* discussions were permitted (subject to requirements for notice,
19 equal time, and timely reporting by the party). *See* Rules 8.3(c) and 8.4.

20 On March 26, 2013 at an energy conference in Warsaw, Poland, Stephen Pickett
21 ("Pickett"), an executive of Southern California Edison ("SCE"), majority owner of SONGS, had
22 a drink at the hotel bar with CPUC President/Commissioner Peevey ("Peevey") and the Director
23 of the Energy Division, Ed Randolph ("Randolph"). Peevey was not the Assigned Commissioner
24 for the SONGS OII. Noting that replacement energy costs were getting very expensive, President
25 Peevey asked Pickett whether SCE intended to permanently shut down SONGS, and if so, when.
26 Pickett acknowledged that closure was being considered and then went on to describe the various
27 categories of costs associated with the shutdown which would need to be addressed in any
28 settlement of the OII. (*See* Declaration of Edward Randolph attached to Roberts Decl. ¶3, Ex. B.)

1 Pickett failed to report this *ex parte* conference within the three-day period required under the
2 rules. The obligation to report an *ex parte* conversation rests with the party – not the
3 Commissioner.

4 SONGS was permanently shut down in June 2013 and SCE and minority owner SDG&E
5 negotiated a complex settlement agreement of the SONGS OII with ratepayer advocate groups
6 and other interested parties. The settlement agreement was approved by the Commission on
7 November 25, 2014. In early February 2015, the Warsaw discussion was reported in the media.
8 On February 9, 2015, Pickett/SCE reported the *ex parte* communication regarding the Warsaw
9 meeting.²

10 On June 5, 2015, Special Agent Diaz served on the CPUC the search warrant at issue.
11 The SONGS Search Warrant, which is very broad and vague, generally concerns all records
12 involving the SONGS settlement agreement, the 2013 Poland Meeting, the determination of when
13 and why SONGS would be closed, commitment of monies for research as a result of the closure
14 of SONGS, and communications pertaining to the settlement of the SONGS OII. (Roberts Decl.
15 ¶4, Ex. C.) The supporting affidavit was filed and remains under seal.

16 **C. Incorrect Statements In Special Agent Diaz’s Publicly Filed Affidavit**

17 On December 29, 2015, the San Diego Union Tribune published the Agent Diaz Affidavit
18 in support of a similar search warrant for Pickett’s personal emails (“Pickett Search Warrant”).
19 (*Id.* ¶5, Ex. D.) The demands of the Pickett Search Warrant are very similar to the demands of
20 the CPUC SONGS search warrant, e.g., it seeks production of all records pertaining to the
21 SONGS settlement, the Poland Meeting, the determination of when and why SONGS would be
22

23 ² Meanwhile, the Attorney General was investigating allegations against Pacific Gas & Electric (“PG&E”) involving CPUC proceedings regarding the San Bruno gas explosion. The CPUC has been cooperating in that investigation and has provided a criminal Joint Task force team, including the U.S. Department of Justice and the State Attorney General, with documents associated with that separate investigation. In November 2014, the Attorney General served and executed a broad search warrant on the CPUC, issued by the Superior Court in San Francisco. It also served 3 grand jury subpoenas on the CPUC. To date, the CPUC has produced over 1,064,000 documents to the Attorney General. Although the affidavit in support of that search warrant was sealed and is likely very similar to the affidavit issued in support of the SONGS Search Warrant because it was issued by a different court, it is not the subject of this motion. The CPUC is headquartered in San Francisco. It is unclear why the SONGS Search Warrant was issued from Los Angeles.

1 closed, the commitment of research monies, and the settlement of the SONGS OII investigation.
2 (*Cf.* Ex. C with Ex. D.)

3 As explained below, the Agent Diaz Affidavit in support of the Pickett Search Warrant
4 contains materially inaccurate statements about the nature of the SONGS OII and the CPUC's *ex*
5 *parte* rules. These statements form the basis of the assertions of violations of criminal law.

6 During a call with CPUC counsel in early January 2016, Agent Diaz confirmed that the same
7 penal code violations alleged in support of the Pickett Search Warrant were alleged in support of
8 the issuance of the CPUC SONGS Search Warrant. (Roberts Decl. ¶6.) He also confirmed that
9 the affidavit filed in support of the Pickett Search Warrant is the only one that has been publically
10 filed. (*Id.*)

11 The Agent Diaz Affidavit alleges that there is probable cause to believe that Peevey and
12 Pickett knowingly engaged and conspired to engage in *ex parte* communications which constitute
13 a violation of California Penal Code section 2110. Specifically, it alleges that Peevey and Pickett:
14 “knowingly engaged in and conspired to engage in prohibited *ex parte* communications regarding
15 the closure of a nuclear facility, to the advantage of SCE and to the disadvantage of the other
16 interested parties.” (*Id.* ¶5, Ex. D at p. 3.) Under section II “Legal Framework”, the affidavit
17 further claims that “**[t]he SONGS OII and associated settlement discussions are considered**
18 **adjudicatory**”, that *ex parte* communications were **prohibited**, and the conspiracy to commit *ex*
19 *parte* violations amounts to a felony because the *ex parte* communications were **prohibited** by
20 Public Utilities Code section 1701.2. Specifically, the affidavit reads:

21 *Ex parte* communications are prohibited in adjudicatory cases.
22 (Pub. Util. Code §1701.2). The SONGS OII and associated
23 settlement discussions are considered adjudicatory. Violation of
24 this prohibition is a misdemeanor. (Pub. Util. Code §2110.) . . .
Conspiracy to commit a misdemeanor offense can also be charged
as a felony, pursuant to Penal Code Section (a)(1).

25 (*Id.* at pp. 5-6.)

26 It concludes:

27 Based on the above evidence and facts, there is probable cause to
28 believe that PICKETT knowingly engaged and conspired to engage
in a reportable *ex parte* communication with PEEVEY in POLAND

1 to the overall advantage to SCE in the subsequent settlement
2 process pertaining to the closure of SONGS. . . . The facts indicate
3 that PEEVEY conspired to obstruct justice by illegally engaging in
4 *ex parte* communications, concealed *ex parte* communications, and
5 inappropriately interfered with the settlement process on behalf of
6 California Center for Sustainable Communities at UCLA.
7 PEEVEY executed this plan through back channel communications
8 and exertion of pressure, in violation of CPUC *ex parte* rules, and
9 in obstruction of the due administration of laws.

10 (*Id.* at p. 16.)

11 **II. THE AGENT DIAZ AFFIDAVIT IN SUPPORT OF THE PICKETT SEARCH**
12 **WARRANT CONTAINS MATERIALLY INCORRECT STATEMENTS OF FACT**
13 **AND LAW**

14 The Agent Diaz Affidavit claims that the SONGS OII was adjudicatory and that *ex parte*
15 communications were prohibited. This is wrong. From its initiation, SONGS OII was a
16 ratesetting proceeding, not adjudicatory. In ratesetting proceedings, *ex parte* communications,
17 like the settlement discussions which occurred between Peevey and Pickett in Poland, are
18 allowed, they just need to be reported. The CPUC fined SCE \$16,520,000 for belatedly
19 reporting these communications but specifically not for engaging in them.

20 **A. SONGS OII is Ratesetting NOT Adjudicatory**

21 From in its initiation on October 25, 2012, the SONGS OII, an investigation into the rates,
22 operations, practices, services and facilities associated with the closure of SONGS Units 2 and 3,
23 was designated as ratesetting, not adjudicatory. (Roberts Decl. ¶2, Ex. A (“Order Instituting
24 Investigation Regarding San Onofre Nuclear Generating Station Units 2 and 3”, at p. 15 (“**5.2**
25 **Category: We determine that the category of this proceeding is ratesetting.** (Rules 1.3(e) and
26 7.1(c).) This is consistent with the preliminary issues focusing on the economic consequences of
27 the outages, repairs, source of replacement electricity, cost of replacement electricity, and cost
28 responsibility.”) (Emphasis added)).)

29 Numerous orders issued by the CPUC, both prior to and after the March 26, 2013 Poland
30 Meeting, including the Scoping Memo, which specifically identified the issues to be addressed in
31 SONGS OII, further confirmed that the proceeding was ratesetting. (*Id.* ¶7, Ex. E (January 28,
32 2013 Scoping Memo, at p. 10 (“**The OII categorized this proceeding as ratesetting.**”)
33 (emphasis added)); Ex. F (April 30, 2013 Ruling on Legal Questions Set Forth in Scoping Memo

1 and Ruling, at p. 8 (“This OII was opened as a ratesetting proceeding to consider various issues
2 related to the extended outages at SONGS Units 2 and 3[T]he Scoping Memo for the OII
3 underscores the general ratemaking tasks of the proceeding by identifying the ratesetting elements
4 of each Phase.”).³ No party appealed the determination that the SONGs OII was ratesetting.
5 See Rule 7.1(c); Pub. Util. Code §1701.1 (“The commission's decision as to the nature of the
6 proceeding shall be subject to a request for rehearing within 10 days of the date of that decision.
7 If that decision is not appealed to the commission within that time period it shall not be
8 subsequently subject to judicial review.”)

9 The difference between a ratesetting, as opposed to an adjudicatory proceeding, is
10 significant. While *ex parte* communications are prohibited in adjudicatory proceedings, they are
11 allowed in ratesetting proceedings, they just need to be timely noticed and/or reported. *Cf.*
12 Commission Rule 8.3(b) (“In any adjudicatory proceeding, *ex parte* communications are
13 prohibited.”) with Commission Rule 8.3(c)⁴ (“in any ratesetting proceeding, *ex parte*
14 communications are subject to the reporting requirements set forth in Rule 8.4.”)

15 Commission Rule 8.4, which outlines the reporting requirements for *ex parte*
16 communications in ratesetting cases, generally provides that if a substantive *ex parte*
17 communication occurs between an interested person and a decision maker, the interested party
18 must provide notice of the communication within three working days of the communication.⁵
19
20
21
22

23 ³ All of these orders are available on the CPUC website which was accessible to Agent Diaz and all
24 members of the public. See <http://www.cpuc.ca.gov/documents/>

25 ⁴ Commission Rule 8.3 specifies other limitations on scheduled oral *ex parte* communications for
26 ratesetting cases, including prior notice and equal time. See Rule 8.3(c)(2). Since Peevey requested that
27 Pickett meet him in the hotel bar, the 3-day notice requirement prior to the encounter was not applicable.
28 However, Pickett violated the rules by failing to report the *ex parte* communication after it occurred. The
Commission found violations of Rule 8.4 – the post-meeting reporting requirements – as opposed to the
pre-meeting notice requirements – 8.3.(c)(2).

⁵ 8.4. (Rule 8.4) Reporting Ex Parte Communications provides:

1 The Scoping Memo for the SONGS OII, issued on January 28, 2013, acknowledged that *ex parte*
2 communications were permitted, subject to the Commission's reporting requirements. (Roberts
3 Decl. ¶7, Ex. E, at p. 12 ("*Ex Parte* Communications: In a ratesetting proceeding involving
4 hearings, *ex parte* communications are permitted only if consistent with certain restrictions and
5 are subject to reporting requirements."))

6 Indeed, approximately 72 *ex parte* communications were reported in the SONGS OII,
7 over one half of which (41) were filed by nonprofits, consumer groups, or other public interest
8 groups. (Roberts Decl. ¶9.) *Ex parte* communications were certainly not prohibited in the
9 SONGS OII but rather were common occurrences in this ratesetting proceeding.

10 **B. The CPUC Penalized SCE For Failing to Report the *Ex Parte***
11 **Communications**

12 Under the Public Utilities Code and its Rules of Practice and Procedure, the CPUC may
13 investigate and impose penalties for *ex parte* violations and did precisely this. See Pub. Util.
14 Code §2107; Rule 8.3(j). The Commission investigated the propriety of the Warsaw meeting and
15 other related contacts between SCE and its decision-makers and accepted extensive evidence and
16

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

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

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

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

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

1 briefing from all parties. On December 3, 2015, the Commission issued a decision, D.15-12-016,
2 penalizing SCE in the amount of \$16,520,000 related to these contacts and ordered SCE to keep
3 public logs of all its *ex parte* contacts in the SONGS OII. (Roberts Decl. ¶10, Ex. G.)

4 Significantly, the Commission found that the Warsaw meeting and other contacts were allowed
5 under the Commission's *ex parte* rules, but ruled that SCE should have reported the contacts
6 when they occurred:

7 This decision affirms eight violations of Rule 8.4 of the
8 Commission's Rules of Practice and Procedure (Rules) by Southern
9 California Edison Company (SCE) stemming from the failure to
report, before or after *ex parte* communications which occurred
between and SCE executive(s) and a Commissioner.

10

11 We conclude SCE violated Rule 8.4 eight times during this
12 proceeding by failing to acknowledge and disclose *ex parte*
13 communications pursuant to Rule 8.4. The Commission affirms the
14 findings . . . based on a preponderance of evidence, because the
15 communications concerned a substantive issue in SONGS OII, took
place between an interested person and a decision maker, and did
not occur in a public hearing, workshop, or other public forum
noticed by ruling or order in the proceeding, or on the record of the
proceeding.

16 (*Id.* at pp. 2, 12-13 (emphasis added).)

17 The fines imposed by the CPUC are expressly tied to SCE's failure to report the
18 communications within the requisite time and the penalty is calculated based on the number of
19 days that passed before it was reported, further confirming that its failure to report the
20 communication, not the communication itself, violated CPUC Rules. (*Id.* at pp. 46-51.)

21 The Commission's decision penalizing SCE for *ex parte* violations is not an isolated
22 occurrence. Indeed, the Commission has consistently interpreted violations of its *ex parte* and
23 reporting requirement rules in both ratesetting and adjudicatory cases. (*Id.* at pp. 44-46 (Section
24 6.1.3 "Commission Precedent" (describing Commission precedent in imposing sanctions for *ex*
25 *parte* violations)).) It is notable that the Public Utilities Code sections allowing the CPUC to
26 impose penalties do not prohibit their application even in an adjudicatory case. Whether an *ex*
27 *parte* communication was permitted with reporting or prohibited altogether is a factor that goes to
28 the weight of the violation and the penalty, not whether a penalty can be imposed under the

1 Public Utilities Code or CPUC Rules.

2 **III. EX PARTE COMMUNICATIONS IN A RATESETTING PROCEEDING DO NOT**
3 **APPEAR TO MEET THE ELEMENTS OF THE MISDEMEANOR CITED AS**
4 **THE BASIS FOR THE SEARCH WARRANT**

5 A search warrant is only available in **criminal**, not civil or administrative investigations.
6 The warrant issues on a showing that there is probable cause to believe that the place to be
7 searched contains evidence of a **crime**. Cal. Penal Code §§1524(a)(2)(3)&(4).

8 The Agent Diaz Affidavit asserts that the Warsaw meeting violated California Penal Code
9 section 2110 because it violated an order or rule of the CPUC and thus could be prosecuted as a
10 misdemeanor. Section 2110 provides:

11 **Every public utility and every officer, agent, or employee of any**
12 **public utility**, who violates or fails to comply with, or who
13 procures, aids, or abets any violation by any public utility of any
14 provision of the California Constitution or of this part, or who fails
15 to comply with any part of any order, decision, rule, direction,
16 demand, or requirement of the commission, or who procures, aids,
17 or abets any public utility in the violation or noncompliance **in a**
18 **case in which a penalty has not otherwise been provided**, is
19 guilty of a misdemeanor and is punishable by a fine not exceeding
20 five thousand dollars (\$5,000), or by imprisonment in a county jail
21 not exceeding one year, or by both fine and imprisonment.

22 Pub. Util. Code §2110 (emphasis added).

23 The Warsaw meeting did not violate any order, decision or rule of the Commission
24 because the proceeding under discussion was **ratesetting** and not adjudicatory, contrary to Agent
25 Diaz's assertion. In ratesetting proceedings, *ex parte* meetings are permissible, but must be
26 disclosed, and thus no order or decision was violated. Furthermore, Penal Code section 2110
27 states that the misdemeanor is only available when "a penalty has not otherwise been provided".
28 In other words, the predicate for any possible criminal charge under section 2110 is that no other
penalty exists or has been imposed. *Cf. Fleming v. Sup. Ct.*, 191 Cal. App. 4th 73, 82 (2010) (no
basis for a criminal charge under Penal Code section 424 – misappropriation of public funds –
when statute contained a predicate clause "without authority of law" and defendant school
superintendent could legally compile lists of names to recall petitioners.) The Commission has
already fined SCE for failure to timely disclose the substantive communications by an SCE
employee at the Warsaw meeting and certain other communications. Therefore, since the

1 Warsaw meeting itself did not violate any order or rule of the Commission, and the failure of
2 timely disclosure occurred in a case in which a penalty was provided and imposed, how could it
3 constitute a misdemeanor? It would seem the criminal predicate for issuance of a search warrant
4 would be absent.

5 Section 2110 is part of Chapter 11 of the Public Utilities Code passed in 1951, which was
6 intended to vest the Commission with the power to enforce laws affecting public utilities. For
7 example, Chapter 11 grants the Commission the right to enforce laws affecting public utilities by
8 suing in the name of the people of the State of California and to request the assistance of the
9 Attorney General or District Attorney to institute or prosecute actions or proceedings. *See, e.g.*,
10 Pub. Util. Code §2101. Other sections in Chapter 11 similarly provide that criminal causes
11 of action against corporations, or officers, agents, or employees of corporations which violate the
12 Public Utilities Code, a Commission Rule or Order, may be pursued only if “a penalty has not
13 otherwise been provided.” Pub. Util. Code §§2111, 2112; *see also* Comm. Rep. CA Assemb. Bill
14 1703 2011-2012 Reg. Sess. (Cal. 2011) (explaining purpose of bill to authorize monetary and
15 imprisonment penalties up to one year for failure to comply with Commission orders and rules, “in
16 a case in which a penalty has not otherwise been provided.”). In interpreting a statute, it must be
17 construed “with reference to the entire scheme of law of which it is part so that the whole may be
18 harmonized and retain effectiveness.” *Clean Air Constituency v. California State Air Resources*
19 *Bd.*, 11 Cal. 3d 801, 814 (1974); *People v. Pieters*, 52 Cal. 3d 894, 899 (1991). The misdemeanor
20 provision of the Public Utilities Code essentially serves as a catch-all, should culpable conduct not
21 otherwise be addressed by CPUC rules, regulations or action. *People v. Simon*, 9 Cal. 4th 493, 517
22 (1995) (“adopt the construction more favorable to the offender”).

23 As explained above, the CPUC was expressly authorized to, and in fact did, penalize the
24 utility for failing to report permissible *ex parte* communications. Pub. Util. Code §2107;
25 Commission Rule 8.3(j); (Roberts Decl. ¶10, Ex. G.) It would therefore seem the misdemeanor
26 provisions in section 2110 are inapplicable.

27 Courts have long accepted the principle that “the commission's interpretation of the Public
28 Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory

1 purposes and language....” *PG&E Corp. v. Pub. Util. Comm’n*, 237 Cal. App. 4th 812, 839-40
2 (2015) (citing *Greyhound Lines, Inc. v. Pub. Util. Comm’n*, 68 Cal. 2d 406, 410 (1968)); *accord*,
3 *S. Cal. Edison Co. v. Peevey*, 31 Cal. 4th 781, 796 (2003); *PG&E Corp. v. Pub. Util. Comm’n*,
4 118 Cal. App. 4th 1174, 1194 (2004). This judicial deference acknowledges a role for the
5 Commission's administrative expertise: “[W]e give presumptive value to a public agency's
6 interpretation of a statute within its administrative jurisdiction because the agency may have
7 ‘special familiarity with satellite legal and regulatory issues,’ leading to expertise expressed in its
8 interpretation of the statute.” *Id.* (citing *Pac. Bell Wireless, LLC v. Pub. Util. Comm’n*, 140 Cal.
9 App. 4th 718, 729 (2006); *S. Cal. Edison Co. v. Pub. Util. Comm’n*, 227 Cal. App. 4th 172
10 (2014); *SFPP, L.P. v. Pub. Util. Comm’n*, 217 Cal. App. 4th 784, 794 (2013)).

11 The rules concerning *ex parte* communications and reporting requirements are CPUC
12 Rules of Practice and Procedure. “The deference may, if anything, be even greater with
13 regulations promulgated by the agency. ‘[T]he PUC's interpretation of its own regulations and
14 decisions is entitled to consideration and respect by the courts.’” *PG&E Corp.*, 237 Cal. App. 4th
15 at 840 (citing *S. Cal. Edison Co. v. Pub. Util. Com’n*, 85 Cal. 4th 1086, 1096 (2000)); *accord*,
16 *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 7 (1998). “‘A court is more
17 likely to defer to an agency's interpretation of its own regulation than to its interpretation of a
18 statute, since the agency is likely to be intimately familiar with regulations it authored, and
19 sensitive to the practical implications of one interpretation over another.’” *Id.*; *accord*, *Yamaha*
20 *Corp. of Am.*, 19 Cal. 4th at 16; *The Util. Reform Network v. Pub. Util. Comm’n*, 223 Cal. App.
21 4th 945, 958 (2014) (The Commission's interpretation of its own rules and regulations “is entitled
22 to consideration and respect by the courts.’”)

23 The problem with the Attorney General’s position that *ex parte* violations constitute a
24 crime is that it is **criminalizing permissible conduct**. *Ex parte* communications, like Peevey’s
25 and Pickett’s alleged settlement negotiations, are allowed in ratesetting proceedings so long as
26 they are noticed and/or reported.

27 It should also be noted that no section of the *ex parte* rules or the settlement rules in the
28 Public Utilities Code or the CPUC Rules of Practice and Procedure prohibit *ex parte*

1 communications with a decision-maker about settlements. Neither does a decision-maker's
2 participation in an *ex parte* discussion regarding settlement dictate that decision-makers' recusal
3 from voting on any proposed settlement. *See Decision Adopting Settlements On Marginal Cost,*
4 *Revenue Allocation, and Rate Design*, No. 09-08-028 (August 20, 2009) at pp. 50-51 available at
5 http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/106088.PDF; *Morongo*
6 *Band of Mission Indians v. State Water Resources Control Bd.*, 45 Cal. 4th 731, 737 (2009)
7 (decision-makers at administrative agencies are accorded a presumption of impartiality); *Assoc. of*
8 *Nat. Advertisers, Inc. v. Fed. Trade Comm'n*, 627 F.2d 1151, 1170 (D.C. Cir. 1979).

9 Put simply, a decision-maker's discussion of a settlement in an *ex parte* communication is
10 neither prohibited by statute, nor by the CPUC's Rules of Practice and Procedure, nor is it an
11 independent ground for recusal of that decision-maker. Such communications may be subject to
12 administrative penalties if they are not properly reported, but not criminal penalties.

13 Criminalizing permitted conduct would chill the CPUC's ability to conduct business
14 based on its own rules and would unfairly subject its employees to criminal inquiries of conduct
15 that is permissible.⁶ Such interpretations would raise grave due process concerns and contradict
16 the clear language of the statute and the rules.

17
18
19 _____
20 ⁶ We leave for another day discussion of the other two criminal statutes cited in the Pickett Search
21 Warrant. At this point, it is unclear how a permitted discussion of settlement constituted an obstruction of
22 "justice". The "due administration" of its own laws was adequately interpreted and handled by the CPUC.
23 Courts have refused to sustain convictions for conspiracy to do acts that are perfectly lawful and to which
24 there is no criminal objective. *Fleming v. Sup. Ct.*, 191 Cal. App. 4th 73, 105 (2011) (defendant who had
25 lawful authority to authorize staff to prepare lists of names of people who circulated recall petitions could
26 not conspire to do acts "to pervert or obstruct justice, or the due administration of laws"); *People v. Redd*,
27 228 Cal. App. 4th 449, 463 (2014) (conspiring to smuggle tobacco into a state prison did not constitute a
28 perversion or obstruction of justice—"It is not enough to show that the object of the conspiracy was not
lawful."). Notably, the Agent Diaz Affidavit does not cite a public corruption statute such as California
Penal Code section 1090, presumably because there is no evidence of any *quid pro quo*. *Skilling v. United*
States, 130 S. Ct. 2896, 2929 (2010) (limiting federal "honest-services" statute to actual bribery or
kickback scheme to avoid unconstitutionality for vagueness).

Likewise, reliance on Penal Code section 96.5 as a justification for the warrant seems misplaced as it only
applies to "judicial officers, court commissioners, or referees." The CPUC is unaware of any instance
where a Commissioner, as a gubernatorial appointee appointed to lead and run the Commission, has ever
been designated as a "judicial officer."

1 **IV. THE RETURN OF THE SEARCH WARRANT FAILS TO ACCURATELY**
2 **DESCRIBE CPUC COMPLIANCE AND EXPENSE**

3 The CPUC has been diligently working to comply with the various demands by the
4 Attorney General at great expense. Since approximately January 2015, on average, 9 contract
5 attorneys have been reviewing documents 7 days a week, 8-12 hours a day. Since January 2015,
6 the CPUC has been making almost monthly productions to the Attorney General ranging from
7 several hundred to tens of thousands of documents each production. (Roberts Decl. ¶11.) As of
8 January 6, 2016, CPUC's review team has produced approximately 1,064,618 documents to the
9 Attorney General. (*Id.*)

10 The CPUC has kept the Attorney General well informed of its progress and the nature of
11 its review. For example, in fall 2015, the CPUC provided detailed information of what volume of
12 documents remained to be reviewed and when it anticipated completing the production. (*Id.* ¶12,
13 Exs. H-I.) The CPUC also described in detail how it was conducting the production in response
14 to the SONGS search warrant and identified the search terms it used to cull the data to be
15 reviewed. (*Id.* ¶¶12-13, Exs. I-J.) It also pointed out, and the Attorney General agreed, that the
16 scope of the SONGS search was vague and confusing. (*Id.*) The Attorney General's
17 representatives promised to provide a more specific explanation of the scope of the search
18 warrant. (*Id.* ¶13.) However, as of this date this filing, no explanation has been provided. (*Id.*
19 ¶13, Exs. J-K.)

20 True to its word, the CPUC completed production in response to the first search warrant
21 on December 18, 2015, ten days ahead of the deadline set by the Attorney General's office. (*Id.*
22 ¶14, Ex. O.) Moreover, the CPUC has produced more than 51,000 documents in response to the
23 SONGS Search Warrant. Indeed, 25,000 of these were documents the Attorney General had
24 already received pursuant to the first search warrant. In response to the SONGS Search Warrant,
25 the CPUC identified these documents by Bates number to the Attorney General for ease of
26 reference. Nevertheless, the Attorney General's Office insisted that the same 25,000 documents
27 be reproduced yet again. (Roberts Decl. ¶14, Exs. L-N.) Based on the terms it outlined in the
28 October 2015 correspondence, the CPUC anticipated completing production in response to all

1 outstanding Attorney General demands by the end of February 2016, including the SONGS
2 search warrant. (*Id.* ¶15.)

3 However, on December 22, 2015, two months after the CPUC had explained in detail its
4 process and what remained to be reviewed, the Attorney General moved the goal posts by
5 demanding that the CPUC produce additional documents in response to both search warrants.
6 (Roberts Decl. ¶16, Ex. P.) In regard to the SONGS search warrant, it demanded that the CPUC
7 filter the documents using 14 additional search terms, many of which are so broad as to trigger
8 tens of thousands of documents that are irrelevant, e.g., “TURN” (The Utility Reform Network),
9 and “ORA” (Office of Ratepayer Advocates), both frequent parties in a multitude of CPUC
10 proceedings. (*Id.* ¶16.) While the Attorney General agreed the CPUC could somewhat limit the
11 documents to be reviewed, the CPUC estimates that the new demands by the Attorney General
12 will require review of an additional 160,000 documents, approximately 74,000 of which are
13 attributable to the newly-broadened scope of the SONGS Search Warrant. (*Id.*)

14 Complying with the Attorney General’s demands has been incredibly costly for the
15 CPUC. It has spent millions of dollars to search for, identify, process, review, and produce these
16 documents. This cost has put incredible strain on CPUC’s financial and personnel resources to
17 the point where it has affected the CPUC’s ability to carry out its constitutionally-mandated
18 duties. The CPUC has repeatedly pointed out this substantial burden to the Attorney General,
19 whose response was to demand more documents. (*Id.* ¶16.) If the SONGS Search Warrant is
20 deemed not to be supported by evidence of an actual crime, then all of this effort and expense will
21 have been an enormous waste of public resources.

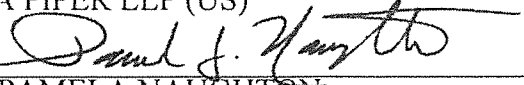
22 I. CONCLUSION

23 Agent Diaz’s Affidavit inaccurately describes the SONGs proceeding as adjudicatory and
24 prohibiting *ex parte* meetings, when the SONGs OII was ratesetting and permitted *ex parte*
25 meetings, subject to reporting requirements, and made non-reporting otherwise subject to penalty.
26 This materially inaccurate statement calls into question the factual and legal basis for the SONGS
27 Search Warrant. Thus, for the reasons discussed above, the CPUC requests that it be allowed to
28 review the affidavit, statement of probable cause and other documents submitted in support of the

1 SONGS Search Warrant *in camera* so that it may determine the most appropriate course of
2 action.

3 Dated: February 17, 2016

DLA PIPER LLP (US)

4 By 

PAMELA NAUGHTON
REBECCA ROBERTS
Attorneys for Movant
California Public Utilities Commission

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ORIGINAL

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5 Attorneys for Movant
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FILED
LOS ANGELES SUPERIOR COURT

FEB 17 2016

Sherri R. Carter, Executive Officer/Clerk
By M. Seals Deputy

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
Utilities Commission

CASE NO.

PROOF OF SERVICE

FILED UNDER SEAL

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 February 17, 2016, I served a copy of the within document(s):

6 **MOTION TO SEAL PLEADINGS AND RECORD;**

7 **DECLARATION OF REBECCA ROBERTS IN SUPPORT OF MOTION**
8 **TO SEAL PLEADINGS AND RECORD;**

9 **[PROPOSED] ORDER GRANTING CPUC MOTION TO SEAL**
10 **PLEADINGS AND RECORD**

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

23 Persons Served

24 Mr. Gerald Engler
25 Chief Assistant Attorney General for the Criminal Division
26 455 Golden Gate, Suite 11000
27 San Francisco, CA 94102-7004
28 Tel: 415.703.1361

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

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

Executed on February 17, 2016, at San Diego, California.



Bonnie K. Lott

ORIGINAL

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9 California Public Utilities Commission

FILED
LOS ANGELES SUPERIOR COURT

FEB 17 2016

Sherri R. Carter, Executive Officer/Clerk
By M. Scals, Deputy

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12 In Re June 5, 2015 Search Warrant No.
13 70763 issued to California Public Utilities
14 Commission

CASE NO.

**DECLARATION OF REBECCA ROBERTS
IN SUPPORT OF MOTION TO VIEW
SEARCH WARRANT AFFIDAVIT IN
CAMERA**

Date:
Time:
Place:

FILED UNDER SEAL

17 I, Rebecca S. Roberts, declare as follows:

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

22 2. Attached as Exhibit A are true and correct excerpts from "Order Instituting
23 Investigation Regarding San Onofre Nuclear Generating Station Units 2 and 3" No. 12-10-013,
24 filed October 25, 2012 ("SONGS OII"). A complete copy of this order is available at
25 *Investigation* 12-10-01, 2012 Cal. PUC LEXIS 483 (Oct. 25, 2012). A complete copy can also be
26 provided upon request.

no opposition

1 3. Attached as Exhibit B is a true and correct copy of “the Declaration of Edward F.
2 Randolph in Response to Administrative Law Judge Questions Received by Email on June 1,
3 2015” submitted in SONGS OII.

4 4. Attached as Exhibit C is a true and correct copy of the June 5, 2015 search warrant
5 issued to the CPUC (“SONGS Search Warrant”). It is my understanding that the affidavit in
6 support of this search warrant was filed and remains under seal.

7 5. Attached as Exhibit D is a true and correct copy of a search warrant and supporting
8 affidavit, submitted by Agent Diaz, for SCE executive Stephen Pickett’s personal emails (“Pickett
9 Search Warrant”). I obtained a copy of this search warrant and affidavit from the San Diego
10 Union Tribune’s website on or about December 30, 2015.

11 6. On or about January 4, 2016, my colleague, Pamela Naughton, and I spoke with
12 Deputy Attorney General Deborah Halberstadt and Special Agent Diaz on the phone. During our
13 call, Mr. Diaz confirmed that the affidavit filed in support of the SONGS search warrant remained
14 under seal. He also confirmed that his affidavit, filed in support of the Pickett Search Warrant,
15 was the only affidavit to be publicly filed in the pending investigation. Mr. Diaz also confirmed
16 that the same penal code violations alleged in his affidavit in support of the Pickett Search
17 Warrant served as the criminal predicate of the SONGS Search Warrant.

18 7. Attached as Exhibit E are true and correct excerpts from “Scoping Memo and
19 Ruling of Assigned Commissioner and Administrative Law Judge Determining the Scope,
20 Schedule, and Need for Hearing in Phase 1 of this Proceeding” issued on January 28, 2013. A
21 complete copy of this order is able at:
22 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M042/K157/42157052.PDF> A complete copy
23 can also be provided upon request.

24 8. Attached as Exhibit F are true and correct excerpts from “Assigned
25 Commissioner’s and Administrative Law Judge’s Ruling on Legal Questions Set Forth in
26 Scoping Memo and Ruling” filed on April 30, 2013. A complete copy of this ruling is available
27 at: <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M064/K268/64268299.PDF> A complete
28 copy can also be provided upon request.

1 9. Below is a list of the *ex parte* communications reported in SONGS OII prepared
2 by CPUC in house counsel. Each *ex parte* communication is available at the hyperlink provided.

3 Copies of all of these *ex parte* communications are also available upon request.

4 Filed on 12-23-15 by World Business Academy:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M157/K541/157541748.PDF>

5 Filed on 12-15-15 by University of California:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M157/K362/157362193.PDF>

6 Filed on 11-20-15 by World Business Academy:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M155/K980/155980560.PDF>

7 Filed on 11-16-15 by World Business Academy:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M156/K051/156051469.PDF>

8 Filed on 11-06-15 by World Business Academy:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M156/K011/156011360.PDF>

9 Filed on 8-20-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K226/154226064.PDF>

10 Filed on 8-20-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K225/154225742.PDF>

11 Filed on 8-20-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K226/154226061.PDF>

12 Filed on 8-20-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K224/154224757.PDF>

13 Filed on 8-20-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K225/154225732.PDF>

14 Filed on 8-20-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K225/154225735.PDF>

15 Filed on 8-20-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K226/154226087.PDF>

16 Filed on 8-20-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K225/154225867.PDF>

17 Filed on 8-20-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K225/154225747.PDF>

18 Filed on 8-20-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K224/154224768.PDF>

19 Filed on 7-09-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M153/K576/153576626.PDF>

20 Filed on 4-13-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M151/K169/151169943.PDF>

21 Filed on 3-12-15 by University of California

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M151/K169/151169552.PDF>

22 Filed on 2-09-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M146/K989/146989901.PDF>

23 Filed on 2-02-15 by Alliance for Nuclear Responsibility:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M151/K533/151533115.PDF>

24 Filed on 1-26-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M151/K339/151339976.PDF>

25 Filed on 1-14-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M151/K305/151305040.PDF>

26 Filed on 1-09-15 by SCE:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M151/K305/151305701.PDF>

27 Filed on 11-03-14 by CIEE (UC Berkeley):

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M143/K986/143986916.PDF>

28 Filed on 10-22-14 by CSC (UCLA):

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M127/K294/127294769.PDF>

1 Filed on 9-05-14 by SCE:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M105/K647/105647647.PDF>
2 Filed on 7-14-14 by Alliance for Nuclear Responsibility:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M099/K565/99565705.PDF>
3 Filed on 5-14-14 by World Business Academy:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M091/K637/91637285.PDF>
4 Filed on 4-29-14 by SCE, ORA, Friend of the Earth:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M090/K550/90550324.PDF>
5 Filed on 4-17-14 by SCE, ORA, Friend of the Earth:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M090/K127/90127274.PDF>
6 Filed on 4-11-14 by TURN:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M090/K049/90049834.PDF>
7 Filed on 2-27-14 by SCE:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M088/K662/88662103.PDF>
8 Filed on 1-23-14 by Women Energy Matters:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K821/87821989.PDF>
9 Filed on 1-21-14 by Coalition to Decommission San Onofre:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K822/87822923.PDF>
10 Filed on 1-21-14 by ORA:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K821/87821987.PDF>
11 Filed on 1-21-14 by ORA:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K072/87072324.PDF>
12 Filed on 1-21-14 by SDG&E:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K351/87351921.PDF>
13 Filed on 1-17-14 by SCE:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K267/87267323.PDF>
14 Filed on 1-16-14 by Alliance for Nuclear Responsibility:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M088/K961/88961758.PDF>
15 Filed on 1-14-14 by Women Energy Matters:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K351/87351920.PDF>
16 Filed on 1-14-14 by ORA:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M085/K389/85389025.PDF>
17 Filed on 1-14-14 by ORA:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K882/87882941.PDF>
18 Filed on 1-14-14 by TURN:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K821/87821982.PDF>
19 Filed on 1-13-14 by TURN:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K351/87351913.PDF>
20 Filed on 1-09-14 by World Business Academy:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K822/87822915.PDF>
21 Filed on 1-08-14 by ORA:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K262/87262219.PDF>
22 Filed on 1-08-14 by ORA:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K351/87351912.PDF>
23 Filed on 12-24-13 by SCE:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M084/K893/84893682.PDF>
24 Filed on 12-16-13 by Alliance for Nuclear Responsibility:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M088/K662/88662097.PDF>
25 Filed on 12-13-13 by World Business Academy:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K262/87262175.PDF>
26 Filed on 12-11-13 by SCE:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K048/87048925.PDF>
27 Filed on 12-06-13 by SCE:
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M086/K947/86947445.PDF>
28 Filed on 10-15-13 by TURN:

1 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M085/K971/85971278.PDF>
Filed on 10-02-13 by Ecumenical Center for Black Church Studies, Chinese
2 American Institute for Empowerment, Latino Business Chamber of Greater Los
Angeles, National Asian American Coalition:
3 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M084/K772/84772568.PDF>
Filed on 9-11-13 by TURN:
4 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M085/K789/85789112.PDF>
Filed on 8-23-13 by Alliance for Nuclear Responsibility:
5 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M088/K966/88966740.PDF>
Filed on 8-15-13 by SDG&E:
6 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M081/K788/81788164.PDF>
Filed on 7-23-13 by SDG&E:
7 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M079/K286/79286625.PDF>
Filed on 7-22-13 by SCE:
8 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M078/K062/78062099.PDF>
Filed on 6-24-13 by Alliance for Nuclear Responsibility:
9 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M076/K843/76843306.PDF>
Filed on 6-14-13 by SCE:
10 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M073/K726/73726604.PDF>
Filed on 5-24-13 by Ecumenical Center for Black Church Studies, Chinese
11 American Institute for Empowerment, Latino Business Chamber of Greater Los
Angeles, National Asian American Coalition:
12 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M076/K841/76841422.PDF>
Filed on 05-06-13 by DRA (ORA):
13 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M075/K723/75723767.PDF>
Filed on 5-03-13 by Friends of the Earth:
14 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M077/K434/77434417.PDF>
Filed on 4-16-13 by SDG&E:
15 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M064/K471/64471281.PDF>
Filed on 3-22-13 by Alliance for Nuclear Responsibility:
16 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M064/K354/64354821.PDF>
Filed on 3-20-13 by Alliance for Nuclear Responsibility:
17 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M063/K373/63373697.PDF>
Filed on 3-13-13 by Friends of the Earth:
18 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M064/K660/64660173.PDF>
Filed on 2-22-13 by Friends of the Earth:
19 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M060/K848/60848224.PDF>
Filed on 2-12-13 by Friends of the Earth:
20 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M062/K373/62373996.PDF>
Filed on 12-07-12 by SCE:
21 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M039/K600/39600668.PDF>
Filed on 12-06-12 by SCE:
22 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M039/K597/39597786.PDF>

23 10. Attached as Exhibit G are true and correct excerpts from “Decision Affirming
24 Violations of Rule 8.4 and Rule 1.1 and Imposing Sanctions on Southern California Edison
25 Company” issued on December 8, 2015. A complete copy of this order is available at *Decision*
26 15-12-016, 2015 Cal. PUC LEXIS 758 (December 8, 2105). A complete copy can also be
27 provided upon request.

1 11. Since approximately August 2015, I have been overseeing the CPUC's document
2 production to the Attorney General. It is my understanding that since approximately January
3 2015, on average, 9 contract attorneys have been reviewing documents 7 days week, 8-12 hours a
4 day. Since January 2015, the CPUC has been making almost monthly productions to the
5 Attorney General ranging from seven hundred to tens of thousands of documents each
6 production. As of January 6, 2016, I estimate that the CPUC's review team has produced
7 approximately 1,064,618 documents to the Attorney General.

8 12. Attached as Exhibit H is a true and correct copy of a September 8, 2015 letter from
9 DLA Piper to the Attorney General which accompanied a production of over 19,000 documents
10 in response to the SONGS Search Warrant. Attached as Exhibit I is a true and correct copy of
11 September 29, 2015 letter from DLA Piper to the Attorney General providing an update of all
12 document productions, expressing concern about the vagueness of the SONGS Search Warrant,
13 and describing in detail how the production in response to this search warrant was being
14 conducted.

15 13. In early October 2015, my colleague, Pamela Naughton, and I had a telephone
16 conference with Deputy Attorney General Deborah Halberstadt and Special Agent Reye Diaz
17 during which we discussed ways to streamline the remaining documents to be reviewed, the
18 CPUC's vast production to date, and the substantial financial and personnel burden imposed on
19 the CPUC by the Attorney General's demands. We also discussed, and Ms. Halberstadt
20 acknowledged, that the SONGS Search Warrant was vague. Ms. Halberstadt represented that
21 further instruction concerning how the SONGS Search Warrant should be interpreted would be
22 forthcoming. However, to date, we have not received any further instruction from the Attorney
23 General's office. We also discussed and the Attorney General agreed, that we could further limit
24 the documents remaining to be reviewed, using search terms. We circulated the proposed search
25 terms in a October 16, 2015 letter, a true and correct copy of which is attached as Exhibit J.
26 Attached as Exhibit K is a true and correct copy of the Attorney General's October 22, 2015
27 response to our letter. This letter did not provide any additional search terms for further filtering.
28

1 However, the Attorney General demanded that the CPUC complete production in response to the
2 first search warrant issued in November 2014 by December 28, 2015. Attached as Exhibit L is a
3 true and correct copy of our November 12, 2015 response letter further detailing the CPUC's
4 production to date.

5
6 14. Attached as Exhibit M is a true and correct copy of a December 11, 2015 letter
7 DLA Piper sent to the Attorney General which accompanied another production in response to
8 the SONGS search warrant of over 6,700 documents. Attached as Exhibit N is a true and correct
9 copy of a December 18, 2015 letter DLA Piper sent to the Attorney General which accompanied
10 reproduction of over 25,000 documents in response to the SONGS Search Warrant. The CPUC
11 had already produced these documents to the Attorney General in response to the November 2014
12 Search Warrant ("November 2014 Search Warrant") which issued out of the San Francisco
13 Superior Court and had identified them by Bates number for the Attorney General. However, the
14 Attorney General requested that the CPUC produce these documents yet again. Thus, to date the
15 CPUC has produced over 51,000 documents responsive to the SONGS Search Warrant. Attached
16 is Exhibit O is a true and correct copy of another December 18, 2015 letter DLA Piper sent to the
17 Attorney General which accompanied what we had anticipated was the remaining documents to
18 be produced in response to the November 2014 Search Warrant, approximately 13,720
19 documents.

20 15. Under the parameters we disclosed to the Attorney General in our September and
21 October 2015 correspondence, we had anticipated completing production to the SONGS Search
22 Warrant by mid-February 2016. We are in fact in the process of finalizing several other
23 substantial productions to the Attorney General.

24
25 16. Attached as Exhibit P is a true and correct copy of a December 22, 2015 letter
26 from the Attorney General's office to DLA Piper. In this letter, the Attorney General proposed
27 14 additional search terms to be used to identify documents to be reviewed in response to the
28 SONGS Search Warrant. Several of the proposed terms triggered results of tens of thousands of

1 documents which are not likely relevant to the SONGS Search Warrant. While the Attorney
2 General agreed the CPUC could somewhat limit the documents to be reviewed, searches
3 generated on our document review platform indicate that our review team will need to review an
4 additional 160,000 documents, approximately 74,000 of which are attributable to the newly-
5 broadened scope of the SONGS Search Warrant.

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

9 Executed this 17th day of February 2016 in San Diego, California.

10
11 By  _____
12 REBECCA ROBERTS

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EXHIBIT A

COM/MF1/sbf

Date of Issuance 11/1/2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

FILED
PUBLIC UTILITIES COMMISSION
OCTOBER 25, 2012
IRVINE, CA
INVESTIGATION 12-10-013

**ORDER INSTITUTING INVESTIGATION REGARDING
SAN ONOFRE NUCLEAR GENERATING STATION
UNITS 2 AND 3**

All costs tracked in the SONGS OMA are subject to audit by the Commission.

The Commission recognizes that SONGS Units 2 and 3 may be out of service for some time, and may or may not return to full service. This situation requires that the Commission consider long term options regarding each utility's provision of safe and reliable electric service without SONGS. These long term resource issues are most appropriately considered in the Commission's Long Term Procurement Planning (LTPP) proceeding (Rulemaking (R.) 12-03-014). While issues regarding long term planning without SONGS will be addressed in the LTPP, issues regarding short and medium term service and reliability should be part of this proceeding. Issues regarding costs for replacement power or expanded demand side management programs in the absence of SONGS should also be discussed as part of this proceeding.

5. Preliminary Scoping Memo

Pursuant to Rule 7.1(c), we include a preliminary Scoping Memo to provide an initial determination of this proceeding's scope, schedule, need for hearing, and other procedural matters. The determination of category may be appealed as described below.

5.1. Issues

The general scope of this OII is to review the effect on safe and reliable service at just and reasonable rates on and after January 1, 2012 of the outages at SONGS Units 2 and 3. The issues include:

1. Whether or not rate adjustments should be made; if so, when they should start, the correct amount, and the correct accounting of these adjustments.

2. The reasonableness and prudence of each utility action and expenditure with respect to the steam generator replacement program and subsequent activities related thereto.
3. The reasonableness and prudence of each utility action and expenditures in securing energy, capacity and other related services to replace the output of SONGS during the outage.
4. The cost-effectiveness of various options for repairing or replacing one or both units of SONGS.
5. Any additional ratemaking issues associated with the above, including the availability of warranty coverage or insurance for any costs related to the SONGS outage.
6. The reasonableness and necessity of each SONGS-related operation and maintenance expense, and capital expenditure made, on and after January 1, 2012 reviewed within the context of the facts and circumstances of the extended outages of Units 2 and 3.

5.2. Category

We determine that the category of this proceeding is ratesetting.

(Rules 1.3(e) and 7.1(c).) This is consistent with the preliminary issues focusing on the economic consequences of the outages, repairs, source of replacement electricity, cost of replacement electricity, and cost responsibility. This determination may be appealed under the procedures stated in Rule 7.6.

5.3. Need for Hearing

We expect disputed issues of material fact over which parties will seek to cross-examine others. Therefore, we preliminarily determine that a hearing will be needed. (Rule 7.1(c).)

5.4. Schedule

Appeals of the categorization of this proceeding, if any, are to be filed and served within 10 days of the date this OII was issued. (Rule 7.6(a).) As required by our rules, an appeal shall state why the designated category is wrong as a

EXHIBIT B



FILED
8-05-15
02:02 PM

APPENDIX A

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

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

Q. What is the purpose of your declaration?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Yes.

Declaration of Witness

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

Executed on this 8 day of June, 2015.



Edward F. Randolph

EXHIBIT C

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 6/5/15
(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:

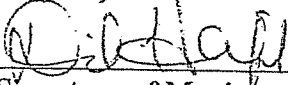
See attached Exhibit "A"

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 5th day of June, 2015, at 10:55 A.M./P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

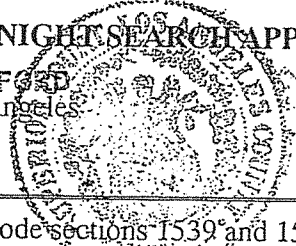


(Signature of Magistrate)

DAVID V. HERRIFORD
Judge of the Superior Court – County of Los Angeles

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

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 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

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.

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA

71801

County of Los Angeles

SEARCH WARRANT RETURN
and
INVENTORY

Search Warrant No. 71801

Issuing Magistrate: M.L. Villar

Date warrant issued: 9/25/2015

Date warrant executed: 9/25/2015

Location/Vehicles/Persons served and title:

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

For personal email records of Stephen Pickett

Manner of service: Faxed to 425-708-0096

FILED
2015 NOV 13 AM 11 21

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 September 25, 2015, your affiant served Microsoft Corporation with the search warrant authorized by the Honorable M.L. Villar, Los Angeles County Superior Court on September 25, 2015.

On October 28, 2015, Microsoft Corporation provided me approximately 1,400 emails related to Stephen PICKETT. These emails were subsequently turned over to the Office of the Attorney General's Litigation Support Unit and will be loaded into a database for my review after the emails are reviewed by others for attorney client privilege.

Microsoft has complied to the search warrant as ordered by the court.

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

Date: 11/13/2015

Special Agent Reye Diaz AG#10
Affiant

Judge of the Court
EDMUND WILLCOX CLARKE, Jr.



Penal Code § 1537

SW No. 71801

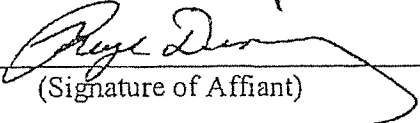
STATE OF CALIFORNIA – COUNTY OF LOS ANGELES

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 18 pages, are true and that based thereon he/she has probable cause to believe and does believe that the property and/or person described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

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


(Signature of Affiant)

(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" "B"

FOR THE FOLLOWING PROPERTY:

See attached Exhibit "A" "B"

RECEIVED 13 APR 11 21
FILED 

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 _____ day of 9/25/15, 2015, at 9:40 A.M./P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

M.L. Villar

M.L. VILLAR

(Signature of Magistrate)

Judge of the Superior Court – County of Los Angeles



NIGHT SEARCH APPROVED: YES [] NO [X]

(Magistrate's Initials)

Be advised that pursuant to California Penal Code sections 1639 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

FILED
2015 NOV 13 AM 11 21

EXHIBIT "A"

LOCATION #1:

Stephen Pickett email account:

See Attached "B" for specific email information:

MAY BE SERVED VIA EMAIL or FAX

FOR THE FOLLOWING PROPERTY:

Any and all email records and correspondence occurring between January 2012 through current on any, and all, email account(s) belonging to Stephen PICKETT, to specifically include the email account listed in Attachment "B".

Upon receipt of all emails from Microsoft Corporations or any other provider:

Upon receipt, the emails will be reviewed by California Attorney General personnel for the following items: Any and all records and correspondence from January 2012 until current, 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. Internal correspondence, emails, text messages, logs, support letters, letters, documentation, as well as correspondence, emails, text messages, logs, support letters, letters, documentation between SCE officials and CPUC officials, decision makers, Michel FLORIO, Michael PEEVEY, Edward RANDOLPH, and CPUC ALJs as they relate to the UCLA Luskin Institute at UCLA, University of California, UCLA's Institute of the Environment and Sustainability, California Center for Sustainable Communities at UCLA, the SONGS closure, the SONGS settlement, the SONGS OII investigation, and commitment of research funds involving the CPUC, and any and all lobbying efforts on any of these topics.
2. SCE communications between SCE executive staff, including but not limited to Ron LITZINGER, Ted CRAVER, and Stephen PICKETT, regarding the meeting between PICKETT and PEEVEY in Poland, the SONGS settlement, the SONGS OII investigation, and monies committed to a research fund as a result of the SONGS closure.

It is further ordered that Microsoft Corporation, and/or any email provider, not notify any person of the existence of this order until further order of this court. Affiant submits that such an order is justified because notification of the existence of this order could seriously jeopardize the ongoing investigation. Such a disclosure could give account holder(s) an opportunity to destroy evidence.

71801

SUPERIOR COURT OF CALIFORNIA

County of Los Angeles

Search Warrant
Sealing Order

FILED
2015 NOV 13 AM 11:11
Los Angeles

Warrant No. _____

Place to be searched: STEPHEN PICKETT EMAIL ACCOUNTS

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:

EXHIBIT "B" OF SEARCH WARRANT
ATTACHMENT "D" OF 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.

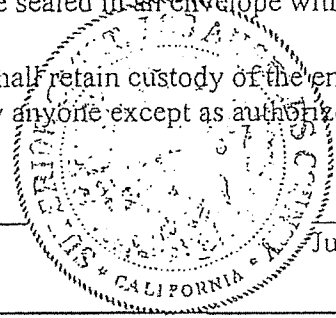
9/25/15
Date

[Signature]
Affiant REYER DIAZ

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.

9/25/15
Date



[Signature]
M.L. VILLAR
Judge of the Superior Court

**AFFIDAVIT OF REYE EUGENE DIAZ
IN SUPPORT OF SEARCH WARRANT**

That your affiant, Reye Eugene Diaz, has been employed by the Department of Justice since 1997.

I am currently a Special Agent and "investigative or law enforcement officer" of the State of California within the meaning of 830.1 of the California Penal Code who is empowered by law to conduct investigations and make arrests for offenses committed within the State of California.

From November 1999 until January of 2003, I was assigned to the California Department of Justice, Bureau of Narcotic Enforcement, San Francisco Regional Office. During this time, my primary assignment was to conduct narcotic investigations which routinely required me to work in an undercover capacity, conduct surveillance on suspects, develop and handle informants, as well as author and serve search warrants. During this time, I also served as case agent on mid level narcotic investigations and assisted with numerous high level narcotic investigations.

From February 2003 until November 2014, I was assigned to the California Department of Justice, Bureau of Gambling Control and Bureau of Investigation. During my time with both the Gambling Control and Bureau of Investigation, I served as case agent on numerous investigations pertaining to the following crimes: Pimping, Human Trafficking, prostitution, violent loan sharks/extortion, murder for hire, corruption, embezzlement, grand theft, burglary, illegal lottery, counterfeiting, identity theft, forgery, fraud, embezzlement, and political corruption. I routinely worked with the Federal Bureau of Investigation, the United States Secret Service, the Internal Revenue Service,

the Department of Homeland Security, and local law enforcement personnel on numerous major investigations. During these aforementioned investigations, I have conducted numerous hours of surveillance, routinely utilized sophisticated investigative equipment, conducted numerous interviews and interrogations, conducted numerous undercover operations, arrested hundreds of suspects, routinely worked with informants, written numerous search warrants, and have routinely testified in court.

I am cross designated as a task force agent with the FBI and have received the California Attorney General Peace Officer Award for my work as a criminal investigator. I am currently assigned to the California Attorney General's Financial Fraud Section and Special Prosecutions Unit where I am tasked by the California Attorney General's Office to combat human trafficking, sex trafficking related crimes, as well as conduct financial fraud investigations.

I. Introduction

This affidavit is submitted in support of a request for a search warrant to be issued and executed for email records belonging to Stephen PICKETT, the former Executive Vice President of External Relations at Southern California Edison (SCE). Your affiant believes there is probable cause to conduct this search warrant for the following reasons:

1) There is probable cause to believe that Michael PEEVEY, former President of the California Public Utilities Commission, utilized his position to influence SCE's commitment of millions of dollars to UCLA to fund a research program. There is also probable cause to believe Stephen PICKETT, former Executive President of External Relations at SCE, and PEEVEY knowingly engaged in and conspired to engage in prohibited *ex parte* communications regarding the closure of a nuclear facility, to the advantage of SCE and to the disadvantage of other interested parties. And there is probable cause to believe that evidence showing that PICKETT knowingly engaged in prohibited *ex parte* communications with PEEVEY will be found in personal emails belonging to Stephen PICKETT.

I. BACKGROUND

In January 2012, Southern California Edison (SCE) announced that a radiation leak likely occurred in a steam generator at the San Onofre Nuclear Generating Station (SONGS). As a result, SONGS' two reactor units, referred to as Unit 2 and Unit 3,

remained offline until it could be determined whether the issues with the steam generators could be corrected. SONGS has not been operational since.

On November 1, 2012, the CPUC initiated a proceeding through an Order Instituting Investigation (OII) in order to determine, among other issues, how to allocate the financial burden associated with the closure between rate payers and SCE shareholders.

On June 7, 2013, SCE announced the permanent shut-down of SONGS. SCE participated in settlement negotiations with rate payer advocacy groups including The Utility Reform Network (TURN) and the California Office of Ratepayer Advocates (ORA). SCE negotiated on behalf of SDG&E. Any agreed upon settlement was required to be submitted to CPUC for approval.

On April 4, 2014, the settling parties filed their proposed settlement with CPUC for approval. CPUC Commissioner Michel FLORIO and Administrative Law Judge (ALJ) Melanie DARLING were assigned oversight of the proceedings.

On September 5, 2014, Commissioner FLORIO and ALJ DARLING issued a ruling that the proposed settlement could not be accepted unless amended to include a \$25 million dollar commitment by SCE to the University of California over five years to address environmental offsets and greenhouse gas mitigation.

On November 25, 2014, after the settling parties agreed to the amendments, CPUC issued a decision approving the settlement.

II. LEGAL FRAMEWORK

A. The California Public Utilities Commission

The California Public Utilities Commission (CPUC) is a state regulatory agency. According to its website, CPUC regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies. The CPUC's mission is to serve the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy. The CPUC is located in San Francisco, CA.

B. 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).) *Ex parte* communications are prohibited in adjudicatory cases. (Pub. Util. Code . § 1701.2.) The SONGS Oil and associated settlement discussions are considered adjudicatory. Violation of this prohibition is a misdemeanor. (Public Util. Code § 2110.)

C. Obstruction of Justice and Conspiracy to Obstruct Justice

Under California law, "every judicial officer, court commissioner, or referee who commits any act that he or she knows perverts or obstructs justice, is guilty of a public offense punishable by imprisonment in a county jail for not more than one year." (Cal. Penal Code § 96.5). Penal Code section 182 (a) (5) makes it a felony to "commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws." Conspiracy to commit a misdemeanor offense can also

be charged as a felony, pursuant to Penal Code Section 182 (a) (1).

III. FACTUAL EVIDENCE IN SUPPORT OF SEARCH WARRANT

A. PEEVEY and PICKETT Secretly Discussed Specific Terms of SONGS Settlement at Hotel Bristol in Poland.

1. PEEVEY and PICKETT *ex parte* conversation

On March 26, 2013, while SONGS was still offline and CPUC OII proceedings were still ongoing, Stephen PICKETT, then the Executive Vice President of External Relations at SCE, met with Michael PEEVEY, then the President of the CPUC, at an unrelated fact finding mission in Warsaw, Poland. According to handwritten notes memorialized on stationery from Warsaw's Bristol Hotel, PICKETT and PEEVEY discussed settlement terms related to the closure of SONGS which included, among other things, decommissioning costs, investment recoveries, shutdown procedures, employee severance packages, rate payer costs, and a \$25 million dollar donation to an agreed upon greenhouse gas or environmental academic research fund. Your affiant obtained these notes in a home-office desk while executing a search warrant at PEEVEY's residence in La Canada, California, on January 27, 2015.

PICKETT reported back to his management at SCE within one week of his meeting with PEEVEY in Poland, and subsequently provided his management with his own version of the notes based on his recollection of the meeting with PEEVEY.

The notes seized from PEEVEY's residence address the following nine topics with additional information pertaining to each topic:

1. Pre-RSG Investment;
2. RSG and post – RSG investment;
3. Replacement Power Responsibility;
4. Neil Insurance Recoveries;
5. MHI Recovery;

6. Decommissioning Costs;
7. O&M;
8. Environmental Offset;
9. Process.

PICKETT's typed notes, entitled "Elements of a SONGS Deal," contain the same nine topics, in almost the exact same order, as the Hotel Bristol notes. PICKETT's notes also contain one additional topic entitled "Other Notes." Copies of both notes are included as Attachment #A.

2. SCE Filed a Notice of Ex Parte Communications Two Years Late, Only After the Poland Meeting was Publicly Disclosed.

On January 27, 2015 your affiant executed a search warrant at PEEVEY's residence in La Canada, California, at which time your affiant seized handwritten notes on Hotel Bristol stationery associated with the SONGS closure. Your affiant subsequently filed a search warrant return with the San Francisco County Superior Court and attached a copy of the property receipt. The Superior Court ordered the declaration sealed, but the property receipt remained publicly available.

On January 30, 2015, as a result of the search warrant return, the *San Diego Union-Tribune* reported the details of the search warrant and emphasized that law enforcement had seized "RSG notes on Hotel Bristol stationery."

On February 9, 2015, nine days after the *San Diego Union-Tribune* reported the seizure of the notes, and approximately two years after the actual meeting took place between PICKETT (SCE) and PEEVEY (CPUC), SCE belatedly disclosed that PICKETT met privately with PEEVEY in Poland on March 26, 2013, and that SCE failed to disclose the *ex parte* communication. According to the late-filed notice of *ex parte* communication, PEEVEY initiated the communication on a framework for a possible

resolution of the pending OII regarding the closure of SONGS. SCE also reported that PICKETT took notes during the meeting, and PEEVEY kept the notes. According to SCE, it did not originally report the *ex parte* communication based on an understanding that "the substantive communication on a framework for a possible resolution of the OII was made by Mr. PEEVEY to Mr. PICKETT, and not from Mr. PICKETT to Mr. PEEVEY." SCE further stated, "However, based on further information received from Mr. PICKETT last week, while Mr. PICKETT does not recall exactly what he communicated to Mr. PEEVEY, it now appears that he may have crossed into a substantive communication."

3. April 4, 2013 email from PICKETT to SCE personnel.

Your affiant reviewed an email, dated April 4, 2013, one week after the meeting in Poland and approximately 1-2 days after PICKETT developed his own version of the notes, from PICKETT to two specific individuals that work for Southern California Edison. In this email, PICKETT advises, "First, we should take my notes and turn it into a simple term sheet we could use to help guide the negotiations."

4. LITZINGER and PICKETT did not file *ex parte* report.

On March 20, 2015, your affiant interviewed Ron LITZINGER, President of SCE. According to LITZINGER, he told PICKETT after the Poland trip that PICKETT was not authorized to engage in negotiations with PEEVEY regarding the closure of SONGS. LITZINGER claimed that when PICKETT came back from the trip and notified him about the conversation, LITZINGER wondered why there was a "conversation taking place" while there was an active proceeding. Nevertheless, LITZINGER did not file, nor did he request that PICKETT file, a notice of *ex parte* communication.

Although SCE did not decide to close SONGS until May 2013, LITZINGER said he had to reinforce to PICKETT on April 11th that he (PICKETT) was not going to be part of the settlement team and that the settlement process was going to be very tightly controlled. LITZINGER said that he had to remind PICKETT of this fact, as PICKETT was "still talking like he was going to be part of the settlement team."

5. PEEVEY pressured LITZINGER to make commitment to UCLA as part of SONGS settlement agreement.

LITZINGER also stated that, in a conversation with PEEVEY on May 2, 2014, while SONGS settlement proceedings were ongoing, PEEVEY requested that SCE make a \$25 million commitment to UCLA as part of the settlement. According to LITZINGER, PEEVEY emphasized the fact that he had discussed the matter with PICKETT in Poland. LITZINGER told your affiant that PEEVEY waved hand written notes. LITZINGER stated that he told PEEVEY, "I was aware that conversation took place, but Steve [PICKETT] was not authorized to speak on behalf of the company."

6. Edward RANDOLPH's description of the Poland meeting

Your affiant also interviewed Edward RANDOLPH, the current Director of Energy at the CPUC. RANDOLPH advised your affiant that he was present during the discussion between PEEVEY and PICKETT in Poland. RANDOLPH told your affiant that there were "ground rules" as to what they could talk to SCE about on the trip. When asked if these ground rules would prohibit substantive discussion on "pending proceedings," RANDOLPH stated yes. RANDOLPH stated that there was an "offline discussion" between RANDOLPH, PEEVEY, and PICKETT at a bar at the Bristol Hotel in Poland. When asked what pending proceeding they discussed, RANDOLPH answered, "The prime point of the discussion was to discuss the timing of a

determination of if Southern California Edison was going to permanently shut down the San Onofre Nuclear Generation Facility.” RANDOLPH said that the discussion, in itself, did not relate to a proceeding in his opinion. According to RANDOLPH, the reason they were discussing the permanent shut down of SONGS is that it was already heading into a second summer in which the plant had been shut down, and SCE had not made a long term determination of what they would do if the plant closed permanently. RANDOLPH said CPUC wanted SCE to do a long term determination so it could do long term planning and not short term “patchwork” which would be more expensive for the rate payers.

When RANDOLPH was asked if there was a more specific conversation about a settlement agreement, RANDOLPH answered, “Sort of, after we finished the discussion about making a determination about the plant closing, which was probably about a ten minute conversation, the conversation did drift into a conversation on what the financials on closing a plant would look like.” When asked who led the conversation, RANDOLPH stated that the first part of the conversation, regarding a determination on if the plant was going to be permanently closed, was led by PEEVEY. According to RANDOLPH, the second part of the conversation, regarding the financials of a plant closure, was led by PICKETT. RANDOLPH’s recollection of events contradicts PICKETT’s assertion to his management that the discussion with PEEVEY was just one-way. RANDOLPH told your affiant that, in his opinion, the discussion in Poland was an *ex parte* communication, and SCE should have reported it.

7. Effects of Poland Conversation on Other Interested Parties

As a result of a recent public disclosure of the PEEVEY notes your affiant seized at PEEVEY's residence, both ratepayer settlement parties (ORA and TURN) that negotiated with SCE, without the advantage of being aware of the PICKETT meeting with PEEVEY in Poland, issued the following separate statements on April 17, 2015:

ORA STATEMENT:

"ORA has reviewed the Hotel Bristol Notes and has made a comparative analysis with the final SONGS settlement agreement. The Hotel Bristol Notes appear to set a framework for settlement that is similar to the elements of the settlement that was ultimately accepted by the CPUC. The Hotel Bristol Notes appear to demonstrate the degree to which Peevey and Pickett collaborated to orchestrate a settlement of the SONGS outage investigation. Based on ORA's analysis of the Hotel Bristol Notes and the final settlement agreement, customers still saved at least \$780 million more than the "deal" that Peevey and Pickett had described. However, ORA cannot honestly say that it got the best deal for ratepayers. Edison was likely able to use its knowledge of Peevey's position to steer the settlement in the direction it wanted. While ORA believes it worked to strike a good deal for ratepayers based on legal precedents, we are troubled by the possibility that we might have been able to strike a better deal."

TURN STATEMENT:

"The Warsaw meeting was a flagrant violation of CPUC rules governing ex parte contacts," said TURN staff attorney Matt Freedman. "The CPUC has properly ordered SCE to turn over all documents relating to communications with CPUC decision makers about the possible settlement of SONGS. Based on the responses to this ruling, TURN may seek a reopening of the case. At a minimum, TURN will urge the CPUC to assess the maximum sanction on SCE for its ex parte violations and apply any financial penalties toward reducing customer rates."

The Utilities and Commerce Committee of the California Assembly also formally requested that John GEESMAN, Attorney for Alliance for Nuclear Responsibility, analyze the PEEVEY notes and make an assessment of the differences between the terms outlined in the notes and the actual settlement proposal. According to GEESMAN, *"Prompt disclosure of ex parte communications like that between Mr. PICKETT and Mr. PEEVEY is an essential prerequisite for a level playing field in a regulatory proceeding."*

In regards to the advantage SCE had going into the negotiations as a result of the PEEVEY and PICKETT meeting and SCE's failure to disclose the meeting as required by law, GEESMAN stated, *"It appears to me that SCE managed to improve its position by at least \$919 million, and arguable \$1.522 billion, from what CPUC President PEEVEY had identified at the Hotel Bristol as a framework for a possible resolution."*

B. PEEVEY's Request for UCLA Research Funds

The University of California, Los Angeles (UCLA), has disclosed that while the SONGS closure settlement negotiations were still ongoing, and prior to a proposal being submitted to CPUC, PEEVEY requested that Stephanie PINCETL, the Director of UCLA's California Center for Sustainable Communities and Professor-in-Residence at UCLA's Institute of the Environment and Sustainability, submit a proposal for exactly \$25 million dollars that would be available as a result of the closure of SONGS.

On **April 4, 2014**, the settlement parties filed their proposed settlement to CPUC for approval. CPUC Commissioner Michel FLORIO and ALJ Melanie DARLING oversaw the settlement proceedings. The initial settlement proposal did not include \$25 million dollars towards greenhouse gas research.

As noted, LITZINGER advised your affiant that PEEVEY told him on **May 2, 2014**, right after the settlement proposal was submitted to CPUC, that SCE needed to make a \$25 million dollar commitment to UCLA. PEEVEY referenced the fact that he had discussed the matter with PICKETT in Poland and waved hand written notes. According to LITZINGER, Commissioner FLORIO, the CPUC commissioner presiding over the matter, was also present during this conversation. LITZINGER advised your

affiant that he refused to engage in conversation with PEEVEY on this matter.

According to a LITZINGER declaration, after this meeting, he called FLORIO to advise that SCE was considering filing an *ex parte* notice. LITZINGER claimed that Commissioner FLORIO later told him he had discussed the matter with PEEVEY's chief of staff, and they had concluded there was no reason to disclose that the two sides had met. According to LITZINGER, over the next several weeks, PEEVEY attempted multiple times to pressure SCE to make this financial commitment directly to UCLA. Ultimately, PEEVEY told LITZINGER that he was going to bypass him and go straight to his boss Ted CRAVER, President and Chief Executive Officer of Southern California Edison (SCE) International.

Your affiant interviewed Ted CRAVER who confirmed that PEEVEY "went at him hard," telling him that they (SCE) did not get the importance of combatting climate change and this was an opportunity to do something, and if they were smart, they would figure out how to "wrap this in a cloak" and it would be good for public relations. CRAVER told PEEVEY that he could not talk to PEEVEY about this matter. SCE never agreed to formally commit money to research.

On **May 19, 2014**, in response to an email from Stephanie PINCETL (UCLA) asking about the status of project funding, PEEVEY stated that SCE had advised him that her request was "a lot of money" and would have to be taken to SCE's board for approval. PEEVEY added in his response to PINCETL, "I am, of course, exploring another option."

In addition to PEEVEY's in-person lobbying efforts, PEEVEY appeared to be organizing a letter-writing campaign to support a UCLA research program. Your affiant

has reviewed documents drafted as letters from Los Angeles-area elected officials to the CPUC, dated in early June 2014. The letters urge, as part of the pending SONGS settlement, that CPUC fund a proposed UCLA research program (California Center for Sustainable Communities at UCLA) involving the creation of a "sophisticated energy data analysis" which would result in reduction of GHG emissions. Similar letters were also delivered to SCE executives during the same time period.

On **September 5, 2014**, Commissioner FLORIO and ALJ DARLING issued a ruling that the proposed SONGS closure settlement could not be supported without two amendments, including a \$25 million dollar commitment to the University of California over five years.

LITZINGER told your affiant that SCE was not surprised, based on what had happened since May 2014, and that the commitment to fund research was a prerequisite to approval of the settlement. LITZINGER told your affiant that SCE internally debated the amendments and met with the Board of Directors to discuss the new terms. LITZINGER said SCE agreed to the terms because "our investors wanted the uncertainty of SONGS behind them." According to LITZINGER, "The benefit of eliminating the uncertainty associated with SONGS far outweighed agreeing to the \$5 million a year."

On October 2, 2014 Stephanie PINCETL (UCLA) emailed PEEVEY to request a language modification that would enhance UCLA's ability to get the funding. As a result, PEEVEY emailed FLORIO that same day asking for the proposed language to be modified in order to accommodate UCLA. FLORIO emailed PEEVEY back, stating that his Chief of Staff spoke to ALJ Darling and had a "fairly difficult conversation" with her.

FLORIO further stated in the email, "*Melanie (DARLING) seems to be in a particularly sour mood! Bottom line, she said she used the language she got from Lester in her ordering paragraph. I think that is the same as what you handed me today. We will try to clean this up before the PD mails tomorrow, or worst case in the final decision. I don't sense any disagreement about the substance, just another ALJ resisting interference by those pesky commissioners. I am confident we will get there.*"

On November 25, 2014, the SONGS settlement was formally approved, including the \$25 million dollar research grant to the University of California.

C. CPUC Business conducted on personal emails:

On February 20, 2015, your affiant served a search warrant on PEEVEY's personal email account. I have observed numerous CPUC business related emails on PEEVEY's personal email account. Although PICKETT departed SCE on November 30, 2013, both continued to correspond with each other. In one email, dated February 4, 2015, approximately one month after PEEVEY departed from the CPUC and a week after a search warrant was served at PEEVEY's house, PEEVEY sent an email to PICKETT's personal outlook email account suggesting that they meet for a glass of wine. PICKETT responded by telling PEEVEY that he was sorry he hadn't responded to his earlier voice mails and would be willing to meet with him. However, PICKETT further advised that he could not engage in "substantive discussion" on the matters currently under investigation.

IV. SUMMARY

Based on the above evidence and facts, there is probable cause to believe that PICKETT knowingly engaged and conspired to engage in a reportable *ex parte*

communication with PEEVEY in POLAND to the overall advantage of SCE in the subsequent settlement process pertaining to the closure of SONGS. It is also evident that PEEVEY utilized his position to influence SCE's commitment of millions of dollars to UCLA to fund a research program. The facts indicate that PEEVEY conspired to obstruct justice by illegally engaging in *ex parte* communications, concealed *ex parte* communications, and inappropriately interfered with the settlement process on behalf of California Center for Sustainable Communities at UCLA. 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.

There is probable cause to believe that further evidence showing PICKETT knowingly engaged in a reportable *ex parte* communication with PEEVEY, will be found, if not deleted, in PICKETT's personal outlook email account which will be listed and sealed under Attachment B.

Your affiant requests search warrant authorization from the Superior Court of Los Angeles County. Because SCE is headquartered in Rosemead, CA, and PICKETT resides in Los Angeles County, there is probable cause to believe that at least a portion of the suspected criminal activity occurred in the County of Los Angeles.

Your affiant believes it is reasonable to request any and all records pertaining to the events surrounding the settlement of the SONGS closure, especially communications regarding the SONGS settlement from January 2012 to the present. It is reasonable to limit the search from January 2012 to the present because that is when SONGS was no longer operational. Your affiant is also requesting all emails on PICKETT's email account, as your Affiant was advised by Microsoft Corporations, the

provide of PICKETT's email account, they do not have the ability to filter specific information from email accounts Microsoft Corporations manages.

SEAL AFFIDAVIT AND WARRANT:

It is further requested by your affiant, due to the high profile nature of the investigation and the suspects, that a sealing order be granted in sections within the search warrant that specifically cite PICKETT's personal email address.

Your affiant believes there is sufficient probable cause 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.

LOCATION #1:

**Stephen PICKETT's personal Email Address:
See Attachment "B"**

FOR THE FOLLOWING PROPERTY:

Any and all email records and correspondence occurring between January 2012 through current on any, and all, email account(s) belonging to Stephen PICKETT, to specifically include the email account listed in Attachment "B".

Upon receipt, the emails will be reviewed California Attorney General personnel for the following items: Emails and correspondence 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:

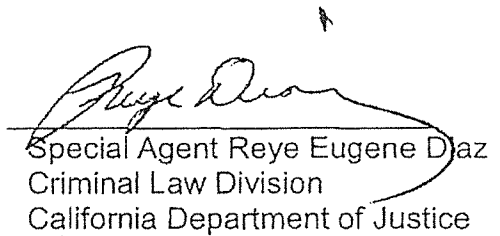
1. Internal correspondence, emails, text messages, logs, support letters, letters, documentation, as well as correspondence, emails, text messages, logs, support letters, letters, documentation between SCE officials and CPUC officials, decision makers, Michel FLORIO, Michael PEEVEY, Edward RANDOLPH, and CPUC ALJs as they relate to the UCLA Luskin Institute at UCLA, University of California, UCLA's Institute of the Environment and Sustainability, California Center for Sustainable Communities at UCLA, the SONGS closure, the SONGS settlement, the SONGS OII investigation, and

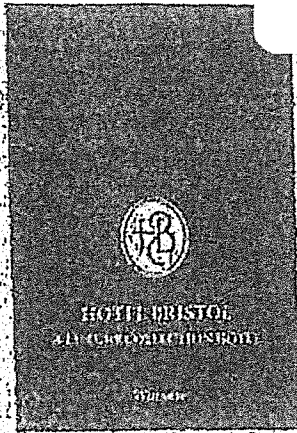
commitment of research funds involving the CPUC, and any and all lobbying efforts on any of these topics.

2. SCE communications between SCE executive staff, including but not limited to Ron LITZINGER, Ted CRAVER, and Stephen PICKETT, regarding the meeting between PICKETT and PEEVEY in Poland, the SONGS settlement, the SONGS OII investigation, and monies committed to a research fund as a result of the SONGS closure.

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 Maggy Krell
Deputy Attorney General
California Department of Justice


Special Agent Reye Eugene Diaz
Criminal Law Division
California Department of Justice



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

Notes
P&G



HOTEL BRISTOL
A LUXURY COLLECTION HOTEL

Warsaw

10

8. Environmental offset: SCE to donate \$50 million per year 2014-2022 to [an agreed upon GHG, climate, or environmental academic research fund, institution, etc.]

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

Mike Perry

- 1 - First \$200 million - 50% custom, 50% SCE
- 2 - Next \$200 million - 70% SCE, 30% custom
- 3 - Any above \$400 million - 80% to SCE, 20% to custom

+48 22 55 11 000 telephone / telefax

+48 22 625 25 977 faksimile / fax

KRAKOWSKIE PRZEDMIEŚCIE 71
00-325 WARSZAWA, POLAND

Elements of a SONGS Deal

1. Recover pre-RSG investment on a "SONGS 1" basis through 2022 (i.e., with a debt level return).
2. Disallow RSG investment entirely ("out of rate base retroactively").

Note: not clear whether the post-leak investment that is not directly related to the RSG's is included (e.g., the new heads, HP turbine, etc.)

3. Customers responsible for all replacement power costs (no disallowance).
4. Any NEIL proceeds go to customers.
5. MHI recovery: to SCE to the extent of any disallowance, then to customers, with some as yet undefined incentive mechanism to encourage SCE to go after MHI to the maximum extent possible for as long as it takes (thinking about the energy crisis settlement as a model).
6. O&M:
 - a. Already approved GRC amounts to shutdown plus some reasonable period beyond (+/- 6 months)
 - b. Ramp down to shutdown level of O&M thereafter.
 - c. Use a subsequent phase of the OII or a separate proceeding to determine the level of ongoing shutdown O&M.
 - d. Shutdown O&M to include "reasonable but generous" severance for affected SONGS employees.
7. Environmental offset: SCE to pay \$5-10 million per year for the remaining life of SONGS (i.e. through 2022) to an agreed upon GHG, climate, or environmental research fund or academic institution. Structured as a charitable donation.
8. Decommissioning to continue to be collected in rates as before through 2022, with reviews as before in triennial CPUC proceedings.

Handwritten mark

9. Process:

- a. Settlement agreement approved in OII.
- b. Balance of OII closed (except possibly a subsequent phase to determine level of ongoing shutdown O&M).

10. Other notes:

- a. Players in deal: Geesman (A4NR), FOE, TURN.
- b. Protecting labor brings TURN along (Carl Wood chair of TURN board).
- c. Privately stated complaints of SOG&E.
- d. Ron Olson involvement per energy crisis.

EXHIBIT E

MF1/MD2/jv1 1/28/2013



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE DETERMINING THE SCOPE, SCHEDULE, AND NEED FOR HEARING IN PHASE 1 OF THIS PROCEEDING

Pursuant to Rule 7.3(a) of the Commission's Rules of Practice and Procedure and following the prehearing conference (PHC) held on January 8, 2013, this scoping memo sets forth the schedule, issues and procedural requirements for Phase 1 of this proceeding.

Background

On November 1, 2012, the Commission issued this Order Instituting Investigation (OII). The Commission will investigate the ongoing shutdown of nuclear generation at the San Onofre Nuclear Generating Station (SONGS), and the resulting effects on the provision of safe and reliable electric service at just and reasonable rates. Specifically, this investigation will consolidate and consider issues raised by the operations, practices, and conduct of Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) related to and following the extended outages of SONGS Units #2 and

§§ 1801-1812 should file and serve a notice of intent to claim compensation no later than February 7, 2013, 30 days after the January 8, 2013 PHC. The notice of intent shall conform with the requirements set forth in Rule 17.1, subsections (c), (d), and (e). Responses may be filed pursuant to Rule 17.1(g). Under the Commission's Rules, future opportunities may arise for such filings but such an opportunity is not guaranteed.

In this proceeding, parties intending to seek an award of intervenor compensation must maintain daily record keeping for all hours charged and a sufficient description for each time entry. Sufficient means more detail than just "review correspondence" or "research" or "attend meeting". In addition, intervenors must classify time by issue. When submitting requests for compensation, the hourly data should be presented in an Excel spreadsheet found on the Commission's webpage under "Intervenor Compensation Program." As reflected in the provisions set forth in § 1801.3(f) and § 1802.5, all parties seeking an award of intervenor compensation must coordinate their analysis and presentation with other parties to avoid duplication.

***Ex Parte* Communications**

In a ratesetting proceeding involving hearings, *ex parte* communications are permitted only if consistent with certain restrictions and are subject to reporting requirements. (§ 1701.3(c); Rules 8.1 through 8.5.)

Filing, Service and Service List

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service. Parties must file certain documents as required by the Rules or in response to rulings by either the assigned Commissioner or the ALJ. All formally filed documents must be filed with the

the CEC's Executive Director may continue to jointly review and refine the terms of the staff collaboration, as necessary.

Category of Proceeding and Need for Hearings

The OII categorized this proceeding as ratesetting. No party appealed that determination pursuant to Rule 7.1(c). The OII preliminarily stated that this matter would require evidentiary hearings, and such hearings are set by this scoping memo for Phase 1.

Other Issues and Pending Matters

Some parties asked the Commission to make available online some or all of the record of Application (A.) 04-02-026, where the Commission gave preliminary approval to SCE for its SGRP. This matter is being explored and we will issue a notice or ruling in the future addressing this issue.

Joint Parties moved to expand the scope of the OII to include review of SCE's and SDG&E's community relations and outreach related to SONGS. These activities would be included in our review of 2012 O&M expenses recorded in the SONGSMA. However, to ensure that review of community outreach is considered in conjunction with local emergency preparedness activities, this Scoping Memorandum and Ruling explicitly authorizes review of SCE's actions and expenditures for community outreach related to the SONGS. To that extent, Joint Parties' motion is granted.

SCE and SDG&E jointly moved for a blanket protective order to govern access to information produced by the utilities which each might claim is either proprietary or "confidential." Several parties oppose the joint motion. At the PHC, we instead directed the utilities to follow the Commission's more usual process generally described in Rules 11.4 and 11.5, and make a motion to file

EXHIBIT F

MF1/MD2/jv1 4/30/2013



FILED

04-30-13
02:45 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

And Related Matters.

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

**ASSIGNED COMMISSIONER'S AND ADMINISTRATIVE
LAW JUDGE'S RULING ON LEGAL QUESTIONS SET FORTH IN SCOPING
MEMO AND RULING**

In the January 28, 2013 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (Scoping Memo), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and other parties were invited to file briefs to develop and expand legal arguments regarding the scope and timing of the Commission's authority to order different types of rate reductions related to the extended outages at the San Onofre Nuclear Operating Station (SONGS).

nuclear decommissioning).⁵ Therefore, the current measure of a general rate proceeding is whether it will assess revenues, costs, and rate base to determine just and reasonable rates.

This OII was opened as a ratesetting proceeding to consider various issues related to the extended outages at SONGS Units 2 and 3, including; (1) reasonable operating & capital costs for the Utilities for 2012 (a test year for rates); (2) what portions of the SONGS facility should reasonably remain in rate base; and (3) what SGRP costs are reasonable to recover in rates. The OII itself includes as a primary task whether “to order immediate removal effective today of all costs related to SONGS” from SCE’s and SDG&E’s rates.⁶ Thus, the Commission clearly intended the OII to serve as a general rate proceeding to consider all aspects and cost consequences of the extended outages, including rate recovery.

Additionally, the Scoping Memo for the OII underscores the general ratemaking tasks of the proceeding by identifying the ratesetting elements of each Phase. For example, Phase 2 will examine whether the Commission should remove any portion of SONGS plant from rate base, and expenses from the revenue requirement, due to the extended outages.

The Commission’s general ratemaking intent is confirmed by D.12-11-051 (SCE’S 2012 GRC) where the Commission deferred reasonableness review and final approval of SCE’s SONGS-related revenue requirement to this OII because

⁵ Id. at 48.

⁶ OII at 2.

EXHIBIT G

ALJ/MD2/jt2

Date of Issuance 12/8/2015

Decision 15-12-016 December 3, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

And Related Matters.

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

**DECISION AFFIRMING VIOLATIONS OF RULE 8.4 AND RULE 1.1 AND
IMPOSING SANCTIONS ON SOUTHERN CALIFORNIA EDISON COMPANY**

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Attachment 1 - Notes

DECISION AFFIRMING VIOLATIONS OF RULE 8.4 AND RULE 1.1 AND IMPOSING SANCTIONS ON SOUTHERN CALIFORNIA EDISON COMPANY

Summary

This decision affirms eight violations of Rule 8.4 of the Commission's Rules of Practice and Procedure (Rules) by Southern California Edison Company (SCE) stemming from failure to report, before or after, ex parte communications which occurred between an SCE executive(s) and a Commissioner. In addition, this decision finds that SCE twice violated Rule 1.1, the Commission's Ethics Rule, as a result of the acts and omissions of SCE and its employees which misled the Commission, showed disrespect for the Commission's Rules, and undermined public confidence in the agency.

To reach the conclusions in this decision, we repeated the discussion and weighing of the evidence and arguments contained in the Administrative Law Judge's Ruling and Order to Show Cause (OSC),¹ as modified by information submitted by SCE and other parties in response to the OSC. Due to these rule violations, the decision imposes a total financial penalty on SCE of \$16,740,000. This decision affirms, in part, the Ruling and OSC² which initially found ten violations of Rule 8.4 of the Commission's Rules by SCE.

The single biggest penalty of \$16,520,000 is based on finding that a continuing Rule 1.1 violation was set in motion by Mr. Pickett's grossly negligent failure to accurately and timely report his ex parte communications in Warsaw,

¹ Issued August 5, 2015.

² Amended Administrative Law Judge's Ruling Finding Violations of Rule 8.4, Requiring reporting of Ex Parte Communications, and Ordering SCE to Show Cause Why it Should Not Also be Found in Violation of Rule 1.1 and be Subject to Sanctions for All Rule Violations (Ruling and OSC) (August 5, 2015).

between individuals, as “between” is used in § 1701.1 and Rule 8.1. We affirm this view and expect it to result in more complete reporting.

Lastly, Ruth Henricks filed an “Objection to the OSC” which combines a restatement of her objections to the adopted decision, and unsupported speculation about alleged improper conduct by ALJ Melanie Darling. Ms. Henricks requests removal of the ALJ for any of several reasons not fully discussed here. We find no merit to these arguments, and further observe that the claims include misrepresentations of facts.²¹ Moreover, her allegations related to the ALJ’s December 2012 procedural communications with SCE’s Mr. Worden, and a short set of e-mails to consider whether SCE should file an ex parte notice as to a few statements, fail to note that a timely filing was made disclosing the communications. This latter set of facts has been previously rejected by the Chief ALJ and the Commission President as providing a basis in the rules to re-assign ALJ Darling.²²

5. Discussion

We conclude that SCE violated Rule 8.4 eight times during this proceeding by failing to acknowledge and disclose ex parte communications pursuant to

²¹ For example, Ms. Henricks invoked an “ethical cloud” over the ALJ and stated, “...[a] Judge of the San Francisco Superior Court found there to be probable cause to believe a felony had been committed and that ALJ Darling is in possession of related evidence.” She cites “5 June 2015 Search Warrant” but does not attach it or provide information to get it, or disclose the subpoena included many people who worked on SONGS and carries no imputation of misconduct.

²² Chief Administrative Law Judge’s Ruling Denying Motion for Reassignment (July 15, 2015) at 2 (The [moving party] does not identify any provision of law or order or rule of the Commission that Judge Darling may have violated, and none is apparent); Ms. Henricks made a previous unsuccessful motion to remove the ALJ for cause, which was denied based on the plain language of Rule 9.4 (see, Chief Administrative law Judge’s Ruling Denying Request for Reassignment for Cause (June 26, 2014); see below, Section 7 Other Rulings.

Rule 8.4. The Commission affirms the findings in the Ruling and OSC, based on a preponderance of evidence, because the communications concerned a substantive issue in the SONGS OII, took place between an interested person and a decisionmaker, and did not occur in a public hearing, workshop, or other public forum noticed by ruling or order in the proceeding, or on the record of the proceeding. On the other hand, after careful review of the evidence, explanations, and argument submitted, we do not find sufficient evidence to conclude that unreported ex parte communications occurred on May 29, 2013 or on June 17, 2014. These facts are discussed below in Section 6.1.1.

In Comments on the Proposed Decision, SCE requests some clarifications of the ex parte rules, but the decision is essentially clear. For example, SCE fears uncertainty because the term “substantive issue” is not defined in the statute or rules. However, we affirm herein the finding in the ALJ’s Ruling and OSC that, at a minimum, the term refers to issues referenced in one or more scoping rulings issued in a formal proceeding, including broad issues identified for future phases of a proceeding.

Furthermore, the Commission concludes that SCE has twice violated Rule 1.1 based on the acts and omissions of SCE and its representatives. Mr. Pickett’s failure to accurately describe, or to properly serve notice of the Poland Meeting or reveal the existence of the Notes until they became publicly known by other means, set in motion a series of misleading filings by SCE. As discussed below, we find an additional violation of Rule 1.1 based on the untrue and misleading statement by Mr. Litzinger during his testimony made under oath.

SCE's Legal Department in determining whether the ex parte rules apply to achieve a permanent privilege claim applied to all such records, thus blocking oversight and investigative access by the Commission. Thus, SCE's proposal is of unknown benefit or accessibility.

6.1.3. Commission Precedent

Commission precedent in imposing sanctions for ex parte violations has ranged from relatively minor fines, or none at all, to requiring training on ethics and the Commission's ex parte rules. In D.14-11-041, the Commission described several relevant examples which are presented below:

- In a ratesetting proceeding in which the utility failed to report its ex parte communications with each of the Commissioners' energy advisors, the ALJ required the utility to file notice of its ex parte communications and to retain an independent firm, at its shareholders' expense, to conduct four training sessions on Rule 1.1 and Article 8 of the Rules of Practice and Procedure, and no penalty was imposed.⁹⁸
- In a ratesetting proceeding in which Pacific Gas and Electric Company (PG&E) met with two Commissioners and their advisors without providing the requisite three-day advance notice of the grant of the individual meetings with the Commissioners or post-meeting notices of the ex parte communications, PG&E was required to develop and institute a control system which reflects best practices for compliance with the ex parte rules, and no penalty was imposed.⁹⁹
- Where two utilities in an adjudicatory proceeding violated the ban against ex parte communications by participating in two

⁹⁸ February 16, 2012, Joint Assigned Commissioner and ALJ's Ruling, A.08-05-022 et al.

⁹⁹ D.08-01-021.

separate ex parte meetings, each with two Commissioners' advisors, the Commission fined them each \$20,000 per meeting.¹⁰⁰

- In an adjudicatory proceeding in which a party sent a written ex parte communication to all Commissioners (and concurrently served it on all parties), the ALJ chastised the party and no penalty was imposed.¹⁰¹
- The highest fine ever was imposed on PG&E for engaging in prohibited communications about ALJ assignment in violation of Rule 8.3. The Commission imposed a \$1,050,000 penalty.¹⁰²

SCE asks the Commission to bear in mind that the largest penalty the Commission has ever imposed for a violation of an ex parte rule was that \$1.05 million penalty recently imposed on PG&E. SCE argues that it would be unfair to impose a higher fine on SCE for late reporting of permitted ex parte communications.

On the other hand, A4NR and ORA have expressed significant outrage over the possibilities of deal-making occurring during unreported ex parte communications. Although the actual content of the communications, to the extent known, is neither detailed nor reflective of agreement, these parties are committed to imposition of the statutory maximum penalties for each and every rule violation.

The Commission has tended to impose higher financial penalties in connection with violations of Rule 1.1, particularly for continuing violations:

- In a rulemaking involving natural gas safety, the Commission fined PG&E \$14,350,000 for not promptly correcting a material

¹⁰⁰ D.07-07-020 as modified by D.08-06-023.

¹⁰¹ May 3, 2002, Administrative Law Judge's Ruling, I.00-11-052.

¹⁰² D.14-11-041.

misstatement of fact in a pleading filed with the Commission and by mischaracterizing the correction submitted for filing as a routine and non-substantive correction.¹⁰³

- In an investigation, the Commission fined a transportation agency \$210,500 for violating Rule 1.1 when it disobeyed the subpoena duces tecum by not producing the unredacted copies of the requested records.¹⁰⁴
- Pursuant to a settlement, the Commission approved the Applicant's payment of a penalty of \$ 10,000 for making a misrepresentation on a Commission form in violation of Rule 1.1 by failing to disclose a previous sanction by the Ohio Public Utilities Commission for failure to file a detariffing application.¹⁰⁵

6.1.4. Amount of Fine or Penalty Will Achieve Objective of Deterrence

Based on the provisions of § 2107, the maximum fine for the eight ex parte violations and one non-continuing Rule 1.1 violation (Litzinger's false statement) is \$450,000, or \$50,000 per violation. We have concluded that the Poland Meeting Rule 1.1 violation launched a continuing violation, therefore, the penalty will be calculated for the period of March 29, 2013, the date by when SCE should have filed its ex parte notice, through July 3, 2015, the last date in which SCE repeated the erroneous statements of Mr. Pickett. The total is 826 days. If we apply the maximum fine of \$50,000 per day for 826 days, the aggregate maximum penalty fine would be \$41.3 million. Altogether, SCE's maximum exposure pursuant to § 2107 is a combined total financial penalty of \$41,750,000.

¹⁰³ D.13-12-053 at 1 (Order Instituting Rulemaking to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms, R.11-02-019).

¹⁰⁴ D.15-08-032 *55, 2015 Cal. PUC LEXIS 521, I.13-09-012.

¹⁰⁵ D.09-11-010; 2009 Cal. PUC LEXIS 587 *3.

SCE argues that application of the maximum fine would be inappropriate notwithstanding its significant financial resources, because such a fine would be disproportionate to the harm caused, the utility's conduct, and precedent. According to SCE, financial resources are used by the Commission "as a means of calibrating deterrence and avoiding the assessment of an excessive fine."¹⁰⁶ SCE argues that its conduct did not risk "severe consequences" so that deterrence is a less significant factor.

A4NR states it has "no illusions" that any fine will achieve a deterrent effect. In D.14-11-041, the Commission acknowledged the limited deterrence value of our penalties when applied to a company such as SCE.¹⁰⁷ As the Commission previously remarked when it declined to impose a penalty for PG&E's prior ex parte violation, "In terms of financial resources, PG&E is an extremely large company... even imposing the maximum penalty" would have little likelihood of a discernable financial impact.¹⁰⁸ Instead, we observe that the primary deterrence value is when financial penalties are sufficiently large that the utility must report them to investors.

6.1.5. Totality of Circumstances

The Commission has held that a fine should be tailored to the unique facts, or totality of circumstances of each case. When making this assessment, the Commission considers facts that tend to mitigate or exacerbate the degree of

¹⁰⁶ SCE's Response to Ruling and OSC at 39.

¹⁰⁷ D.14-11-041 at 13

¹⁰⁸ D.08-01-021 at 14.

wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.¹⁰⁹

SCE argues for a modest penalty due to several mitigating factors:

- The Ruling was new information - the Ruling and OSC was the first time "many of the interpretive issues have been explained." SCE continues to believe that only the March 26, 2013 Poland meeting constitutes a reportable ex parte communication. Since the Commission has determined otherwise, SCE asks the Commission to recognize that parties' expectations and understanding of the rules have evolved since the communications in question have occurred. Thus, SCE asserts it would be unfair to apply this new understanding retroactively.

We acknowledge this as a mitigating factor, particularly in relation to the Rule 1.1 violation from Mr. Litzinger's testimony. However, in each of the Rule 8.4 violations, there was evidence and inference to support that, perhaps briefly, an ex parte communication occurred. The utility also has a duty to comply with the Commission's Rules. Therefore, if faced with uncertainty or ambiguity, SCE should have sought guidance or favored disclosure instead of parsing exceptions.

- Informality - The overall impression from the internal and external emails produced, is that SCE has lax oversight of its executives who are permitted, if not encouraged, to meet with Commissioners at "social" occasions, industry activities, and other non-office settings. The executives then engage in conversations that may briefly touch on substantive issues in a formal proceeding, but do not report them on the grounds they are short, or not substantive enough.

¹⁰⁹ D.15-08-032 at 43.

We treat this as an exacerbating factor due to the continuing risk that SCE has become too informal, too casual about what is permissible, permissible if reported, and what is wholly prohibited.

- SCE's new policy – SCE has adopted a new policy which limits contact with Commissioners to normal business hours or “at widely-attended events like seminars, recognition ceremonies, or other public events; private dinners are not allowed.”¹¹⁰

We treat this as a mitigating factor because it indicates SCE understands the problem and is acting to reduce or eliminate it.

- Everybody else does it - SCE requests restraint in adopting sanctions given the quantity of ex parte and Rule 1.1 violations SCE alleges have been committed by other parties, “including those clamoring most loudly for SCE to be punished.”¹¹¹ SCE provided numerous examples.¹¹²

It is tempting to treat this as a mitigating factor because it is true that this has been a boisterous, contentious, and complex proceeding in which several parties accused each other of misconduct. However, SCE is a large company with many resources and a long history with the Commission. We expect it to be able to fulfill its own regulatory duties and not look for excuse in the alleged bad acts of others. Therefore, we consider this neither mitigating nor exacerbating.

6.2. Conclusions re Penalties and Sanctions

Based on the discussion above, the facts and circumstances of this proceeding require that we impose financial penalties for the eight Rule 8.4 violations and two Rule 1.1 violations.

¹¹⁰ SCE's response to Ruling and OSC at 35.

¹¹¹ SCE's Response to Ruling and OSC at 40.

¹¹² *Id.* at 40-42.

SCE has a duty to comply with our rules, and the burden is on the utility to determine its legal obligations and fulfill them. However, SCE's argument that it could hardly be expected to know whether these communications fit the definition of ex parte communications prior to issuance of the Ruling and OSC, is not entirely without weight given the apparent confusion among the parties.

It is remarkable that parties advanced such differing views of the decades-old language defining an ex parte communication. SCE's submissions exposed a range of previously unknown, rather informal, communications between SCE executives and Commissioners, advisors, and other decisionmakers in which a substantive issue may have received briefly passing comments between them. Nonetheless, if the other elements are present, this is a reportable ex parte communication.

In any event, SCE's arguments are inapplicable to the late and inaccurate Late Notice regarding the March 26, 2013 Poland meeting which is the most egregious violation, and which led to SCE repeating the false characterization of this now-admitted ex parte communication. Thus we identify no mitigating factors for this violation. A lower penalty is suitable for the other seven violations due to mitigating factors, including SCE's new policy limiting after-hours social occasions between SCE executives and Commissioners. However, the violations are still significant because these particular communications were established as "two-way" between SCE and one or more Commissioners on a substantive issue related to the SONGS OIL.

Therefore, we calculate the fines for Rule 8.4 violations as follows:

- March 26, 2013 - \$50,000
- All others - $\$20,000 \times 7 = \$140,000$

We calculate the fines for the two Rule 1.1 violations as follows:

We found that SCE's and Mr. Pickett's series of grossly negligent actions and omissions resulting in false and misleading statements made to the Commission is a continuing violation. We begin the calculation on March 29, 2013, the date by which SCE should have filed its ex parte notice of the March 26 meeting and disclosed the Notes, and end the calculation on July 3, 2015, the latest date in which SCE continued to repeat Mr. Pickett's erroneous version of the Poland Meeting. Actions and omissions which mislead the Commission, and continue for a period of time to mislead the Commission, should result in significant penalties. We assess \$20,000 per day for this continuing violation based on the history of this proceeding as set forth above. The financial penalty is $\$20,000 \times 826 \text{ days} = \$16,520,000$.

The second Rule 1.1 violation is the false testimony by Mr. Litzinger which is also subject to mitigating factors. A reasonable inference from the evidence is that he did not mislead the Commission by intention, recklessness, or gross negligence. It is also reasonable to infer that he believed he was responding accurately, and was relying on advice of his counsel. However, as discussed above, these facts do not excuse that he gave untrue testimony under oath and misled the Commission, the public and other parties. Making a false statement to the Commission, especially under oath, favors the maximum penalty. However, we apply a lesser amount in recognition that Mr. Litzinger's false testimony does not appear to be intentional, reckless, or grossly negligent, but at a minimum it was unreasonably uninformed and unreflective. Therefore, we impose a substantial penalty of \$30,000 for this violation.

The grand aggregated total financial penalty for SCE and its shareholders is \$16,740,000.

In Comments on the PD, both SCE and A4NR asked the Commission to alter the proposed penalties, albeit in different directions. However, the decision reaches a reasonable conclusion based on the facts in evidence, the criteria established by D.98-12-078, and is consistent with Commission precedent. SCE's request was based on unaccepted arguments to reduce the number of violations. A4NR's requests for the maximum penalties are based on its unaccepted arguments, and reference to two decisions which are factually distinguishable.¹¹³ Consequently, we decline to make any adjustments to the proposed penalties.

It is the Commission's intent to highlight to SCE and all parties that we are committed to achieving full compliance with our governing laws and rules. Anything less damages the agency's regulatory mission and undermines the public's confidence in due process, fair hearings, and just and reasonable rates.

In addition to financial penalties, we consider the steps SCE has taken to improve tracking and recordkeeping of communications between SCE employees, agents, and representatives and Commission decisionmakers and advisors to Commissioners. As noted previously, we are concerned that this vital information will not be accessible to the public, parties, and the Commission.

Therefore, effective the date this decision is issued, in connection with the SONGS OII (and its consolidated proceedings) SCE shall begin collecting information on all non-public individual communications where both SCE and

¹¹³ For example, D.08-09-038, wherein the Commission adopted a \$30 million penalty, was in response to finding that SCE employees and management had manipulated and submitted false data which was used to determine certain rewards for a period of seven years. The penalty amount was the equivalent of \$12,000/day for the continuing violation, lower than the \$20,000 per day imposed in this decision.

one or more Commissioners, and/or their advisors, and/or CPUC decisionmakers (per Rule 8.1(b)) are present. SCE shall immediately develop an internal tracking system which results in a public log which shall include the identity of all participants, general subject matter, the relevant SONGS OII or consolidated proceeding(s), meeting date, length of time, location, whether written materials were used, if an ex parte notice was filed, and if not, then an explanation. SCE shall make the log available to the public, preferably by posting it on the website and keeping it current throughout the remainder of the SONGS OII and consolidated proceedings, unless superseded by future Commission action.

No later than March 1, 2016, SCE shall file a Tier 1 Advice Letter with the Executive Director which describes the implementation of the tracking, features of the log, accessibility to the public, and the internal mechanisms to ensure accuracy.

7. Other Rulings

On November 24, 2015, Chief ALJ Karen V. Clopton issued a Ruling that denied Coalition to Decommission San Onofre's (Coalition) July 14, 2015, and October 21, 2015 motions to reassign ALJ Melanie Darling and to recuse Chief Judge Clopton from ruling on these matters. These motions follow the Coalition's July 2, 2015, motion to reassign Judge Darling and Chief Judge Clopton's July 10, 2015, ruling denying that motion. The Commission affirms these rulings.

8. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

EXHIBIT H



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September 8, 2015
VIA UPS

OUR FILE NO. 393011-000001

Ms. Maggy Krell
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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 Comm., 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
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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

WEST261221070.1

EXHIBIT I