

Citizens' Oversight Projects (COPs)

771 Jamacha Rd #148
El Cajon, CA 92019
CitizensOversight.org
619-447-3246

June 11, 2013



California Public Utilities Commission
Michael R. Peevey, President
Michel Peter Florio, Commissioner
Catherine J.K. Sandoval, Commissioner
Mark J. Ferron, Commissioner
Carla J. Peterman, Commissioner

505 Van Ness Avenue
San Francisco, CA 94102
415.703.2782
c/o public.advisor@cpuc.ca.gov

Dear California Public Utilities Commission:

On May 13-17, the CPUC held evidentiary hearings regarding the outage at the San Onofre Nuclear Generating Station (SONGS) in I.12-10-013. These meetings were held at your San Francisco hearing rooms and were open to the public.

The Bagley-Keene Open Meeting Act of 1967 implements a provision of the California Constitution which declares that "the meetings of public bodies and writings of public officials and agencies shall be open to public scrutiny" and explicitly mandates open meetings for California State agencies, boards and commissions. One provision of that act is that: "Any person attending an open and public meeting of a State body shall have the right to record the meetings on a tape recorder."

Prior to the start of the meeting, I attempted to record the meeting, as we have done before at hundreds of other meetings at all levels of government. This event is fully documented on this web page:
<http://www.copswiki.org/Common/M1358>

Our method of recording such meetings is unobtrusive and does not infringe on anyone's rights. As a standard practice, if someone informs us that they wish not to appear for any reason, such as if they are in a witness-protection program, we will edit out their appearance. However, at official administrative hearings regarding public utility matters, such a situation is very unlikely. We noted that during those times when the meeting was put "off the record," this was to give the court reporters a break during discussions that were of little consequence rather than being for privacy concerns, and these periods could have been video or audio recorded without any concern for anyone's right to privacy and would assist the public in their understanding of the sessions.

Administrative Law Judge Melanie Darling said that she would not allow any video or audio recordings of the meeting, contrary to the Bagley-Keene Open Meeting Act of 1967. She also said that it was necessary that the public provide advanced notice of our intention to record the meeting. Prior to the meeting, she also asked me to identify myself, and she stated that I was required to do so, contrary to California Government Code 11124, which reads: "No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise fulfill any condition precedent to his or her attendance."

During the first day of these meetings, the public was not allowed to record it, either by audio or video recording means. On subsequent days, a video webcast of low fidelity was provided for viewing by the public, and made available on the CPUC website. However, during those days, the public was not allowed to perform any recording, audio or video. We discovered that it is difficult to access the video for many people who may not have the correct player (it requires Real player), and is difficult to download the video later, as I attempted to do so and had to record it off of the screen.

Since a video webcast and recording of the meeting was made available, it seems difficult to substantiate that the public cannot make their own recordings, particularly in light of the fact that times which are "off the record" are typically discussions of low importance. Statements by ALJ Darling that there are other concerns was not at all substantiated.

We are particularly concerned about these actions because the hearings are being held in the CPUC San Francisco headquarters regarding the San Onofre Nuclear Generating Station and utilities (Southern California Edison, San Diego Gas & Electric, and City of Riverside Utilities Department) in Southern California, about 450 miles away. This makes it difficult to attend in person and therefore such recordings and webcasts are essential. The obvious and real injury to the public's ability to monitor these meeting far outweighed any hypothetical and nonexistent concern to privacy by the participants.

To protect the public's right to record meetings and to attend meetings anonymously, the actions taken by ALJ Darling to restrict the recording of these meetings and to require that the public identify themselves must be challenged, and thus this letter to you.

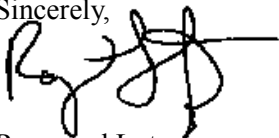
REMEDY DEMANDED:

The Commission shall, by formal action: (1) declare the actions restricting recording of these public meetings by ALJ Darling on May 13, 2013, to be in violation to the Bagley-Keene Act; (2) declare the actions of ALJ Darling requiring that a member of the public identify him/herself to be in violation of California Government Code 11124, (3) formally reprimand ALJ Darling and remove her from presiding at this proceeding, (4) provide transcripts without charge and any audio recordings that may have been made on the CPUC website, particularly for the first day which is not available as a webcast recording, and (5) create a policy statement to support the Bagley-Keene Open Meeting Act by allowing audio and video recording by the public of all such future proceedings, without advance notice, and providing live webcasts when feasible.

Should the Commission fail to respond entirely as demanded, it will be assumed that the Commission believes these actions were authorized by the Bagley-Keene Act and by California Government Code 11124. Such a belief will therefore confirm an actual controversy exists between us as to the rights of the public and the responsibilities of the Commission (CCP § 1060.).

This Demand for Cure or Correction is submitted by me both as an individual member of the public and on behalf of Citizens Oversight, as its authorized representative. Although Citizens Oversight, Inc. is the umbrella 501(c)3 corporate entity DBA the Coalition to Decommission San Onofre, and is therefore a party to the proceedings, this challenge is brought forward on behalf of the public and explicitly not as a party to the proceedings.

Sincerely,



Raymond Lutz

National Coordinator, Citizens' Oversight

CC: Martha Sullivan, Coalition to Decommission San Onofre
Barbara George, Women's Energy Matters
Mary Beth Brangan, Ecological Options Network
J.W. August, President Emeritus CalAware & Managing Editor, 10News