

**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 Oct. 25, 2012)

And Related Matters.

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

MOTION TO STAY PROCEEDINGS AND CONSIDERATION OF ANY SETTLEMENT PENDING RESOLUTION OF CLAIMS OF COLLUSION AND IMPROPRIETY BY CPUC COMMISSIONERS

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THE COALITION TO DECOMMISSION SAN ONOFRE (CDSO)
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October 23, 2014

DOCUMENT ID: CDSO-513

INTRODUCTION

The California Public Utilities Commission (CPUC) is headed up by a five member decision-making body. Micheal Peevey is the President of that body. Michel Florio is the assigned Commissioner to this investigation I.12-10-013 into the outage and ultimate closure of the San Onofre Nuclear Plant. Both of these Commissioners have been implicated in a series of allegations regarding improper ex parte communications, bribery, and pay-to-play schemes related to the San Bruno gas line explosions. Michael Peevey has indicated he is not planning to seek reappointment at the end of his current term of service¹, which ends in December, 2014. Michel Florio has recused himself from participation in decision-making in the PG&E San Bruno Gas Line case, and Commissioner Michael Picker has been assigned as his replacement.²

The City of San Bruno requested communications between the CPUC Commissioners, Pacific Gas & Electric (PG&E,) and others and have obtained some 65,000 individual items. These communications include evidence of prohibited ex parte meetings and pay-to-play schemes. A criminal case may be filed against Commission President Peevey, Florio, and others.

PG&E may face a \$1-million fine for a series of improper and unreported communications with state regulators. . . . The company also confirmed that federal prosecutors told them that the emails were the subject of an investigation by the U.S. attorney's office in San Francisco. The state attorney general's office also is reportedly investigating.³

State Sen. Jerry Hill (D-San Mateo), said he found it "troubling" that the PUC is directing all the blame at the company and not at itself. "It takes two to communicate," Hill said. In some cases, he said, PUC staff "created the environment" that fostered the unreported emails and conversations.⁴

These stunning events may be more than isolated and rare, but systemic throughout the Commission. Micheal Peevey, former President of Southern California Edison (SCE), Michel

1 <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M119/K503/119503738.PDF>

2 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M119/K054/119054600.PDF>

3 <http://www.latimes.com/business/la-fi-puc-fine-20141017-story.html> – "PG&E may face \$1-million fine over improper contact with PUC", Marc Lifsher, Los Angeles Times, 2014-10-16

4 *Ibid.*

Florio, and other Commissioners and CPUC staff, may have also had inappropriate communications with SCE and SDG&E, collusion, pay-to-play schemes, and bribery in the San Onofre investigation (I.12-10-013 et al), particularly with respect to the settlement which is currently being considered. Given the impropriety evidenced by the communications received in the San Bruno gas line explosion case, it stands to reason that similar impropriety may have occurred in this proceeding, I.12-10-013.

On Sept 13, 2014, Ruth Henricks (represented by the firm Aguirre Severson LLC) pursuant to state law (California Public Records Act- Gov't Code § 6250 *et seq.*) duly filed with the custodian of records a request for the production of public records relating to the communications between the Commission and the utilities, (PRA #01262). The CDSO is making a similar request to allow it to share the results of the request. This request is attached as "Exhibit 1," and requested, in summary:

- any and all communications between the Commissioner Peevey or his staff and everyone employed with, or representing Southern California Edison or its lawyers, including emails, letters, faxes, phone messages, texts for the period of 2005 through the present
- All documents showing communications between Carol Brown and anyone employed with or representing Southern California Edison or its lawyers, including emails, letters, faxes, phone messages, texts for the period of 2005 through the present
- All documents showing communications between Commissioner Florio or his staff and anyone employed or representing Southern California Edison or its lawyers, including emails, letters, faxes, phone messages, texts for the period of 2005 through the present.

A response was returned on September 23, 2014, written by CPUC Staff Counsel Jason Reiger (Attached as "Exhibit 2") stating (in part) that "The Commission's staff has already begun the process of searching for records responsive to your request; however, it will take considerable amount of Commission staff time to properly comply with your request. Pursuant to Cal. Gov't Code § 6253, *et seq.*, I'm informing you that the Commission staff will need additional time in order to properly respond to your request."

In the Investigation into the San Bruno gas line explosion (I.12-01-007 et al), the City of San Bruno pursued similar records. After the Commission did not produce much of any response

to the request, the City of San Bruno filed a complaint and petition for a writ of mandate in the San Francisco Superior Court.

According to the motion and ex parte communication⁵ by the City of San Bruno for Commissioner Peevey to recuse himself from that proceeding, the City of San Bruno said the following:

During the pendency of this action, the Commission produced approximately 7,000 pages of records responsive to San Bruno's outstanding and unanswered records requests. An examination of the public records the CPUC produced as a result of this lawsuit demonstrate that President Peevey and PG&E have actively participated in improper, pervasive, systematic and continuous ex parte communications ("Peevey/PG&E ex parte communications") over a time period from March 16, 2011 to April 4, 2014 during the pendency of the Line 132 OII proceedings. None of these 41 separate communications were proffered to the other parties, introduced into the record, made into the record, made public or noticed as ex parte communications. The record closed in the Line 132 OIIs in March of 2013.

...

No one expects the Commissioners to be sequestered, barred from reading the newspaper or the financial news, but these communications from PG&E's Regulatory Affairs executives to the CPUC exhibit an ingratiating characteristic suggesting toadyism and unfettered access.

While the content of these ex parte communications between President Peevey and PG&E may well violate the law, they also demonstrate in their tone, totality, and pervasiveness a relationship between the utility and this Commissioner which is familiar, collegial, and cozy.

SIMILAR COLLUSION IN THE SAN ONOFRE INVESTIGATION AND SETTLEMENT MAY HAVE OCCURRED

Without reviewing the records responsive to the CPRA request described above (PRA #01262), it is not possible to make a showing of collusion between the Commissioners, ALJs, the utilities and any other Settling Parties. Sufficient red flags put protesters on inquiry notice that the same tactics that led to the disqualification of Peevey and Florio in the San Bruno Case (I.12-01-007, et al) may also have been executed in the instant case.

5 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M112/K116/112116117.PDF>

Those red flags include judge shopping, trading decisions for contributions, extensive ex parte communications on a daily basis for months and include investigations by both the U.S. Attorneys Office and State Attorney General.

This information is known to the Commission because they are in possession of the documents being sought but are not available to the parties of this case.

Circumstantial evidence implies that collusion did occur, even if the actual communications have not yet been produced by the Commission. Such circumstantial evidence includes:

- Splitting the proceeding into a number of phases with the actual investigation into the failure scheduled to occur last, so a settlement could be drafted prior to any record being created regarding prudence of the actions of SCE regarding the steam generator replacement project (SGRP).
- Coming out with a press release about the settlement, the fact that it represented a “rebate” to ratepayers, apparently planned prior to the actual announcement of the proposed settlement, with wording implying that all parties were in agreement.
- Stopping the OII proceedings I.12-10-013 et al based on a suggestion within the settlement agreement, prior to the actual acceptance of that agreement, rather than a motion by one or more parties to move to a settlement phase.
- Stopping the internal investigation by Dr. Budnitz, hired by the Commission to provide an expert's opinion on whether SCE acted imprudently in their execution of the SGRP, without any rationale other than certainly the utilities would prefer not to be investigated.
- Acceptance of a process which did not include a settlement conference where all parties were allowed to participate. Instead, a meeting was held where the already-drafted settlement was announced *fait accompli*, with no real opportunity for the parties to participate in any meaningful way, other than to ask questions about what had already been done. No alternative proposals were entertained.

- Making a statement in the Evidentiary hearing by ALJ Darling that at settlement conference had been held when in fact a settlement conference was announced but whether it was held was not in evidence and was disputed, and still is.
- After SCE President Ron Litzinger admitted in the evidentiary hearing that there was nothing in the record that would allow the Commission to evaluate the claims of the parties representing ratepayers that SCE was responsible for not just the loss of the SGRP, but the demise of the entire plant, the ALJs in the proceeding attempted to fabricate a record by taking judicial notice of numerous documents desired by the utilities to be in the record, while simultaneously denying notice of other documents requested to be judicially noticed by parties representing ratepayer interests.
- ALJs and Commissioners Florio and Peevey orchestrated a ridiculously short evidentiary hearing, consisting of only 3.5 hours to discuss a lengthy and complex settlement agreement proposing that the ratepayers cover a \$3.3 billion tab for the abandoned nuclear plant, cutting off representatives for opposing parties before they could adequately address the record, further exemplified by Peevey's statement that the hearing did not explain the settlement "one iota."
- Commissioner Peevey declined to answer the question by counsel for Ruth Henricks, about whether he had any inappropriate ex parte communication with his former employer, SCE, during the investigation, to which he responded by telling the attorney to shut up and cursing rather than just saying "no."
- Oral arguments have been scheduled with a vastly insufficient ten minutes allowed for each party opposing the settlement agreement to address the 139-page Revised Proposed Decision, likely without even a quorum of the Commissioners present, and thereby those Commissioners are unable to ask questions and interact with those party representatives.
- Allowing the settling parties to revise the settlement agreement without then requiring a motion to adopt the new settlement agreement, and allowing comments and an evidentiary hearing on the new proposed agreement to occur.

THE MOTION TO STAY

Therefore, the Coalition to Decommission San Onofre hereby moves to stay these proceedings, including Oral Arguments (scheduled for Oct 31, 2014) and possible consideration of the Revised Proposed Decision to Adopt the Settlement Agreement until:

- a) the Commission fully complies with the CPRA request (PRA #01262),
- b) parties given the time to make a showing of collusion by the Commissioners and ALJs in this case based on that information,
- c) the various investigations related to the stunning improprieties related to the San Bruno case (I.12-01-007 et al) and any showing of collusion in this case have completed and any appropriate changes made to the processes and procedures used by the Commission in place,
- d) any turnover of Commissioners completed and new Commissioners in place. This means the Oral Arguments would be rescheduled after Peevey's (and perhaps Florio's) replacements have been sworn in and given sufficient time to become familiar with the case.

It is particularly disturbing that if both Commissioner Peevey and Commissioner Florio are found to have participated in collusive actions or inappropriate communications in this or other cases, and then appropriately removed from their positions, then we have no one with a history of the case to hear and ask questions during Oral Arguments, to participate in final deliberations, and with the memory of the various public participation hearings (where no formal record was created, no video allowed, and not transcript made.)

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Thus, these proceedings, including Oral Arguments scheduled for October 31, 2014, and possible consideration by the Commission of the Revised Proposed Decision as early as November 20, 2014, should be stayed as we request.

Respectfully submitted.

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EXHIBIT 1

PUBLIC UTILITIES COMMISSION
LEGAL DIVISION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298
ID 94-3031353



September 23, 2014

VIA ELECTRONIC MAIL

Maria "Mia" Severson, Esq.
Aguirre & Severson LLP
mseverson@amslawyers.com

**Re: Public Records Request
CPUC Reference No.: PRA #01262**

Dear Ms. Severson:

You ask the California Public Utilities Commission (Commission) to provide you a copy of the following:

- any and all communications between the Commissioner Peevey or his staff and everyone employed with, or representing Southern California Edison or its lawyers, including emails, letters, faxes, phone messages, texts for the period of 2005 through present
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The Commission's staff has already begun the process of searching for records responsive to your request; however, it will take a considerable amount of Commission staff time to properly comply with your request. Pursuant to Cal. Gov't Code § 6253, *et seq.*, I'm informing you that the Commission staff will need additional time in order to properly respond to your request.

Please refer to PRA #01262 in all of your communications with the Commission regarding the above-referenced matter.

Very truly yours,

Handwritten signature of Jason Reiger in black ink.
Jason Reiger
Staff Counsel

EXHIBIT 2

PUBLIC UTILITIES COMMISSION
LEGAL DIVISION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298
ID 94-3031353



September 23, 2014

VIA ELECTRONIC MAIL

Maria "Mia" Severson, Esq.
Aguirre & Severson LLP
mseverson@amslawyers.com

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Jason Reiger
Staff Counsel