

**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 FOR RECUSAL, DISCOVERY, AND TO COMPEL RELEASE OF
COMMUNICATIONS STARTING ON JANUARY 31 2012
REGARDING SANCTIONS
BY THE COALITION TO DECOMMISSION SAN ONOFRE**

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1 INTRODUCTION

1.1 BACKGROUND

On October 25, 2012, the Commission issued an order instituting an investigation on its own motion into the rates, operations, practices, services and facilities of Southern California Edison Company (SCE) and San Diego Gas and Electric Company associated with the San Onofre Nuclear Generating Station Units 2 and 3 (collectively, SONGS). Several proceedings were consolidated with the investigation and they were characterized as “ratesetting” pursuant to the Commission’s Rules of Practice and Procedure (Rules).¹

On November 25, 2014, the Commission issued Decision (D.) 14-11-040, which adopted The Amended and Restated Settlement Agreement, dated September 23, 2014, in the Order Instituting Investigation (OII), Investigation (I.) 12-10-013. The statutory deadline for completion of this OII proceeding has been extended twice. (See D.15-01-037 and D.15-03-043). Thus, the proceeding remains open “for consideration and potential prosecution of possible Rule 1.1 violations based on conduct of parties and/or their representatives during the course of these proceedings.” (See D.14-11-040, Ordering Paragraph 7.)

1.2. LATE FILED EX PARTE NOTICE OF EX PARTE COMMUNICATION

On February 9, 2015, SCE filed “Southern California Edison Company’s (U338E) Late-Filed Notice of Ex Parte Communication” (Late Ex Parte Notice) in this OII proceeding.

The Late Ex Parte Notice states “[o]n or about March 26, 2013, former SCE Executive Vice President of External Relations, Stephen Pickett, met with then-President Michael Peevey at the Bristol Hotel in Warsaw, Poland in connection with an industry event” and that the two discussed “the status of SCE’s efforts to restart San Onofre Nuclear Generating Station (SONGS) Unit 2” and “a framework for a possible resolution of the Order Instituting Investigation (OII).”² Further, the notice states that “Mr. Pickett took notes during the meeting, which Mr. Peevey kept; SCE does not have a copy of those notes.”³

The Late Ex Parte Notice, continues: “Mr. Pickett does not recall exactly what he communicated to Mr. Peevey, it now appears that he may have crossed into a substantive communication.”⁴ SCE reported this communication as an Ex Parte Communication, but expressed doubt as to whether it qualifies as a reportable ex parte communication.

1.3. REQUEST FOR SANCTIONS

On February 10, 2015, the Alliance for Nuclear Responsibility (AFNR) filed a motion¹ which “request[ed] the Commission to investigate the extent of sanctions it should order against [SCE] for violations of Rule 1.1 and, its predicate, Rule 8.4” AFNR specifically notes that SCE filed the Late Ex Parte Notice nearly two years after the communication occurred.

1.4. CALIFORNIA ATTORNEY GENERAL’S RELEASE OF THE “RSG NOTES”

On April 10, 2015, the California Attorney General provided the Commission a two-page document which appeared to be notes from the meeting between Mr. Pickett and Mr. Peevey at the Hotel Bristol in Warsaw, Poland on March 26, 2013 (Notes). Indeed in a press release the same day, SCE stated that the Notes were “drafted by then SCE executive Stephen Pickett, with annotations by Commission President Michael Peevey.” Within hours of obtaining the Notes, the Commission promptly produced them via an e-mail to the service list of the OII. In addition, multiple parties had previously requested copies of the Notes via California Public Records Act requests. Accordingly, also on April 10, 2015, the Commission responded to these requests, and produced the Notes. On April 13, 2015, SCE filed and served a “Supplement” to its Late-Filed Ex Parte Notice which attached the Notes and asserted that SCE did not have the Notes in its possession prior to April 10, 2015.

1.5 ALJ RULING OF APRIL 14, 2015

On April 14, 2015, Administrative Law Judges Melanie Darling and Kevin Dudney submitted the ruling² directing SCE to produce information regarding written and oral communications involving possible settlement of the OII. The ruling specified that “information and documents, including written communications (e.g., e-mail) and documents pertaining to oral communications (including references to written communications) involving possible settlement of the consolidated proceedings comprising the OII.”

The Ruling specified that:

1. SCE shall produce all documents pertaining to oral and written communications about potential settlement of the SONGS OII between any SCE employee and CPUC decisionmaker(s) between

1 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M146/K991/146991349.PDF> -- “Alliance For Nuclear Responsibility’s Motion Seeking Investigation Of The Extent Of Sanctions To Be Ordered Against Southern California Edison Company For Violation Of Commission Rules 1.1 And 8.4”

2 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M151/K170/151170170.PDF> -- “Administrative Law Judges’ Ruling Directing Southern California Edison Company To Provide Additional Information Related To Late-Filed Notices Of Ex Parte Communciations.”

March 1, 2013 and November 31, 2014 which reported, discussed, referred to, or otherwise contained a description of such communications.

2. SCE shall produce all written communications internal to SCE which reported, discussed, referred to, or otherwise contained, a description of oral or written communications about settlement with CPUC decisionmaker(s), identified pursuant to Question 1 above.
3. SCE shall promptly file notices of any undisclosed communication identified in Question 1 above or any other oral or written ex parte communication relating to the substantial issues described in the OII and the Scoping memos of various phases of the consolidated proceedings.

1.6 AMENDED MOTION FOR SANCTIONS

The Alliance for Nuclear Responsibility filed an amended motion for sanctions³ on May 6, 2015.

On February 9, Southern California Edison (SCE) submitted a notice of ex parte communication

1.7 ALJ'S EMAIL RULING FOR ADDITIONAL INFORMATION

On June 26, 2015, ALJ's Darling and Dudney sent a email to the service list requesting more information. This request is provided in Exhibit A.

2.0 ALJ DARLING EX PARTE COMMUNICATIONS WITH SCE

On May 22, 2015, a Public Record Act request (PRA-1365)⁴ provided six email documents related to a telephonic meeting between ALJ Darling and SCE Executive Russell Worden on December 4, 2012. These emails raise factual questions regarding whether improper ex parte communications involving the ALJs in the proceeding occurred. These documents of PRA-1365 are provided as Exhibit B.

3.0 THE MOTION

3.1 THE INVESTIGATION INTO SANCTIONS SHOULD BE ASSIGNED TO AN ALJ OUTSIDE THE CPUC

The Coalition to Decommission San Onofre hereby moves that ALJ Melanie Darling should recuse herself from the investigation into sanctions due to the conflict of interest this presents. The Commission should assign this aspect of the proceeding to an ALJ outside the CPUC, an application should be filed with California Supreme court to designate an appropriate judge with no ties to the CPUC and this case.

3 <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M152/K341/152341746.PDF> -- Alliance For Nuclear Responsibility's Amended Motion For Sanctions

4 <http://www.copswiki.org/Common/M1597>

4. CONCLUSION

The California Public Utilities Commission has suffered a loss of credibility in the recent months and years over this case and the settlement, tainted by improper ex parte communications and back-room settlement negotiations. We have already filed a timely request for rehearing of the settlement. It appears that the Commission is just planning to ignore that request and instead allow modification of the decision based on various Petitions for Modification. We reject this notion and maintain that the proper disposition of the case is to grant our rehearing request, particularly in light of the recent statement by TURN that the settlement should be abandoned and the case litigated instead.⁵

However, the question of sanctions and the related investigation into sanctions is a separate and distinct issue, and is not contingent on the approval of the rehearing request, nor the progress of any petitions for modification.

Therefore we make the motions as described above and request timely and explicit ruling.

Respectfully submitted.

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DATE: July 1, 2015

⁵ <http://turn.org/press-room/press-releases/item/865-edison-secret-meetings-with-peevey-tainted-settlement-process.html>

EXHIBIT A - EMAIL RULING OF JUNE 26, 2015

On February 10, 2015, the Alliance for Nuclear Responsibility (AFNR) filed a motion which asked the Commission “to investigate the extent of sanctions it should order against [Southern California Edison Company “SCE”] for violations of Rule 1.1 and, its predicate, Rule 8.4” On April 14, 2015, Administrative Law Judges (ALJ) Melanie Darling and Kevin Dudney issued a ruling directing SCE to produce information and documents involving possible settlement of the consolidated proceedings comprising the OII by April 29, 2015. In order to complete review of the materials provided, I find that SCE should provide, no later than July 3, 2015, additional information related to a limited number of identified communications and claims of privilege. The information requested is described below.

A. **Communications and documents described in Appendix C** between SCE and CPUC decision makers from October 25, 2012 through November 30, 2014:

Item #	Date	Description of communication	Information Requested
2	1/14/13	There was a discussion between Peevey & Litzinger of possible ways to expedite the OII.	What options, methods, process, etc. (“ways”) were discussed re expediting the OII
15	8/9/13	Litzinger called all Commissioners to briefly notify them SCE would be publishing an open letter in LA Times regarding permanent retirement of SONGS and cost recovery	Did SCE provide a copy of the letter to the Commissioners before its publication? If so, provide a copy of the letter.
19	3/27/14	Hoover met with Peevey and advisors to each Commissioner “on topics unrelated to SONGS,” during which CPUC participants made positive statements about the settlement.	What were the “topics unrelated to SONGS;” identify any specific provisions of the SONGS settlement discussed; and what exactly did Hoover say in response to comments about settlement by Peevey and advisors?
23	5/2/14	Peevey told Litzinger the settlement omitted a provision to address GHG impacts, asked SCE for specific contribution to UCLA; Litzinger said they “would get back to him.”	Did Litzinger or any other SCE employee “get back” to Peevey about his request for GHG research funds? If a reply is described in, or was made through, a written communication, provide a copy.
25	5/14/14	Meeting between Peevey, Florio & Litzinger: “approximately half” of the	Identify what “topics unrelated to GHG research,” but related

conversation was on topics “unrelated to GHG research.”

to the SONGS OII were discussed?

31 6/20/14

Peevey and Olson first speak on telephone, then meet in person where Olson tells Peevey he cannot engage in a substantive conversation about funding GHG research at UCLA.

If Olson told Peevey on the phone he couldn’t engage on the GHG topic, then what else was discussed when Olson met him in person later that day? Identify all topics related to SONGS discussed either on the phone or in person.

B. Communications and documents described in Appendix D : documents pertaining to oral and written communications about potential settlement of the SONGS OII between any SCE employee and CPUC decisionmaker(s) between March 1, 2013 and November 31, 2014; all written communications internal to SCE which reported, discussed, referred to, or otherwise contained, a description of oral or written communications about settlement with CPUC decisionmaker(s).

Item /page #	Date	Description of communication	Information Requested
002-004	4/1/13	<p>Email Pickett to Craver “Here is a typed up version of my notes from our conversation this morning.</p> <p>“Redacted –AC” (This redaction is not included in the Privilege Log)</p>	<p>Who created the undated and unidentified “Elements of a SONGS Deal” and when? Identify the attorney who was a party to the alleged confidential communication. If none, then what is the basis for AC privilege of redacted material?</p>
005	4/4/13	<p>Email Pickett to Scott-Kakures/Worden re “SCE v. Lynch Settlement Agreement”; “I’m in San Francisco tomorrow for a meeting with Peevey on LA Basin reliability...”</p>	<p>Did Pickett and Peevey discuss reliability in terms of the SONGS OII proceeding or settlement? If so describe the discussion.</p>
00186	4/11/13	<p>Email Litzinger to Craver etc. re “Discussion with SP”: (1) “Steve has yet another ‘social dinner’ with Peevey this weekend?”</p> <p>(2) I pressed Steve as to whether his two previous meeting(sic) were listen only...”</p>	<p>(1) What previous social dinner was Litzinger referring to? Identify all meetings, including “Social” meetings that occurred with Pickett and Peevey between 3/27/13 and 4/11/13</p> <p>(2) On what dates did the prior meetings occur? Provide</p>

			a description of the meetings, participants, and what topics were discussed; provide copies of all written communications which describe or discuss these meetings, if not already provided.
			When did Hoover communicate with Peevey about the letters provided to the NRC? Provide all documents which describe or discuss Hoover, or any SCE employee, communicating with Peevey about the letters or providing the referenced letters to Peevey.
00188	5/29/13	Email Hoover to Starck: Peevey was made aware of these [two] letters [SCE to MHI in 2004, 2005]...He is really unhappy with the way we handled this...	
00187	5/29/13	Email Starck to Hoover: "We need to talk with Pickett ASAP to let him know about your discussions with Peevey."	Describe all topics discussed in the communications between Hoover and Peevey; when the communication(s) occurred; and which topics, particularly related to SONGS settlement, to which Starck wanted to alert Pickett
00209	3/27/14	Email Litzinger to Mosher: "I have contacted the CPUC Commissioners [Redacted – AC/WP]..." (This redaction is not included in the Privilege Log)	Identify the attorney who was a party to the alleged confidential communication. If neither Litzinger nor Liese Mosher are counsel for SCE, what is the basis for AC privilege of redacted material? What is the basis for WP privilege claim?
00221	3/27/14	Email Litzinger to Commissioner Picker: I would like to provide you with a brief update on the proposed settlement..." and included an attachment. The attachment was not provided.	Provide the attachment indicated on the email and any attachment provided to the Commissioners on or about 3/27/14 about the settlement which has not been previously provided in SCE's responses.

C. **Appendix E – Privilege Log** describing documents that are responsive and withheld based on privilege. *SCE shall provide more foundation to establish entitlement to assert the claimed privileges below, and provide a declaration from counsel that the identified written communications and documents arose within the course of the professional attorney-client relationship and the privileges have not been waived.*

Rpt#	Date	Document Description	Information requested
2	4/8/13	Russ Worden Draft attachment; No SCE or EIX attorney is identified as “Sender/Author /Custodian” or recipient	Identify the attorney who was a party to the alleged confidential communication
7	4/12/13	SEP Mark-up; Worden to ...rick peters	Identify the attorney who was a party to the alleged confidential communication; If Rick Peters of Peters Consulting, was acting as an outside third party consultant, then explain why sharing the email with him did not result in a loss of confidentiality and AC privilege?
8	4/12/13	Russ Worden; Draft attachment; No SCE or EIX attorney is identified as “Sender/Author /Custodian” or recipient	Identify the attorney who was a party to the alleged confidential communication
9	4/12/13	Benjamin Hodges; Title redacted ; No SCE or EIX attorney is identified as “Sender/Author /Custodian” or recipient	Identify the attorney who was a party to the alleged confidential communication
26	5/28/14	Mark Fabiani; Proposed Action Plan	Identify the attorney who was a party to the alleged confidential communication; If Fabiani was acting as an outside third party consultant, then explain why sharing the email did not result in a loss of confidentiality and AC privilege.

THE DOCKET OFFICE SHALL FORMALLY FILE THIS RULING.

IT IS RULED that Southern California Edison Company shall provide written response to the requests for information contained herein, no later than by July 3, 2015.

Executed on June 26, 2015 at San Francisco, CA

Melanie M. Darling

Administrative Law Judge

California Public Utilities Commission

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San Francisco, CA 94102-3298

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EXHIBIT B

(SIX PDF FILES ARE ATTACHED TO THE FILING)