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

RUTH HENRICKS' AND COALITION TO DECOMMISSION SAN ONOFRE'S STATUS CONFERENCE ISSUE STATEMENT

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[1] Coalition to Decommission San Onofre is a fictitious business name of Citizens Oversight, Inc.

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The 10 October 2017 Ruling of Assigned Commissioner and Administrative Law Judge Setting Status Conference does not provide a reliable and fair forum for resolving the case to determine who should pay for the closed San Onofre nuclear. power plant. Ms. Henricks urges the CPUC to agree to allow the case to be resolved in federal district court in San Diego County, where San Onofre is located.

The CPUC cannot close it eyes to what has happened. On 14 May 2014, the requester made a record before the CPUC that the proposal to force utility customers to pay for defunct San Onofre plant was the product of collusion:

> MR. AGUIRRE: Let me give you my offer of proof. It's our contention that the representation by the Commission that there was going to be an investigation into the reasonableness of Southern California Edison's deployment of the defective steam generators was

a promise of an investigation with the intent not to perform it. It is our contention that you, Ms. Darling, Judge Darling, entered a ruling that put the investigation off into the remote future in order to avoid any such investigation. It's our position that Mr. Peevey helped to orchestrate this settlement through Mr. Freedman and others, and it wasn't a settlement negotiation. It was a meeting to figure out how not to have the reasonableness investigation. The rulings that you made prohibiting any kind of discovery into the relevant issues, when the dis- -- when the settlement was announced, the coordinated press releases that falsely stated, from Mr. Florio and Mr. Peevey, that the parties had settled which was picked up as part of the blitzkrieg in which the ratepayers were misinformed that they were going to get a $1.4 billion refund was **a collusive, not bona fide basis for this settlement**. And we have a right to try to develop that record, which you are not permitting us to do. And let me just ask this.
ALJ DARLING: All right.
MR. AGUIRRE: Let me just ask Mr. Peevey a question.
ALJ DARLING: No. You don't have –
MR. AGUIRRE: Mr. Peevey –
ALJ DARLING: -- any questions.
MR. AGUIRRE -- did you have any discussions with any parties?
ALJ DARLING: No.
MR. AGUIRRE: -- about the settlement process while it was taking place, sir? Will you put that on the record? And same with Mr. Florio. Will you put that on the record? [14 May 2014 R.T. 2772-2774]
**
MR. AGUIRRE: What about Southern Cal Edison?
COMMISSIONER PEEVEY: Sorry. Edison?
MR. AGUIRRE: Yeah.
COMMISSIONER PEEVEY: I'm not here to answer your questions.
ALJ DARLING: Mr. Aguirre.
COMMISSIONER PEEVEY: I'm not here to answer your goddamn question. Now shut up. Shut up. (Vol I 117)

It was very clear why Mr. Peevey did not want to answer the question of whether he was engaging in ex parte communications to shape and drive the settlement. An affidavit submitted to the Superior Court in Los Angeles (the

CPUC unsuccessfully resisted) provides the answer. The affidavit provides in pertinent part:

> **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 011 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. Decommission 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." **

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 011 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 drfit 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 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.

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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.

On 5 September 2014, Commissioner Florio and ALJ Darling issued a ruling that provided: "We request the Settling Parties add a provision to the Agreement which will result in a multi-year project, undertaken by the University of California, funded by shareholder dollars, to spur immediate practical, technical development of devices and methodologies to reduce emissions at existing and future California power plants tasked to replace the lost SONGS generation."

SCE modified the request in the ruling and its revised agreement provided: "As part of their philanthropic programs, each of SCE and SDG&E agree to work with the University of California Energy Institute (or other existing UC entity, on one or more campuses, engaged in energy technology development) to create a Research, Development, and Demonstration (RD&D) program, whose goal would be to deploy new technologies, methodologies, and/or design modifications to reduce GHG emissions, particularly at current and future generating plants in California."

The 10 October 2015 Ruling the omits any discussion of the obstruction of justice. The Ruling does not discuss what was stated at the ex parte meetings. Commissioner Picker has refused to turn over his secret San Onofre communications after he told an Assembly utilities committee he based his decision to support the discredited settlement only on the public record.

There are also scores of secret San Onofre communications with the Governor's office that the CPUC refuses to provide. The First Appellate District has rejected the CPUC's legal arguments and has ordered the CPUC to produce the withheld San Onofre files for an in camera review.

The CPUC told the state Legislature it needed millions of dollars to cooperate with the Attorney General's investigation into the San Onofre investigation; the opposite appears to be true. A Los Angeles Superior Court judge has ordered the CPUC search warrant pleadings and records to be produced.

The 10 October 2017 ruling fails to deal with Ms. Henricks' and Citizens Oversight's motion for reconsideration filed in December 2014 -- over three years ago. The ruling fails to rule on Ms. Henricks' and Citizens Oversight's motions to stop SCE's on-going collection of revenue from utility customers for San Onofre, despite the fact the record is clear that the decision adopting the settlement is illegal.

The 10 October 2017 Ruling fails to provide fair notice and hearing to the utility customers because it proposes to keep the settlement in place and to have hearings on how it might be tweaked. The Ruling assumes the decision adopting should be adjusted because of ex parte communications. The decision should be set aside because it was the product of an obstruction of justice and because it was not based on a fair notice and hearing. The fact that the CPUC is still clinging to the discredited decision adopting the settlement is the best evidence of the extent to which the CPUC is a regulatory captured agency.

The cost allocation must be based upon whether SCE can prove they acted prudently. SCE contended in its Mitsubishi Heavy Industries (MHI) arbitration that it was defrauded into deploying the defective steam generators. However, the arbitrators ruled there was no credible evidence supporting SCE's claim and SCE lost its fraud claim. SCE was ordered to pay MHI's $55 million legal bill.

This case is pending before the Ninth Circuit Court of Appeals. A hearing has been set in February 2018. Ms. Henricks and Citizens Oversight urge the CPUC to agree to allow the case to be tried in federal district court because the CPUC is, on this record, incapable of providing fair hearing and notice. The CPUC was implicated in the Peevey/SCE definition of the framework of a settlement. The subsequent settlement largely followed that paradigm to cover losses by SCE up front with the promise of significant returns from MHI.

ALJ Darling participated early on to orchestrate the phases so the most important phase 3 -- to determine responsibility for the loss -- was left to the end. Once the secret settlement was reached, the responsibility determination phase was never even started. When the RSG Warsaw framework was revealed, ALJ Darling headed up the investigation into ex parte violations, setting the time limits to avoid her own violations, then only fining SCE a measly $16.7 million for its $3.3 billion bailout.

The CPUC took no responsibility for the obstruction of justice. Calls for change to a new ALJ were disregarded. Even former chief ALJ Clopton has blown the whistle on the continued operation of the CPUC with rampant conflicts of interest.

Under the principles of res judicata, SCE should be foreclosed from any claim that it acted prudently.

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CONCLUSION

The obstruction of justice in this case continues. The CPUC is incapable of providing a fair notice and hearing to resolve the matter. The case should be resolved in the U.S. District Court, Southern District of California in San Diego.

Respectfully Submitted,

Dated: 30 October 2017

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