

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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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.

I.12-10-013
(Filed October 25, 2012)

And Related Matters.

A.13-01-016
A.13-03-005
A.13-03-014
A.13-03-013

**MOTION OF THE OFFICE OF RATEPAYER ADVOCATES FOR AN
INTERIM BAN ON COMMUNICATIONS BETWEEN SOUTHERN
CALIFORNIA EDISON COMPANY AND THE CALIFORNIA PUBLIC
UTILITIES COMMISSION REGARDING THE SAN ONOFRE NUCLEAR
GENERATING STATION ORDER INSTITUTING INVESTIGATION**

I. INTRODUCTION

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure ("Rules"), the Office of Ratepayer Advocates ("ORA") moves that the officers, employees, and agents of the Southern California Edison Company, including its affiliates (collectively "SCE"), be prohibited from engaging in communications with Commissioners, advisors to Commissioners, Administrative Law Judges, or Division Directors of the California Public Utilities Commission regarding the San Onofre Nuclear Generating Station Order Instituting Investigation ("OII"), other than via written

communications copied simultaneously to all parties in this proceeding or on-the-record hearings. This request includes communications that might otherwise be deemed by participants to be “procedural” in nature and thus arguably within the scope of unreported communications under the Commission’s rules.

The e-mails and other materials submitted in SCE’s Response to Administrative Law Judges’ Ruling, dated: April 29, 2015, indicate that SCE may have violated the Commission’s *ex parte* rules on a number of occasions in this matter. Further, SCE’s apparent interpretations of the *ex parte* rules may endanger the due process rights of other parties. Thus, ORA files this motion as a prophylactic step to ensure that the Commission’s record-based decision-making is not compromised.

II. A COMMUNICATION BAN IS AN APPROPRIATE INTERIM REMEDY

The basic definition of an *ex parte* communication is contained in Rule 8.1(c):

(c) “Ex parte communication” means a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:

- (1) concerns any substantive issue in a formal proceeding,
- (2) takes place between an interested person and a decisionmaker, and
- (3) does 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.

Communications regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such nonsubstantive information are procedural inquiries, not *ex parte* communications.¹

¹ Rule 8.1(c).

The language of this definitional rule is clear. Failure to timely report such communications, per the requirements set forth in Rule 8.4, can trigger findings of violations.² Further, during the investigative stage of determining the extent of *ex parte* violations and sanctions, interim bans have been established:

[W]e could modify the scoping memo and impose an *ex parte* ban for the duration of the proceeding. The offense was an inappropriate *ex parte* contact so this option would preclude all future *ex parte* contacts. Any further *ex parte* contact would therefore be an egregious and deliberate violation. We believe, however, that we should hear further factual, policy and legal argument from the parties before imposing a final sanction, which may require action by the full Commission. Upon careful consideration of our options, including taking no action, as the assigned Commissioner and Presiding Officer we believe the most appropriate response is to impose an interim *ex parte* ban pending determination of the appropriate sanctions ...³

Given the current record, applying a communication ban on SCE for the remainder of this proceeding is an appropriate interim remedy.

III. THE “LISTEN MODE ONLY” INTERPRETATION APPEARS TO BE AN *EX PARTE* STRATEGY USED TO KEEP SUBSTANTIVE CONTACTS OFF THE RECORD OF COMMISSION PROCEEDINGS

Appendix D of SCE’s pleading references “listen mode only.”⁴ The concept appears to be having a CPUC decision-maker speak about the substantive issues of a proceeding with an interested party, such as an SCE representative, without the interested

² See, e.g., A.06-11-005, Assigned Commissioner and Administrative Law Judge’s Ruling on Sanctions for *Ex Parte* Violations, dated: August 8, 2007, at 6.

³ A.06-11-005, Joint Ruling of the Assigned Commissioner and the Presiding Officer Modifying the Scoping Memo, dated: June 1, 2007, at 4-5. The *ex parte* ban was imposed even though PG&E had acknowledged the violations and issued an apology. *Id.* at 3-4.

⁴ See, e.g., SCE-CPUC-00000186.

party providing responses. On its face the practice appears to rely on a tortured interpretation of the Commission's *ex parte* rules. Further, the notion that an interested person can consistently listen to such information, without responding in any fashion, appears to be a fiction.

However, by acting in "listen mode only" the interested party may believe that it can circumvent all of the reporting requirements contained in Rule 8.4, which requires "[a] description of the interested person's, but not the decisionmaker's (or Commissioner's personal advisor's), communication and its content ..." ⁵ This "listen mode only" interpretation, which may be present in SCE's regulatory practices, argues in favor of an interim communication ban until this proceeding is concluded.

Furthermore, to the extent that such an interpretation is present in SCE's regulatory practices, ORA respectfully requests that the Commission clarify that Rule 8.4 (a) and (b) contain several additional categories of information that should be timely reported by SCE, even in "listen mode only":

- (a) The date, time, and location of the communication, and whether it was oral, written, or a combination; [and]
- (b) The identities of each decisionmaker (or Commissioner's personal advisor) involved, the person initiating the communication, and any persons present during such communication[.] ⁶

Providing other parties with this information, as mandated by the rules, allows parties the opportunity to respond by taking on-the-record actions, or by seeking "equal time" meetings. ⁷ To allow otherwise would endanger the due process rights of parties that have not received notice of such meetings.

⁵ Rule 8.4(c).

⁶ Rule 8.4(a)-(b).

⁷ See Cal. Pub. Util. Code § 1701.3(c).

IV. CONCLUSION

Based on the current record, ORA is concerned that SCE is not applying correct standards in its application of *ex parte* reporting requirements. Therefore, the officers, employees, and agents of SCE should be prohibited from engaging in communications with Commissioners, advisors to Commissioners, Administrative Law Judges, or Division Directors of the California Public Utilities Commission regarding this OII, other than via written communications copied simultaneously to all parties in this proceeding or on-the-record hearings.

Respectfully submitted,

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