

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.

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

**ATTACHMENT 1
TO
RUTH HENRICKS' BRIEF IN RESPONSE TO JOINT RULING REOPENING
RECORD: SETTLEMENT AGREEMENT DOES NOT MEET COMMISSION
STANDARDS, NOR STANDARDS OF DUE PROCESS, FOR APPROVING
SETTLEMENTS**

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July 7, 2016

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

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The following is an addendum describing evidentiary support as to that summarized in the Response and describing the investigation that needs to be conducted before a reasonableness review can be conducted. All Exhibits appear in the declaration filed herewith.

A. The Secret Communications

We know CPUC's then-President Peevey and CPUC's Randolph, along with SCE's Pickett, Craver, Litzinger, and Worden, participated in or knew about the clandestine meeting at the Bristol Hotel in Warsaw, Poland, and of the framework for

prematurely stopping the investigation. The question remains: Who else knew? Did any other commissioners know?

It appears Randolph and Peevey told CPUC Commissioner Florio at their lunch meeting at San Francisco's Opera Café the Thursday after Peevey and Randolph returned from Warsaw. All writings regarding or showing the commissioners and staff who knew about the Warsaw meeting before the settlement was approved in November 2014 must be disclosed.

On 31 January 2012 at 4:30 p.m., Southern California Edison (SCE) operators at the San Onofre nuclear power plant (SO) discovered a "Steam Generator Tube Rupture" and "commenced [a] rapid power reduction" of Unit 3. When reactor power was lowered to 35%, the Unit was manually tripped. Replacement steam generators (RSG) at the plant experienced "significant and unexpected steam generator tube wear and the loss of tube integrity" after 11 months of operation. On Friday night, 24 January 2013, California Public Utilities Commission (CPUC) President Peevey had dinner with SCE President Litzinger; they discussed San Onofre.

On 26 March 2013, CPUC officials met with an SCE Executive Vice President at the Bristol Hotel in Warsaw, Poland. (Severson Decl.) There, they negotiated an agreement (recorded on the hotel's stationery) to make utility customers pay over \$3 billion (\$3,000,000) as expected revenue from the plant, had it not closed. (Severson Decl).

Upon his return from Poland (31 March 2013), a CPUC executive at the Warsaw meeting had a "red category" email exchange with the CPUC Commissioner in charge of the San Onofre proceeding (Florio) to determine who should pay for the closed SO plant:

From: Florio, Michel Peter <MichelPeter.Florio@cpuc.ca.gov>
Sent: Sunday, March 31, 2013 9:50 PM
To: Randolph, Edward F.
Subject: RE: Meeting with Peevey Thursday

Yes, I have only a 2:30 meeting that afternoon. Lunch would be fine. THANKS and welcome back! Mike

From: Randolph, Edward F.
Sent: Sunday, March 31, 2013 2:59 PM
To: Florio, Michel Peter
Cc: Gonzalez, Nuria
Subject: Meeting with Peevey Thursday

Commissioner Florio,

Commissioner Peevey asked me to set up a meeting with him for you and me next Thursday after the Commission meeting. (We were both having email problems in Poland so he asked me to set it up when I got back). He suggest lunch or dinner (but I need to be in Sacto late in the day). For now Commisisoner Peevey would like to keep this meeting to just the three of us. I am happy to come by and explain the topic in person (or on the phone).

Can we make something work for Thursday?

On 1 April 2013, the SCE official who participated in the Poland meeting (Stephen Pickett) reported to and provided the “Elements of a SONGS Deal” to SCE Chief Executive Officer Ted Craver. (Severson Decl.) Three days later, Randolph, Florio and Peevey met on 4 April 2013 at Max's Opera Café in San Francisco, California (Severson Decl).

On 4 April 2013, SCE’s Pickett wrote two other SCE officials about his Poland meeting, telling them “we should take my notes and turn it into a simple term sheet.” (Exhibit 8, Severson Decl.) On 29 May 2013, SCE executives exchanged emails reporting on their discussions with then-CPUC President Peevey and his Chief of Staff, Carol Brown: “Carol indicated that Pickett was well prepared in Poland with specifics.” In another, an SCE official warned: “We have a small window of opportunity to work with parties to implement a shutdown in exchange for getting our money back. That - window will close soon and' we will lose a very good opportunity.” (Severson Decl)

Effective 7 June 2013, SCE certified it had “permanently ceased power operation of the San Onofre Nuclear Generating Station, Units 2 and 3.” (Severson Decl) On 7 June 2013, Peevey advisor Brian Stevens emailed Peevey’s Chief of Staff, Carol Brown, and

SCE Director of Regulatory Affairs, Laura Genao, copying several SCE executives and CPUC officials (Severson Decl.):

Hi Laura:

Thank you for the information on the check-in today.

With the announcement by EIX (SEC parent), can we schedule a meeting to discuss the current status and next steps? I request it for early next week. I also request that SCE management involved intimately with this issue be involve at least by phone. There are BK (open meeting law) issues with inviting other offices (I believe my office can invite Florio's office), so the target audience should be ED (Randolph), Legal, CPUC management, my office, and maybe folks from Florio's Office. I request it be 1-2 hours in duration. I will invite others from the CPUC to help me propose questions.

On 7 June 2013, an SCE official reported to Stephen Pickett the word from Florio's office was to "do everything we can to keep this out of the Commission's hands. They've learned much from the San Bruno effort (i.e. claims that the commission is in the "pockets" of the utilities) and want to avoid a repeat as much as they can." (Exhibit 13, Severson Decl.) On 21 September 2013, SCE's Pickett and CPUC's Peevey made plans to meet at the "Stafford Hotel in St. James" in London. (Severson Decl.)

One of the participants in the SO proceedings before the CPUC, The Utility Reform Network (TURN), admitted Peevey told them about the Warsaw meeting: "Mr. Peevey stated that he had met with Stephen Pickett about San Onofre over a year earlier and waved several papers he claimed were notes from that meeting." (Severson Decl.)

In an another email, Peevey's Chief of Staff, Carol Brown, wrote to SCE executive Michael Hoover, acknowledging time is not well spent on Phase I (of the OII), and impliedly admitting her knowledge of the secret settlement the parties had reached. (Severson Decl.) On 27 March 2014, SCE announced it had entered into a settlement agreement with TURN, and the Office of Ratepayer Advocates ("ORA") (Severson Decl.) There is an information black hole between the RSG Notes deal made in March 2013 and the settlement announced a year later in March 2014.

B. Warsaw Circle Should Be Excluded From Proceedings

Any CPUC decision maker who knew of the secret Poland meeting should withdraw from or be disqualified from further participation of the case. A related criminal search warrant shows those in the Warsaw Circle.

We need CPUC disclosure and CPUC records of communication disclosing which Commissioners and staff were in the Warsaw Circle. Commissioner Picker should release the writings he claims are communications with the Governor or part of Commissioner Picker's deliberative process. In a 1 April 2015 CPUC letter to the Assembly Committee on Utilities & Commerce Chairperson, President Picker revealed the deliberative process he claims he followed in connection with San Onofre:

I have conducted a review into my own decision making process leading to the November 20, 2014 Decision made by the Commission approving the Amended and Restated Settlement Agreement. As a Commissioner, I assessed whether I could reach the same conclusion about the decision based solely on the written record that has been available to all parties. That is the methodology that I used in developing my vote last November. This reliance on an evidentiary record developed through a public process that is open for all to view - transparent - is our primary source of information for formal Commission decisions. (Severson Decl.)

Mr. Picker did not mention to the Legislature he relied on any private writings. (Severson Decl.) However, However, Mr. Picker has refused to turn over relevant San Onofre documents claiming they are privileged deliberative process:

Lastly, the CPUC redacted portions of the text of three (3) records pursuant to the deliberative process and mental process privileges and Government Code §§6254(k), 6255. The redacted text reflects discussions between Commissioner Picker and his advisors the disclosure of which would reveal the Commissioner's thought process regarding the subject matter of the redacted emails. As such, the public's interest in disclosure of this information is outweighed by the public's interest in allowing its policy makers to have "frank discussion of legal or policy matters," an interest that would be "inhibited if 'subjected to public scrutiny'" and "greatly hampered if, with respect to such matters, government agencies were 'forced '10 operate in a fishbowl'" *Times Mirror Co. v. Sup'. cr.* (1991) 53 Cal.3d

1325, 1340. CPUC Assistant General Counsel Laura Gasser made the decision to redact these records.

** Additionally, the CPUC withheld from this production sixty-three (63) records pursuant to the deliberative process and mental process privileges pursuant to Government Code §§6254(k), 6255. These 63 records are communications between Commissioner Picker and his advisors, top level advisory staff and/or top level state officials that discuss matter of policy and/or decisions in proceedings before the Commission. As such, their disclosure would reveal the Commissioners' deliberative and mental thought processes. Consequently, the public's interest in disclosure of this information is outweighed by the public's interest in allowing such decisions to be made uninhibited by public scrutiny. CPUC Assistant General Counsel Laura Gasser made the decision to withhold these records.

Additionally, Mr. Picker should produce the writings in his possession regarding the decision to reopen the record in this case. Mr. Picker has told the Legislature, and the Los Angeles Times the San Onofre decision to accept the settlement would not be changed. However, we have before us a different set of circumstances in which it appears the case is being reopened. The question naturally arises about whether the CPUC is acting in good faith or simply engaged in another subterfuge. Accordingly, Mr. Picker and other CPUC officials were asked for their records of communications about the reopening of the case to see if they would shed light on the question of whether things are on the up and up.

So far, the CPUC has stalled and has not produced Mr. Picker or other CPUC officials' records of communication on the reopening. Instead, the CPUC hired outside counsel and stalled production:

From: Katherine Alberts
To: Michael Aguirre; mseverson@amslawyers.com
Cc: Harris, Frederick; Kimberly Sutton
Subject: CPUC PRA Request No. 2008, RE: PRA Reopening -
Date: Tuesday, May 24, 2016 3:33:45 PM

Dear Mr. Aguirre,

The California Public Utility Commission has retained me to assist it with

responding to your Public Records Act Request received on May 16, 2016 regarding the reopening of the San Onofre OII. In this Request you ask the following: "Please provide me under the Cal Public Records Act and Art I, Sec 3 of the Cal State Constitution any writings reflecting communication with Michael Picker or Mike Florio or Edmund Randolph regarding the reopening of the San Onofre OII. Please also include any such communication between Com Sandoval and Michael Picker. Also please provide any emails or records of communications regarding the reopening of the San Onofre OII and any CPUC ALJ. Please include any records of communications regarding the reopening of the San Onofre OII between any CPUC agent, officer, employee or commission and any Southern California Edison agent, officer or employee."

In order to respond, we need clarification regarding the scope of your request. We interpret this Request as seeking 2 categories of documents. First, any writings reflecting communications with Michael Picker or Mike Florio or Edmund Randolph regarding the reopening of the San Onofre OII, including but not limited to communications between Commissioner Sandoval and President Picker and between Michael Picker, Mike Florio or Edmund Randolph and any CPUC ALJ.

And then second, any records of communications regarding the reopening of the San Onofre OII between any CPUC agent, officer, employee or commissioner and any Southern California Edison agent, officer or employee. Please either confirm that we have interpreted your request correctly or advise us as to how we have misinterpreted your request by no later than close of business on Wednesday, May 25, 2016.

Thank you for your attention and quick reply to this matter,
Katherine A. Alberts
Leone & Alberts
2175 N. California Blvd., Ste. 900
Walnut Creek, CA 94596
Ph: (925) 974-8600
Fax (925) 974-8601

Over a month has passed and the CPUC has failed to produce any document in response to the request for Commission records of communication regarding the reopening of the case. These documents need to be disclosed.

C. Governor Involvement Must Be Disclosed

Days after Senator Boxer called for a criminal investigation based on SCE's November 2004 letter revealing SCE's early knowledge of the steam generator risk of failure SCE drew Governor Brown into their defense team. On 6 June 2013, SCE Chief Executive Officer, Ted Craver, sent the following email to his Board of Directors, reporting his conversation with Governor Jerry Brown:

Governor Brown-about 10 minutes (was in Rancho Mirage with Pres. Obama, Chinese). Appreciated call. Asked some questions about decommissioning and number of employees. He said what we were doing seem right under the circumstances, good to reduce uncertainty, and took a little swipe at NRC bungling the process which was going to cause harm to CA. Fished for whether we were going to blast NRC or Boxer, I said "no, I didn't see any mileage in that. We were taking the high road and focusing on the future and insuring system reliability for our customers." He said he agreed that was best approach. I indicated that I imagined his office would get media calls tomorrow about this and would be looking for his reaction; I indicated that if he was so moved, it would help if he could indicate we had talked and he thought the company was acting responsibly and focused on the right things. He indicated a willingness to do that. (Severson Decl.)

The CPUC has admitted there were secret communications between Governor Brown's office and the CPUC officials regarding San Onofre and these need to be released:

Additionally, the CPUC redacted portions of the text of two (2) records pursuant to Government Code §6254(1) as the redacted text reflected communications to or from employees of the Governor's Office

Moreover, the CPUC withheld from this production one hundred twenty-four (124) records in total The CPUC withheld sixty-five (65) records of communications to or from employees of the Governor's Office pursuant to Government Code §6254(1). (Severson Decl)

D. Delay of Proceedings and Need for Discovery:

First, the CPUC delayed the start of the investigation from February 2012 until October 2012. In June 2012 Commissioners acquiesced in SCE's request to postpone the investigation of the failed San Onofre steam generators:

From: Les.Starck@sce.com
Sent: Tuesday, June 19, 2012 1:07 PM
To: mp1@cpuc.ca.gov
Cc: cab@cpuc.ca.gov
Subject: SONGS OII Letter to CPUC
Attachments: SONGS OII Letter to CPUC 061912.pdf

Dear President Peevey,

Attached is the letter I sent today expressing SCE's concerns about the proposed SONGS OII. This is on the agenda for the June 21 commission conference.

(See attached file: SONGS OII Letter to CPUC 061912.pdf)

Les Starck
Senior Vice President
Regulatory Affairs
Southern California Edison
Office: 626-302-4883
Cell: 202-256-7159

The CPUC Commissioners stalled the investigation; four months later in October 2012, the CPUC announced in a press release the start of the investigation:



California Public Utilities Commission
505 Van Ness Ave., San Francisco

FOR IMMEDIATE RELEASE

PRESS RELEASE Media Contact: Terrie Prosper, 415.703.1366,
news@cpuc.ca.gov

CPUC OPENS FORMAL INVESTIGATION INTO SAN ONOFRE OUTAGES

SAN FRANCISCO, October 25, 2012 - The California Public Utilities Commission (CPUC) today opened a formal investigation into the

extended outages of Units 2 and 3 at the San Onofre Nuclear Generating Station (SONGS). The investigation will determine whether to remove all costs related to SAN ONOFRE from the rates of Southern California Edison (SCE) and San Diego Gas and Electric (SDG&E) going forward, and whether to refund SONGS-related costs already collected in rates back to January 1, 2012.

Six weeks later -- on 10 December 2012 -- Administrative Law Judge (ALJ)

Darling halted the San Onofre failed generators investigation. Instead, the focus of the investigation was diverted to the 2012 expenses at San Onofre:

The Commission intends to approach this inquiry in stages due to the potential wide scope and quantity of information necessary to ensure that ratepayers pay just and reasonable rates, in light of the extended outages at SONGS. The Commission will initially gather information in the form of testimony from both SCE and SDG&E about the actual **expenses** each incurred in **2012** related to SONGS. (10 December 2012 Darling Ruling pp. 1-2)

ALJ Darling announced the postponement of the San Onofre investigation after improperly discussing the delay with SCE's Vice President for San Onofre, Russell Warden:

From: "Darling, Melanie" <melanie.darling@cpuc.ca.gov>
To: "Russell.Worden@sce.com" <Russell.Worden@sce.com>,
Date: 12/05/2012 01:55 PM
Subject: RE: SONGS OII - Follow up questions

Mr. Worden: I appreciate your scrupulous attention to the rules. To the extent your comments exceeded provision of the procedural status of any SGRP litigation (i.e., an arbitration could commence in CA in 2013) in relation to possible timing of the OII phases, and widely reported information (e.g., SCE & MHI are working together to discover what went wrong), I can see where you could find a comment or two reportable (e.g.,no internal root cause analysis has been completed, whether the MHI report provided to NRC was publicly available.)

ALJ Darling

ALJ Darling and Commissioner Florio further delayed the investigation into “**causes of the SG (steam generator) damage and allocation of responsibility**” known as “Phase 3” to an unspecified date.

ALJ Darling hindered for six months (from August 2013 to January 2014) Ms. Henricks' effort to gather evidence about what caused the steam generators to fail, and then denied Ms. Henricks' discovery request altogether:

Ruth Henricks's (Henricks) July 8, 2013, "Motion for an order for discovery relating to the San Onofre Steam generator Anti-Vibration Bar Design team" is **denied** without prejudice.** (14 January 2014 ALJ Darling Ruling)

On 24 April 2014, ALJ Darling put a permanent hold on the investigation into who and what caused the steam generators to fail:

7. Request for Stay of Proceedings In their Motion, Settling Parties asked the Commission to refrain from 1) scheduling a PHC or issuing a scoping memo regarding Phase 3; 2) voting on any proposed decision (PD) for any phase of the OII; and 3) issuing any further PDs regarding any phase of the OII. The request is largely unnecessary. Work on the Phase 2 PD is incomplete, the ALJs did not contemplate scheduling a pre-hearing conference regarding Phase 3 prior to issuance of the Phase 2 PD, and the Phase 1 PD is currently on hold. Nonetheless, it is reasonable to refrain from continuing to work on aspects of the OII which may be resolved as a result of the pending Motion and Agreement. Because utility rates fund Commission, utility, and (in some cases) party activity in our proceedings, it is in the best interests of ratepayers to avoid I.12-10-013 et al. MD2/KD1/ek4 - 7 - duplicative or unnecessary activity until the Commission has had an opportunity to consider the proposed settlement. (24 April 2014 Ruling pp.6-7)

The investigation was conducted in a manner contrary to what the Commission stated. Indeed, it should produce discovery of the type CPUC staff member Eric Green discussed with ALJs Darling and Dudney, and Florio staff member Sepideh, on 11 February 2014:

I would like to see documents submitted by SCE to MHI and MHI's responses as they relate to the design and manufacture of the SAN ONOFRE replacement steam generators. To date, I have not seen anything regarding SCE's incentive and **motivation back in 2004 –2005 for wanting larger steam generators** with more and longer tubes that are spaced closer together. Energy Division will need to get input from our consultant Dr. Robert Budnitz for inclusion in the subpoena and request for documents and information. Regarding timing, Legal would like these subpoenas issued fairly soon perhaps in the next 2 – 3 weeks. Eric (11 February 2014 Eric Green Email)

SCE has identified the errors that caused the steam generators to fail (Dr. Budnitz' first question):

3. It is now clear that the defective RSGs resulted from problems embedded in Mitsubishi's design and manufacturing processes. According to the results of multiple investigations – by the Nuclear Regulatory Commission (“NRC”), SCE, and Mitsubishi itself – Mitsubishi's proprietary computer modeling codes were faulty to begin with and, additionally, Mitsubishi misused those codes when predicting the thermal-hydraulic conditions in the RSGs. Mitsubishi's errors led directly to its grossly underestimating these conditions: Fluid velocities inside the RSGs were up to four times greater than Mitsubishi had predicted, and the fraction of water in liquid form in the steam (“**void fraction**”) was 10 times lower than predicted by Mitsubishi.

4. Fluid velocities and void fractions are key thermal-hydraulic conditions that affect tube vibration, and both were critical factors upon which Mitsubishi based its design. As a result of Mitsubishi's gross errors, the Mitsubishi design for the RSGs could not control tube vibration under the extreme conditions, so the RSG tubes collided with one another and with the RSG tube support structures, resulting in excessive wear that ultimately led to the premature retirement of SONGS. The tube vibration and resultant extraordinary wear are exactly what Mitsubishi promised would not occur when it bid to provide RSGs that would last 40 years. (International Chamber of Commerce International Court of Arbitration Request for Arbitration pp. 2,5)

The Nuclear Regulatory Commission (NRC) further refined the cause of the steam generators' failure:

The Mitsubishi FIT-III thermal-hydraulic computer model (FIT-III) output gap velocities were not appropriately modified for triangular pitch designed steam generators. There were opportunities to identify this error during the design of the replacement steam generators. Mitsubishi was the vendor selected by Southern California Edison to design and manufacture the replacement steam generators. On numerous occasions during the design process, Southern California Edison personnel questioned the results from and appropriateness of using FIT-III, but ultimately accepted the design as proposed by Mitsubishi. Mitsubishi hired consultants with expertise in designing large steam generators, but did not rigorously evaluate all

concerns raised by the consultants about use of FIT-III and specific results obtained from that thermal-hydraulic model. As a result, replacement steam generators were installed at San Onofre with a significant design deficiency, resulting in rapid tube wear of a type never before seen in recirculating steam generators.

The writings were not produced by SCE in this proceeding until after Senator Boxer called for an investigation. The essence of the two letters was described in a 28 May 2013 CPUC email:

Here is an excerpt from the 11/30/2004 letter from VP of SCE to GM of MHI. “Anti-Vibration Bar design (and installation) is by far one of the most challenging tasks that will face MHI and SONGS; in fact, it is in our opinion the single most significant task facing the industry for steam generators of our size today... Recent industry experiences with Anti Vibration Bar supports has demonstrated the difficulty in developing a successful design (the recent experience at a US plant emphasized this point when more than 180 tubes were found to have wear indications after only one cycle of operations, some of these indications were up to 20% through the wall). Our discussion with MHI to date have not resulted in a plan that will successfully address this industry concern. Both SAN ONOFRE and MHI are having difficulty in formulating such a plan. “Based upon these observations, I am concerned that there is the potential that design flaws could be inadvertently introduced into the steam generator design that will lead to unacceptable consequences (e.g., tube war and eventually tube plugging).”

Excerpt from the 6/16/2005 letter from VP of SCE to GM of MHI. “As we have discussed with your personal industry’s experience with tube wear in the U-bend region of the large steam generators is not encouraging, as evidenced by the recent tube inspections at the Calvert Cliffs and Palo Verde plants. In general, all plants with large steam generators report significant number of wear indications after as little as one cycle of operation. “Void fraction is an important thermal-hydraulic parameter, related to the probability of tube dry out occurring during power operation (the higher the void fraction, the higher the probability of tube dry out). Tube dry out is an undesirable phenomenon as it may eventually result in tube cracking. The information presented to Edison in the most recent Technical Meeting, indicated that for SAN ONOFRE RSG the expected void fraction is very high. Consequently, Edison requests that MHI launch a consolidated effort aimed at addressing high void fraction in the RSG.” (28 May 2013 Email from CPUC Kevin Barker)

Answering Dr. Budnitz' next question of "Who made those errors?" was the aim of Ms. Henricks' discovery requests which SCE, with the Commission's backing, refused to answer. Ms. Henricks asked SCE to identify who knew about the new steam generators' tube problems.

In data requests, Ms. Henricks asked SCE for the evidence of who and what was done at SCE about the new generators tube steam problem. On 16 April 2014, Ms Henricks asked SCE to identify the "SCE decision makers who were aware that the [T]he AVB Design Team recognized that the design for the RSGs resulted in higher steam quality (void fraction) than previous designs and had considered making changes to reduce the void fraction." (17 April 2014, Henricks Data Request 17) Also on 16 April 2014, Ms. Henricks asked SCE to "explain **the steps the SCE decision makers (by name) went through to make** sure the design for the RSGs that resulted in higher steam quality (void fraction) than previous designs was corrected." (17 April 2014, Henricks Data Request 18) On 28 April 2014, Ms. Henricks asked SCE to "**provide the names of the SCE executives who were told** "the [T]he AVB Design Team recognized that the design for the RSGs resulted in higher steam quality (void fraction) than previous designs and had considered making changes to the design to reduce the void fraction." (28 April 2014, Henricks Data Request 43) Also on 28 April 2014, Ms. Henricks asked for the "documents showing what action SCE's most senior executives took to address the tube steam problem in the new generators. (28 April 2014, Henricks Data Request 44)

Backed by the CPUC rulings of ALJ Darling, SCE refused and did not produce the answers and documents requested in Ms. Henricks' data request numbers 17, 18 43, and 44. Based on SCE's refusal to answer the questions and produce the documents because "Per ALJ Darling's April 19, 2013, ruling on SCE's Motion to Seal '[I]dentification of specific personnel' comprises information properly designated as confidential in Commission Proceedings," SCE also objected because such request was beyond the

scope of permissible discovery as determined in the ALJ's April 24, 2014 ruling." (SCE Responses to 17 April 2014, 28 April 2014 Henricks Data Request 17, 18, 43 and 44)

ALJ Darling also obstructed Ms. Henricks' effort to take discovery of the steam generator steam issue by deposition discovery. Ms. Henricks brought a motion to take deposition discovery of SCE officials involved in the new generators steam problem issue. In denying the motion, ALJ Darling noted that "Henricks cites the Root Cause Analysis Report prepared by Mitsubishi Heavy Industries (MHI) to show that SCE and MHI established an AVB Design Team, and that this team recognized certain differences (steam quality, void fraction) between the replacement steam generator designs relative to the original steam generators and rejected making changes to reduce these differences. Henricks seeks to identify and depose "key members" of this team about "information relevant to the question of whether SCE and SDG&E acted reasonably in designing, manufacturing and installing the Unit 2 replacement steam generators in early 2010." (Footnotes omitted) (14 January 2014, ALJ Darling Ruling p. 2)

ALJ Darling justified the denial of the discovery motion because "Henricks has not demonstrated that depositions are the best or the only way to obtain the substantive information that she apparently seeks." (14 January 2014, ALJ Darling Ruling p. 3) ALJ Darling also cited to SCE's argument: "SCE points out that this Commission has a preference for discovery through data requests rather than depositions and that an earlier ruling in this case has noted that the identity of specific personnel may be redacted." (14 January 2014, ALJ Darling Ruling p. 3)

ALJ Darling understood how important the Mitsubishi Heavy Industry (MHI) root cause report was to the issues in the case: "I also volunteered my understanding of what root cause analyses had been performed to date, and whether or not MHI considers part of its root cause evaluation to be proprietary because of the **FIT III software used to model the steam generator design**. (5 December 2014 Email from Russell Worden to ALJ Darling)

ALJ Darlings' rulings allowing SCE to hide the names of the witnesses and related documents was inconsistent with fundamental California discovery principles:

We emphasized that “[c]entral to the discovery process is the **identification of potential witnesses**. ‘The disclosure of the names and addresses of potential witnesses is a routine and essential part of pretrial discovery.’ [Citation.] Indeed, our discovery system is founded on the understanding that parties use discovery to obtain names and contact information for possible witnesses as the starting point for further investigations. *Crab Addison, Inc. v. Superior Court* (2008) 169 Cal. App. 4th 958, 966.

In its decision approving the settlement, the CPUC turned its rulings denying discovery to Ms. Henricks on its head. In its decision approving the settlement, the Commission erroneously stated “Ms. Henricks also (mistakenly) contends the Commission has not allowed discovery about matters expected to be within the scope of Phase 3.” SCE blocked discovery based on the ALJ’s Darlings rulings. (See, SCE’s Answers to Henricks Data Requests 17, 18, 43 and 44) SCE’s discovery objections fly in the face of the Commission’s claim that “Henricks had almost six weeks to serve pre-hearing discovery related to the proposed Agreement, an opportunity to make these inquiries at the evidentiary hearing, and an ability to bring forth evidence of contested facts.” (November 2014 Decision Approving Settlement p. 50)

The transcript of the 14 May 2014 evidentiary hearing in this matter shows ALJ Darling did not allow any examination of the tube and steam problem with the new generators:

Q: Question before you, sir, is are you familiar with the fact that the AVB Design Team reported to Southern California Edison that the design that was underway for the replacement steam generators was creating greater steam quality in the U-bend region of the generators?

MR. WEISSMANN: Objection, your Honor. This is beyond the scope of this hearing.

ALJ DARLING: Sustained. Move on. (14 May 2014 Transcript p. 2752)

“Absurd” is the best word to describe the Commission’s statement that Ms. Henricks had an opportunity to make inquiries at the 14 May 2014 evidentiary hearing. (November 2014 Decision Approving Settlement, p. 50) At the hearing, ALJ Darling took her lead from SCE’s counsel. We now know that SCE’s counsel had directed the Commission actions as illustrated by this email SCE’s counsel sent to CPUC staff:

From: Weissmann, Henry [<mailto:Henry.Weissmann@mto.com>]
Sent: Wednesday, April 23, 2014 2:53 PM
To: Reiger, J. Jason (Jonathan.Reiger@cpuc.ca.gov)
<Jonathan.Reiger@cpuc.ca.gov>; Dorman, Elizabeth
(elizabeth.dorman@cpuc.ca.gov) elizabeth.dorman@cpuc.ca.gov
Subject: MHIA Subpoena

Dear Jason and Elizabeth – Following up on our conversation of Monday, we gave further thought to whether there is a need to serve a separate subpoena on MHIA. The subpoena you previously served on MHIA was in its capacity as agent of MHI Ltd. While the definitions in that subpoena should capture documents in the possession of MHIA, we do want to be sure that MHIA will produce any documents in its possession. There are two ways you could obtain such assurance. First, you could ask Michael Hindus to agree that, in responding to the subpoena you have already served, they will produce documents in MHIA’s possession.

Second, if he doesn’t agree, you could serve a new subpoena on MHIA in its own capacity, as for example in the form attached. You could serve this subpoena either on Michael Hindus (if he agrees to accept service) or, if necessary, on MHIA’s agent in Sacramento in the same manner as you did previously. If you do decide to go this route, you should revise Jason’s declaration to refer in paragraph 1 to a subpoena issued to MHIA. In light of these options, which you can explain to Hindus, I would expect him to agree to produce MHIA’s documents in response to the pending subpoena. Please let me know if you have any questions or would like to discuss further.

The deference ALJ Darling paid to SCE’s counsel at the hearing occurred from the onset of the hearings:

ALJ DARLING: All right. Please be seated. And Mr. Mr. Weissmann, is there a preexisting process that you devised here? (14 May 2014 Transcript p. 2665)

ALJ Darling allowed SCE's attorney to disrupt the cross-examination of SCE President Ron Litzinger at the 14 May 2014 evidentiary hearing:

Q: Now, you have heard it argued no doubt by the opponents that what's in the public interest is to get to the bottom of whether or not Southern Cal Edison was or was not unreasonable after it was put on notice of the design flaws in the U-bend region that produced greater steam quality than in past designs. Do you agree with that?

MR. WEISSMANN: Does he agree with everything that you just said?

MR. AGUIRRE: Yes. Again, your Honor, I'm sorry. What is this? What is this doing right here? What is that? What do we call that?

MR. WEISSMANN: It's called an objection on the grounds that your question is extremely confusing and wasn't actually posed as a question.

MR. AGUIRRE: **Your Honor, you are violating the fundamental principles of due process by letting this attorney act as the judge in the case.** That's what you're letting this happen. You can do it if you want to, but that is highly improper for him to do that.

ALJ DARLING: You're entitled to your opinion, Mr. Aguirre. You state a question which was not entirely comprehensible. And counsel interjected an objection. This is the ordinary course of litigation.

MR. AGUIRRE: Okay. Your Honor, there's lawyers listening to this all over the State of California. And if you want to take the position that what he's doing is proper, that's fine. There's probably judges listening to it as well. That's fine. Let's go back. Mr. Litzinger, let's go back. (14 May 2014 Transcript pp. 2750-2751).

E. What Might Have Been Done, By Whom, At What Stage To Have Averted The Errors?

The proceedings must be opened to get answers to Dr. Budnitz next questions: *“What might have been done, and by whom, and at what stage, to have averted those errors?”* Ms. Henricks asked for the records showing what steps SCE executives took to correct the defective steam generator designs but ALJ Darling denied it. The proceedings must be opened and the relevant records must be produced.

F The Threshold For Needing A Reasonableness Review Has Been Met

Under former CPUC President Peevey, the CPUC approved on 15 December 2005 the expenditure of \$680,000,000 for new steam generators to replace those at the San Onofre nuclear power plant. The steam generators failed 11 months after they were all installed. SCE admitted the steam generator failures caused “at least \$4 billion in damages:”

10. The SAN ONOFRE Owners have suffered **at least \$4 billion in damages** as a result of Mitsubishi’s wrongdoing. (International Chamber of Commerce International Court of Arbitration Request for Arbitration p. 5)

In its decision approving the project, the CPUC directed that, “If the SGRP (Steam Generator Replacement Project) cost exceeds \$680 million the entire SGRP cost shall be subject to a reasonableness review.” (15 December 2005, Decision 05-12-040, p. 2) SCE proposed “to file an application to establish the reasonableness of the SGRP construction costs, excluding the costs of removal and disposal of the original steam generators, **six months after SAN ONOFRE returns to commercial operations**. In addition, SCE proposes to file an application to establish the reasonableness of the costs of removal and disposal of the original steam generators six months after the last removal and disposal costs are incurred.” (15 December 2005, Decision 05-12-040, pp. 48-49)

G. Cpuc Officials Who Knew About And Participated In The San Onofre Proceedings Must Be Disqualified From Any Further Involvement In The Case

We know that Peevey and Randolph (by his declaration) participated in striking the framework to end the investigation at the secret Warsaw Poland meeting. There is evidence Peevey and Randolph told Florio about the secret agreement on the Thursday following their return from Warsaw:

From: Florio, Michel Peter <MichelPeter.Florio@cpuc.ca.gov>
Sent: Sunday, March 31, 2013 9:50 PM
To: Randolph, Edward F.
Subject: RE: Meeting with Peevey Thursday

Categories: Red Category

Yes, I have only a 2:30 meeting that afternoon. Lunch would be fine. THANKS and welcome back! Mike

From: Randolph, Edward F.
Sent: Sunday, March 31, 2013 2:59 PM
To: Florio, Michel Peter
Cc: Gonzalez, Nuria
Subject: Meeting with Peevey Thursday

Commissioner Florio,

Commissioner Peevey asked me to set up a meeting with him for you and me next Thursday after the Commission meeting. (We were both having email problems in Poland so he asked me to set it up when I got back). He suggest lunch or dinner (but I need to be in Sacto late in the day). For now Commisisoner Peevey would like to keep this meeting to just the three of us. I am happy to come by and explain the topic in person (or on the phone).

Can we make something work for Thursday?

H. The Framework for Settlement Meeting at the Bristol Hotel in Warsaw, Poland Violated Due Process and Cannot Be Resurrected by Another Agreement Negotiated in the Absence of A Full Reasonableness Review of All San Onofre Costs

The Commission was publicly made aware of the secret meeting in Poland between Steven Pickett, Ed Randolph, and Michael Peevey on 9 February 2015. At the time, Steve Pickett was a Vice-President of SCE and a lawyer, Ed Randolph was the Commission's Energy Division Director, and Michael Peevey was a Commissioner and Commission President. They discussed highly substantive matters, including terms of a settlement evidently agreeable to President Peevey.

The Commission's Rules of Practice and Procedure require substantive conversations to be reported by the utility within three days of the discussion. SCE did not do so, and the meeting and unreported contact was only discovered when law enforcement seized Peevey's computer. Then SCE filed a notice of ex parte contact some on 9 February 2015, two years after it should have been disclosed. In fact, the meeting should never have occurred.