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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the matter of: Foothills Education & Technology Partnerships Unlawful Participation in the California Teleconnect Fund and Violation of California Teleconnect Fund Program Rules.	H.24-02-005

CREIGHTON GRENOBLE APPLICATION FOR REHEARING OF RESOLUTION ALJ-481 RESOLVING ADMINISTRATIVE ENFORCEMENT ORDER AGAINST FOOTHILLS EDUCATION TECHNOLOGY PARTNERSHIP

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Pursuant to Rule 16.2 of the Commission's Rules of Practice and Procedure, Creighton Grenoble hereby files this application for rehearing of Resolution ALJ-481 ("Resolution") resolving an Administrative Enforcement Order ("AEO") against Foothills Education and Technology Partnership ("FETP").[1] The Application identifies legal and factual errors in the Resolution and the underlying AEO it is adopting.

Rule 16.2(b) permits an application for rehearing of a resolution to be filed by "any person who has served written comments on a draft or alternate resolution pursuant to Rule 14.5." Mr. Grenoble filed comments on draft resolution ALJ-481 pursuant to Rule 14.5 on August 25, 2025. Therefore, he is eligible to file this application for rehearing. Rule 16.1(a) requires that applications for rehearing must be filed "within 30 days after the date the Commission mails the order or decision." Resolution ALJ-481 was issued on September 25, 2025, therefore this application is timely.

I. STANDARD OF REVIEW

The purpose of an Application for Rehearing is to alert the Commission as to legal error, in order to permit the Commission to correct it expeditiously.[2] As discussed in detail below, the Commission should revise legal and factual errors in Resolution ALJ-481, which adopts the AEO as amended on March 21, 2024. Specifically, the AEO and Resolution ALJ-481 should be modified to conform to the record in this proceeding by: 1) correcting Mr. Grenoble's title to reflect the undisputed evidence that he was not the CEO of FETP; 2) indicating whether the $7,000 penalty and seven-year ban on participation in the Commission's public purpose programs applies only to FETP, the respondent and sole party in this proceeding or to non-party

[1] Foothills Education & Technology Partnership's Unlawful Participation in the California Teleconnect Fund and Violation of California Teleconnect Fund Program Rules, Proposed Administrative Enforcement Order, (Jan. 12, 2024).

[2] *See* Rule 16.1.

Mr. Grenoble; and 3) correcting the Resolution and AEO to conform to the undisputed evidence that Mr. Grenoble was neither a respondent nor party in this proceeding. Further, Mr. Grenoble submits that grounds exist to vacate Resolution ALJ-481 in its entirety on the basis requests that it be vacated and the AEO be amended as indicated herein and adopted as the Commission's Final Order. Such grounds include the Commission's failure to serve the AEO on Mr. Grenoble, the Commission's refusal to allow Mr. Grenoble to make a special appearance to challenge the Commission's jurisdiction over him and the denial of FETP's timely peremptory challenge seeking reassignment of the assigned Administrative Law Judge on the basis of bias.

Mr. Grenoble's due process rights have been and continue to be violated. Such due process violation is reversible error. Among the due process violations are that the Commission appears to be penalizing him even though Mr. Grenoble was barred from participating in the proceeding to defend himself or otherwise be heard. Mr. Grenoble notes that the California Supreme Court in *Center for Biological Diversity, Inc. et al., v. Public Utilities Com.* explicitly overruled the deferential standard of review set forth in *Greyhound.*[3]

The California Supreme Court clarified that Commission decisions may be vacated if it proceeded in a manner contrary to law, in excess of its authority or in violation of Mr. Grenoble's due process rights under the U.S. Constitution and/or the California Constitution.[4] Mr. Grenoble requests that the Commission take official notice and evaluate the legal and factual errors in Resolution ALJ-481 and the AEO raised in this Application under the standard set forth in *Center for Biological Diversity*.[5]

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[3] *Center for Biological Diversity, Inc. v. Public Utilities Com. (2025), 18 Cal. 5th 293, 295.*
[4] *Id.*, (*citing* Cal. Pub. Util. Code Section 1757 and 1757.1).
[5] Rule 13.10. Evidence Code section 451 mandates that "[j]udicial notice shall be taken of … [t]he decisional, constitutional, and public statutory law of this state and of the United States . . .".

II. RESOLUTION ALJ-481 COMMITS LEGAL ERROR BY FAILING TO IDENTIFY THE TARGET OF THE PROPOSED PENALTY

Resolution ALJ-481states that "[t]he AEO seeks a penalty of $7,000 and a ban from participating in the CTF program for seven years."[6] The Resolution does not identify the entity or person against whom the penalty would be assessed. The Ordering Paragraph simply states that "[t]he Request for Hearing of Proposed Administrative Enforcement Order #CPUC-12-AEO is dismissed for failure to prosecute."[7] The AEO stated that "If a timely Request for Hearing is not filed, this Proposed Order will become final and effective upon adoption by the Commission (Final Order)."[8] Presumably, then, Resolution ALJ-481 intends to adopt the AEO as amended as the final and effective order of the Commission. If ALJ-481 does not intend to adopt the AEO as amended, the Resolution should be revised to clarify what order (if any) has been adopted as a Final Order of the Commission.

The lack of clarity regarding the person or entity against whom Resolution ALJ-481 intends to assess the penalty stems from its reference to AEO language regarding the target of the penalty. In response to a CPED motion, the AEO was amended to state, " Based on all of the factors outlined above, a fine of $7,000 and a ban against FETP and its CEO, Creighton Grenoble, from benefiting from or participating in any Commission program for a period no less than seven years is reasonable and appropriate under Resolution M-4846."[9] Resolution ALJ-481 does not indicate whether it intends to adopt the language in the amended AEO unchanged, hence it is impossible for Mr. Grenoble to determine whether the Resolution intends to penalize him.

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[6] Resolution ALJ-481, at p. 1.
[7] Resolution ALJ-481, at p. 6 (Ordering Paragraph 10).
[8] AEO, at p. 2.
[9] Resolution ALJ-481, at p. 2 (citing May 22, 2024, ruling granting the CPED motion).

If the Commission intends to penalize Mr. Grenoble, Resolution ALJ-481 and the AEO commit reversible legal error because the Commission may not deprive a person of property (e.g., fined or deprived of a livelihood), without due process.[10] It is well settled that due process requires an opportunity to respond to the Commission's allegations and to appeal erroneous decisions.[11] It is not possible for Mr. Grenoble to have a meaningful right of appeal since Resolution ALJ-481 is vague as to whether Mr. Grenoble is being penalized.

III. AEO IS BASED ON FACTUAL ERROR

The AEO was amended to incorrectly identify Mr. Grenoble as the CEO of FETP. The statement is factually incorrect and adopting this language is an error. The record is undisputed (based in part on CPED's counsel statements at the pre-hearing conference) that Mr. Grenoble is incorrectly identified as FETP's CEO. Rather, he was a contract Executive Director. The AEO states "FETP was exclusively managed by Creighton Grenoble as the executive director since 2014 and was governed by a rotating board of directors comprised of Superintendents from FETP's member school districts."[12] Nicholas Hwang, the attorney in Legal Division representing CPED in this matter, conceded "I will acknowledge the typo that we made in the motion to amend labeling him as CEO. We acknowledge he was not the CEO of FETP. And we'd be happy to correct that, but I would note that ultimately his precise title is irrelevant."[13]

Mr. Grenoble's title is highly relevant to determine whether the Commission can attempt to impute the alleged violations of FETP on Mr. Grenoble personally. The AEO cites to no authority that would allow the imposition of personal liability on a contract executive director who also served as the secretary of the corporation. California law establishes that corporate

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[10] Resolution M-4648, at p. 9-10.
[11] *Id.*
[12] *See* [PROPOSED] Administrative Enforcement Order [CPUC-12-AEO] in H.24-02-005, at p. 3. (January 12, 2024).
[13] *See* Pre-Hearing Conference Transcript, at 16:20 – 17:5. (June 10, 2025).

officers of nonprofit corporations, are not personally liable for the corporation's obligations solely by virtue of their official positions. Liability arises only if the officer personally participates in wrongful conduct, authorizes it, or meaningfully contributes to it. This principle is well-established in case law, which holds that liability stems from personal actions rather than the individual's corporate status. The California Supreme Court has held that officers and directors are not vicariously liable for corporate torts unless they authorize, direct, or actively participate in the wrongful conduct.[14]

IV. AEO VIOLATES MR. GRENOBLE's DUE PROCESS RIGHTS

Although the Chief Administrative Law Judge ruled that this is an informal proceeding, due process rules apply.[15] In *Carstens v. Pillsbury* (1916), the California Supreme Court described a proceeding at an agency as, "the commission, upon such hearings, must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the Constitution of the United States that this cannot be done except after due process of law."[16] Further, Resolution M-4846 establishing the AEO program requires compliance with due process.[17] Nonetheless, the AEO and Resolution ALJ-481 violate due process requirements for Mr. Grenoble.

1. Mr. Grenoble is not a party to this proceeding so he may not be penalized

It is undisputed that Mr. Grenoble is not a party to the proceeding.[18] It is well established under Commission precedent and due process that a non-party may not be penalized because the Commission lacks personal jurisdiction over non-parties.[19] The Commission has explicitly held

[14] *Frances T. v. Village Green Owners Assn*. (1986) 42 Cal. 3d 490, 503-504.
[15] Chief Administrative Law Judge's Ruling Denying Foothills Education and Technology Partnership's Motion for Reassignment on Peremptory Challenge Pursuant to Rule 9.2 ("Ruling"), at p. 3.
[16] *Id*.
[17] Resolution M-4846, at p. 9.
[18] *See e.g.*, ALJ Ruling denying Grenoble Special Appearance Motion (Oct. 24th, 2024).
[19] D.15-01-003, at p. 11.

that it cannot penalize a non-party. In D.15-01-003, the Commission determined, "the Commission lacks authority over non-utilities . . . Finally, the Commission, as an administrative body, does not have authority over non-parties in a dispute."[20] It is undisputed that Mr. Grenoble is neither a public utility nor a party.[21] Yet, Resolution ALJ-481 is ambiguous as to whether the AEO intends to penalize Mr. Grenoble in his personal capacity by banning him from participating in the Commission's CTF program for seven years.[22]

2. Mr. Grenoble was not named as a respondent to the AEO

Mr. Grenoble was not named as a respondent to the AEO, thus penalizing him violates his due process rights because he was not put on notice that the Commission was investigating Mr. Grenoble or that he might be penalized personally. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Due process as to the commission's action is provided by the requirement of adequate notice to a party affected and an opportunity to be heard before a valid order can be made."[23]

3. The AEO was not served on Mr. Grenoble as required

Resolution M-4846, which authorized the AEO process, mandates that "[s]taff shall verify delivery of the proposed Administrative Enforcement Order to the regulated entity using a Proof of Service form."[24] As established above, Mr. Grenoble is not a regulated entity, and there was no Proof of Service form attached to the AEO or filed as a separate document in this

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[20] D.15-01-003, at p.11.
[21] The AEO acknowledges that "[a]s a non-profit organization, FETP is not a public utility," but nonetheless asserts that it has jurisdiction because FETP participated in the California Teleconnect Fund program. AEO, at ¶11.
[22] AEO, at p. 14. Due to Mr. Grenoble's age, this is essentially a lifetime ban.
[23] *Pacific Gas & Electric Co. v. Public Utilities Commission*, (2015) 237 Cal. App. 4th 812, 814.
[24] Resolution M-4846, Attachment, at p. 12 §9.a.

proceeding. The AEO provides no evidence (such as an email return receipt or certified mail receipt) that Mr. Grenoble was served with the AEO. Yet, service of process is an absolute requirement for a tribunal to establish jurisdiction over a party.[25]

During the pre-hearing conference, Mr. Grenoble's counsel objected to him being included in the investigation or being penalized because he was not served.[26] CPED's attorney admitted he had no evidence that Mr. Grenoble was served.[27] Judge Kelly refused to consider the service issue. He stated that despite not being involved "in how things are served . . . ·to my knowledge, I would be pretty sure or clear that ·when CPED filed the AEO that they did serve it on who they were supposed to. That's not an issue before me."[28]

It is well settled that a tribunal such as the Commission cannot exercise jurisdiction over a defendant unless the defendant has been properly served with complaint (or in this case a copy of the AEO). Service of process is the mechanism by which a court asserts jurisdiction over a party and provides reasonable notice of the action. Without compliance with statutory requirements for service, the court lacks jurisdiction over the defendant.[29] Failure to properly serve a defendant renders any judgment against them void.[30]

4. Mr. Grenoble was not provided notice that he could be penalized personally and was barred from participating in the proceeding to defend himself

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[25] *OC Interior Services, LLC v. Nationstar Mortgage*, LLC, (2017) 7 Cal. App. 5th 1318, 1318 ("[t]o establish personal jurisdiction, it is essential to comply with the statutory procedures for service of process"). *see also*, Cal. Code Civ. Proc. § 410.50; and *Stancil v. Superior Ct.*, 11 Cal. App. 5th 381, 392 (2021).
[26] PHC transcript, 18:22-19:8.
[27] *Id*., 12:1-13.
[28] *Id*., at 42:22 – 43:1.
[29] Cal Code Civ Proc § 418.10, *Ruttenberg v. Ruttenberg*, 53 Cal. App. 4th 801.
[30] Cal Code Civ Proc § 418.10, *Dill v. Berquist Construction Co*., 24 Cal. App. 4th 1426.

Due process requires notice and a meaningful opportunity to present evidence in regard to the issues.[31] Mr. Grenoble was repeatedly barred from filing pleadings in this proceeding or otherwise defending himself against the proposed penalty.[32] It is well settled that an administrative agency may not impose penalties without providing notice of specific allegations against the target because "violations based upon information of which the parties were not apprised and which they had no opportunity to controvert amounts to a denial of a hearing."[33] The California Supreme Court long ago held that a person targeted for investigation must be apprised of the violations alleged and given an opportunity to defend himself. In *Carstens v. Pillsbury,*[34] a worker's compensation claim was awarded against Carstens. Unbeknownst to Carstens, an investigation had been initiated, evidence taken and a decision granted in a worker's compensation application awarding worker's compensation damages against Carstens before he even received notice.[35] There, the California Supreme Court stated:

> Objection is also made to the conduct of the commission in considering evidence taken before he received any notice of the application. This objection is well taken. The evidence upon which the award was based, so far as it tends to disclose any connection of Carstens with the injury, was all taken before he was made a party and before the notice to him. Evidence so taken could not be lawfully considered as evidence against him. He had no notice of it; he was not present to contradict or explain it, and its force and effect is not binding upon him. Due process of law requires that the party against whom a claim is asserted shall have opportunity to be present when the evidence to sustain the claim is introduced. This privilege was not afforded to Carstens in this case.[36]

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[31] *Rea v. Workers' Comp. Appeals Bd.*, 127 Cal. App. 4th 625, 643 (Cal. App. 2d Dist. March 15, 2005) (citing, *Katzin, supra,* 5 Cal.App.4th at pp. 711–712; *Fidelity & Cas. Co. of New York v. Workers' Comp. Appeals Bd.* (1980) 103 Cal. App. 3d 1001, 1015 [163 Cal. Rptr. 339]; *Fremont Indemnity Co. v. Workers' Comp. Appeals Bd.* (1984) 153 Cal. App. 3d 965, 971 [200 Cal. Rptr. 762].)
[32] PHC Transcript, 43:2-12.
[33] *English v. City of Long Beach*, (1950) 35 Cal. 2d 155, 158 (*citing*, *La Prade* v. *Department of Water & Power*, 27 Cal.2d 47 [162 P.2d 13]; *see Bandini Estate Co.* v. *Los Angeles County*, 28 Cal.App.2d 224, 231 [82 P.2d 185].)
[34] *Carstens v. Pillsbury*, (1916) 172 Cal. 572, 577.
[35] *Id*. (emphasis added)
[36] *Id*.

This is an almost identical situation to the instant case. Mr. Grenoble is not a named respondent.[37] No discovery was issued to him personally. The AEO makes no allegations against Mr. Grenoble personally.[38] Rather, the staff report concluded that CTF funds were used to subsidize broadband service to CTF-eligible entities.[39] FETP provided the services to those eligible entities without markup.[40]

The only violation was a technical issue involving FETP's misclassification as a CBO, but there is nothing in the staff report to suggest that it ever examined whether Mr. Grenoble had any involvement with FETP's misclassification as a CBO. Indeed, the record is clear that FETP's enrollment in the CTF program occurred years before Mr. Grenoble was the Executive Director. All allegations in the AEO are directed at FETP. The only basis for asserting that Mr. Grenoble should be penalized is that CPED appears to believe that Mr. Grenoble and FETP are fungible, and that it can impose liability on Mr. Grenoble for the acts of FETP. The Commission may lack jurisdiction to impose alter ego liability. This issue is currently under review by the California Fourth District Court of Appeals.[41]

Additionally, the AEO denies Mr. Grenoble his due process rights because he has had no opportunity to be heard since he was ***barred*** from filing a motion to challenge the Commission's jurisdiction,[42] or to otherwise defend himself in this proceeding. It is well established in case law

[37] *Id*.
[38] FETP AEO, at ¶ 1, at p. 1.
[39] Consumer Protection and Enforcement Division, Utility Enforcement Branch Staff Report, Investigation of the Foothills Education & Technology Partnership, Inc. for CTF Program Non-Compliance ("Staff Report") (Oct. 17, 2023), at p. 9.
[40] *Id*.
[41] *See* Court of Appeals Case No. G065120 in the 4th District of CA, *Vaya Telecom, Inc. v. Public Utilities Commission of the State of California* (January 21, 2025).
[42] The Commission has explicitly recognized that a party may challenge the Commission's jurisdiction without having to become a party and thereby subject himself or herself to the Commission's jurisdiction. See e.g., In D.02-10-059 in which the Commission held that a "special appearance" contemplated by Rule 45(c)(2) is a method of appearing for the sole purpose of objecting to the lack of jurisdiction of the tribunal over the person appearing specially, without submitting to the

and Commission orders that notice and an opportunity to be heard are the bare minimum procedures required for due process.[43][44] Due process must be afforded to all parties "before a valid order can be made."[45]

5. Mr. Grenoble carried out the FETP board's decisions and played no role in enrolling FETP in the CTF Program

Mr. Grenoble was employed by an outside vendor who provide executive director services for Foothills Education and Technology Partnership ("FETP").[46] He was the executive director (not the CEO nor a founder, as indicated in the AEO) from 2013 to 2022, who carried out the decisions of the board of directors comprised of school district superintendents. That board, not Mr. Grenoble, approved enrollment in the California Teleconnect Fund ("CTF") program in 2005 during the tenure of a prior executive director eight years before Mr. Grenoble's tenure began.[47] FETP's participation in CTF was uneventful for over a decade until Commission staff questioned whether the prior executive director's categorization of FETP as a Community Based Organization ("CBO") was correct. Imposing alter ego liability on Mr. Grenoble is even further removed since he was an employee of an FETP contractor. Neither the AEO nor any ruling from Judge Kelly identifies any Commission order, rule or state law holding that that an outside vendor can be penalized as the alter ego of a corporate client.

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tribunal's jurisdiction." When the Commission's rules were revised, Rule 45(c) was consolidated into Rule 11.1(b), the general rule for motions. R.06-02-011, Order Instituting Rulemaking to Update, Clarify and Recodify Rules of Practice and Procedure, at p. 8, Appendix B, at p. 8.

[43] *See e.g.*, Resolution ALJ 288; D.15-04-023; D.16-01-041; D.18-04-014; D.22-05-010.

[44] *See e.g.*, Resolution ALJ 288; D.15-04-023; D.16-01-041; D.18-04-014; D.22-05-010.

[45] *Pacific Gas & Electric Co. v. Public Utilities Commission*, (2015) 237 Cal. App. 4th 812, 814.

[46] ALJ Ruling dated December 6, 2024.

[47] AEO, Staff Report, Attachments 2 and 3.

The AEO acknowledges that FETP was governed by a board of directors,[48] yet the entire board and all officers were dismissed from the proceeding pursuant to a motion filed by CPED.[49] In short, the AEO imposes alter ego liability solely on Mr. Grenoble (erroneously identified in the AEO as FETP's CEO and founder) in his personal capacity for FETP's alleged violations. A California Court of Appeals is currently reviewing whether the Commission has authority to impose alter ego liability on non-utility affiliates of a certified carrier.[50]

V. COMMISSION LACKS STATUTORY AUTHORITY FOR THE AEO PROGRAM AND IMPOSITION OF PENALTIES ON MR. GRENOBLE

Resolution M-4846, which established the AEO program, asserts that the Commission has authority to impose penalties through an AEO via several resolutions and decisions,[51] but none provide the required authority because they apply to industries other than telecommunications. Resolution M-4846 cite to D.14-12-001 (as modified by D.15-05-054), and D.16-09-055, but these decisions relate only to citation programs for gas and/or electric utilities. Resolution M-4846 cites to several resolutions that purportedly provide authority for the AEO program, but again, none of those resolutions apply to telecommunications carriers: Resolution E-4017[52] (as modified by ResolutionE-4195)[53] apply only to electric utilities; Resolution E-4550[54], and Resolution SED-

[48] AEO, at p. 3 (FETP "was governed by a rotating board of directors comprised of Superintendents from FETP's member school districts.").
[49] Motion of CPED to amend AEO, at p.1, March 21, 2024.
[50] Case No. G065120 in the California Court of Appeal, 4th District, Division 3 (writ of review issued on April 7, 2025).
[51] Resolution M-4846, at p. 5.
[52] Resolution E-4017 (Approval of a citation program for system and local resource adequacy filing requirements by load-serving entities within the California's three largest electric utilities).
[53] Resolution E-4195 (Modification to citation program enforcing system and local Resource Adequacy filing requirements by Load-Serving Entities).
[54] Resolution E-4550 (Authorizing Commission Staff to fine public utilities for non-compliance with Permits to Construct (PTC) and CPCNs for natural gas storage facilities; electric generating plants; electric transmission/power/distribution line facilities and substations.

3,[55] are applicable only to electric utilities; ResolutionW-4799 is applicable only to water and sewer utilities; Resolution TL-19108[56] is applicable only to transportation companies; and Resolution ROSB-002[57] is applicable only to railroad carriers.

Resolution M-4846 fails to identify any statutory or legislative authority that empowers it to penalize telecommunications carriers through an AEO. It does, however, cite to statutes setting forth the Commission's general authority to regulate, [58] but all of those statutes are limited to regulating public utilities: Section § 701 authorizes the Commission to "supervise and regulate every *public utility* in the State . . ."; 702 requires that "[e]very *public utility* shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission . . . ."; Section 451 mandates that "[a]ll charges demanded or received by any *public utility* . . . shall be just and reasonable"; Section 2101 authorizes the Commission "to see that the provisions of the Constitution and statutes of this State affecting *public utilities* . . . are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected . . ."; Section 2107 authorizes the Commission to penalize "[a]ny *public utility* that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission . . .".[59] The AEO, however, concedes that FETP is not a public utility. It is beyond dispute that Mr. Grenoble is not a public utility.

The AEO also refers to Section 281(f)(7), as a purported basis to apply the AEO program to non-utilities. The AEO states that the "Legislature enacted this section which brings under the

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[55] Resolution SED-3 (Citation Procedures for violations of General Orders and other applicable Decisions, Codes, and Regulations regarding communications facilities. Resolution SED-3 (Dec 1, 2016).
[56] Resolution TL-19108 (Authorizing the Executive Director to Notify a Charter Party Carrier that Its Permit to Operate May be Permanently Revoked).
[57]Resolution ROSB-002 (Adopting a Railroad Citation Program).
[58] Resolution M-4846, at p. 5-6.
[59] Emphasis added.

Commission's jurisdiction non-telephone corporations."[60] However, Section 281 is specific to those entities that participate in the California Advanced Services ("CASF") program, not the California Teleconnect Fund ("CTF") program at issue in the AEO against FETP.

The only conceivable basis on which the Commission might claim authority to penalize Mr. Grenoble is Section 2111, the section of the public utilities code that allows for penalties over *non*-utilities but only if those persons or entities have aided and abetted a *public* utility in violating the law.[61] Even if FETP were a public utility, Section 2111 would be applicable only if the AEO presented evidence (or even allegations) that Mr. Grenoble in some way aided or abetted FETP in violating state law or a Commission order.

The Commission cannot give itself powers that are not provided for by statute. The Commission is an administrative agency of specific jurisdiction with powers limited to those either enumerated in the California Constitution[62] or those that the legislature expressly delegated, namely enforcing the California Public Utilities Code regulating public utilities.[63] California Constitution, Article XII, § 6 (which established the Commission) makes clear that the Commission's jurisdiction extends only over public utilities, "The commission may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts *for all public utilities subject to its jurisdiction*."[64] While the Commission has broad power under Section 701 to do all things "necessary and convenient" the Commission has acknowledged that "such power only pertains to

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[60] AEO, at ¶ 11.
[61] AEO, at ¶ 11; and Cal Pub Util Code § 2111.
[62] *Nagel v. PG&E*, 2023 CAL. PUC LEXIS 460, at fn. 7 (Cal. P.U.C. November 2, 2023),
[63] *Id*., at *22-23.
[64] Emphasis added.

our exercise of jurisdiction over public utilities. Section 701 does not "confer upon the Commission any [independent] authority."[65]

The Public Utilities Code explicitly holds that entities must have a CPCN to be classified as a public utility.[66] The California Constitution explicitly defines a public utility as "Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages . . . directly or indirectly to or for the public, and common carriers, are public utilities subject to control by the Legislature." (Cal. Const. Art. XII, §3.)

Even if the Commission were to prevail on an argument that it has statutory authority to impose the AEO program on a person who is not a public utility and is not alleged to aided or abetted a public utility in violating state law or a Commission order, Resolution ALJ-481 is still improper. If the Resolution intends to penalize Mr. Grenoble $7,000 or to deprive him of his livelihood by imposing a seven-year ban on participation in the Commission's public purpose programs, he is entitled to a trial by jury.[67]

In *Jarkesy*, the U.S. Supreme Court held that the Seventh Amendment entitles a defendant to a jury trial when an administrative agency imposes seeks civil penalties, as such penalties are "legal in nature" and must be adjudicated in court. If Resolution ALJ-481 intends to impose penalties on Mr. Grenoble, an agency hearing conducted by an in-house ALJ is not sufficient. Here, Mr. Grenoble was not even afforded a hearing before an ALJ because he was barred from participating due to his non-party status. As discussed above, the ALJ rejected Mr.

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[65] D. 02-01-037, 2002 Cal. PUC LEXIS 7, at *57-58 (Jan. 9, 2002) (*citing Assembly of the State of California v. Public Utilities Commission,* 48 Cal. Rptr. 2d. 54 (1995).
[66] *See* Cal. Pub. Util. Code §1001(a).
[67] *Jarkesy v. SEC*, 34 4th 446 (2024).

Grenoble's effort to exercise his right granted by state law to file a motion to quash,[68] or to participate in the hearing in a special appearance capacity to challenge the Commission's jurisdiction over him.[69]

Mr. Grenoble notes that if the AEO intends to impose a penalty on him personally, it violates his due process rights because it is an excessive delegation of authority to staff. Resolution M-4846 asserts that the AEO program is not an excessive delegation of authority because the target of an AEO has appellate rights.[70] Mr. Grenoble, however, was denied any access to the hearing in this proceeding, and he was barred from filing motions or other pleadings to challenge the Commission's jurisdiction over him.[71]

VI. CPUC VIOLATED ITS OWN RULES BY REFUSING TO GRANT A TIMELY PEREMPTORY CHALLENGE

Resolution M-4846 establishing the AEO process explicitly stated that "[a]ll actions in this Enforcement Policy, whether new or existing, will be performed consistent with the Pub. Util. Code and all other relevant legal authorities."[72] Certainly the California Public Utilities Code, California and U.S. Constitution and the Commission's Rules of Practice and Procedure implementing the California Public Utilities Code certainly fall within the term "relevant legal authorities."

As permitted by Rule 9.2, FETP filed a motion for reassignment of the ALJ in this proceeding on the basis of bias. [73] Yet the Commission's Chief Administrative Law Judge denied Mr. Grenoble's request for reassignment of the administrative law judge ("CALJ Ruling") on the

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[68] Cal. Code Civ. Proc. Section 418.10 provides that a defendant may serve and file a notice of motion to quash service of summons on the ground of lack of jurisdiction of the court over the defendant.
[69] *See e.g.*, ALJ Ruling denying Grenoble Special Appearance Motion (Oct. 24th, 2024).
[70] Resolution M-4846, at pp. 7, 9.
[71] Rule 16.2.
[72] Resolution M-4846, at p. 11.
[73] FETP Motion for Reassignment (Feb. 23, 2024).

basis of bias.[74] The denial asserts that Rule 9.2, granting one peremptory challenge to an ALJ, does not apply. Thus, participants in AEO proceedings are stripped of their right to a fair hearing because they have absolutely no method to challenge an ALJ for bias. Literally the ALJ could be married to an investigator who conducted the study underlying the AEO but no mechanism exists to obtain relief.

Mr. Grenoble notes that even though FETP filed the unsuccessful motion for reassignment, he is entitled to assert FETP's rights as a third party on rehearing because the ALJ's decision harms his substantive rights, he is an adequate representative to ensure FETP's rights are enforced and FETP cannot assert its own rights since it was dissolved years ago with the approval of the California Attorney General's office .[75] Had a different judge overseen the proceeding as FETP requested, Mr. Grenoble believes he would not have been subjected to a penalty despite being a non-party.

1. An AEO is an Adjudicatory Proceeding

The CALJ Ruling primarily attempts to dispose of FETP's peremptory challenge by claiming that its motion did not meet the requirements of Rule 9.2(a) because the AEO proceeding purportedly does not fall under the definition of an "adjudicatory proceeding" as defined in Rule 1.3(a).[76] However, Rule 1.3 defines "Adjudicatory proceedings" as: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission."[77] This is precisely the same purpose of an AEO.

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[74] Chief Administrative Law Judge's Ruling Denying Foothills Education and Technology Partnership's Motion for Reassignment on Peremptory Challenge Pursuant to Rule 9.2 (Feb. 28, 2025).
[75] See e.g., *Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*, (2006) 143 Cal. App. 4th 1284, 1297 (employer had standing to assert claim against group that harassed employees) ; *see also Yelp Inc., v. Superior Ct.*, (2017) 17 Cal. App. 5th 1, 7 (determining right of litigant to assert constitutional rights of third parties in resisting discovery request.
[76] 20 CCR 1.3(a).
[77] *Id*.

Nonetheless, the CALJ Ruling defines an AEO as, an "informal process that the Commission adopted to help streamline Commission staff's ability to ensure compliance with statutes, rules, orders, and other requirements without the need for the Commission to open a formal adjudicatory proceeding pursuant to Rule 5.1."[78] As an enforcement investigation into possible violations by FETP of provisions of statutory law, Commission orders and rules, pursuant to Resolution M-4846 the AEO against FETP necessarily is an adjudicatory proceeding.[79] Resolution M-4846 ("Resolution"), states that the purpose of the resolution itself is to adopt the Commission Enforcement and Penalty Assessment Policy ("Enforcement Policy or Policy"). The Resolution asserts, "This Policy is part of the Commission's ongoing efforts to ensure compliance with statutes, rules, orders and other requirements and to provide meaningful deterrence to violations through robust enforcement actions."[80]

By definition, an Administrative Enforcement Order is an enforcement investigation into possible violations of any provision of statutory law or order or rule of the Commission. In fact, it is the product of an enforcement investigation. Afterall, Resolution M-4846 specifically describes AEOs as part of its Enforcement Policy:

> The Enforcement Policy seeks to provide more structure around those tools by consolidating and identifying a uniform set of staff level enforcement actions such as: communications with regulated entities, warning letters, requests for information and inspections, and notices of violation. …
>
> The Policy does give staff the option of issuing a proposed Administrative Consent Order or Administrative Enforcement Order instead of issuing a citation or seeking an OII in situations not currently covered by an existing citation program or warranting an OII.[81]

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[78] AEO, at p. 1 ¶ 2.
[79] *Id*.
[80] Resolution M-4846, Resolution Adopting Commission Enforcement Policy, Nov. 6, 2020, at p. 1 ("Resolution M-4846").
[81] Resolution M-4846, at p. 3.

Therefore, in no uncertain terms, Resolution M-4846 authorizes staff to issue AEOs pursuant to the Commission's Enforcement Policy.[82] Because an enforcement investigation leads to an AEO, resulting in an enforcement proceeding (although informal), enforcement investigations are properly categorized as adjudicatory pursuant to Rule 1.3. Which is subject to Rule 5.1, making peremptory challenges applicable. Thus, FETP's peremptory challenge is valid in the instant case and should be granted.

FETP notes that Rule 1.3(a) only defines an adjudicatory proceeding as "enforcement investigations into possible violations". It does not reference a proceeding or even a case; it merely states, "enforcement investigations into possible violations…". It does not say "enforcement proceedings" as the Ruling seems to imply.[83] Giving the language of Rule 1.3 the plain meaning of the words (as the Commission must), any enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission is an adjudicatory proceeding. An AEO easily meets this broad definition.

Although the Ruling claims that AEOs do not fall under Rule 1.3(a)[84], no explanation is provided other than the assertion that they do not, "Nothing in either the plain language of Rule 1.3(a), or in the Rules read as a whole, supports FETP's position that an Administrative Enforcement Order must be categorized as an adjudicatory proceeding under Rule 1.3(a) that would then give a party the right to exercise a peremptory challenge under Rule 9.2."[85]

/ / /

[82] Resolution M-4846, at p. 1-3.
[83] Ruling, at p. 3-4.
[84] Ruling, at p. 3-4, "Second, FETP asserts because Administrative Enforcement Order CPUC-12-AEO involves an enforcement investigation into the possible violation of a provision of statutory law or order or rule of the Commission, the Administrative Enforcement Order fits within Rule 1.3(a)'s definition of adjudicatory proceedings. Not so. Rule 1.3(a) defines adjudicatory proceedings as either enforcement investigations instituted by the Commission and which are covered by Rule 5.1, or complaints filed by specified parties and which are covered by Rule 4.1."
[85] Ruling, at p. 4.

Due process rules apply regardless of whether the proceeding or process is formal or informal. In *Carstens v. Pillsbury* (1916), the California Supreme Court described a proceeding at an agency as, "the commission, upon such hearings, must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the Constitution of the United States that this cannot be done except after due process of law."[86] This is what the Commission does in the AEO "informal process", it find facts and declares and enforces the rights and liabilities of those involved, sometimes through hearings. In acting as a court, the Commission is required to observe the mandate of the Constitution of the United States and enforce and observe the due process of law under the California Supreme Court's decision in *Carstens*. In the instant case, this means applying Rule 1.3's definition of "adjudicatory proceeding", as well as the requirements of other applicable statutes, such as P.U. Code § 1701.1 (requiring categorization of all proceedings at the Commission) and granting FETP's peremptory challenge pursuant to Rule 9.2 and P.U. Code § 1701.2(c).

2. A Formal Proceeding is Not Required Under Section 1701.1(a) or (d).

As noted above, the CALJ Ruling describes Administrative Enforcement Orders as: "part of an informal process that the Commission adopted to help streamline Commission staff's ability to ensure compliance with statutes, rules, orders, and other requirements without the need for the Commission to open a *formal* adjudicatory proceeding pursuant to Rule 5.1."[87] This statement acknowledges that the instant matter is a proceeding. Pursuant to PU Code Section 1701.1(a) any proceeding at the Commission must be categorized according to one of four categories, 1) rulemaking, 2) adjudicatory, 3) ratemaking, 4) quasi-legislative.[88]

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[86] *Id*.
[87] CALJ Ruling, at p. 3 (emphasis added).
[88] Cal Pub Util Code § 1701.1 (a)

Procedural due process requires that the Commission abide by the processes laid out in applicable statutes, including Section 1701.1(a) which requires the Commission to categorize all proceedings, regardless of whether the process is formal or informal.[89] FETP notes that the legislature was broad in its language to include all proceedings, as the legislature was well aware of the fact that there are formal and informal proceedings at the Commission yet did not distinguish that Section 1701.1(a) was only to apply to formal proceedings and not informal proceedings. The California Legislature codified in Section 1701(a) of the Public Utilities Act that all *investigations*, hearings, and proceedings before the Commission shall be governed by the Public Utilities Code and that the informality of the Commission's processes would not invalidate its decisions:

> (a) All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission, and in the conduct thereof the technical rules of evidence need not be applied. <u>No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, or rule made, approved, or confirmed by the commission</u>.[90]

Section 1701(a) simultaneously requires all investigations be governed by the Public Utilities Code and acknowledges that any informality of the Commission's processes have no effect on the validity of its decisions. Thus, regardless of the informality of the AEO process, the Public Utilities Code still applies as well as due process.

Resolution M4648 attempts to address due process concerns raised in comments on the Resolution. It states:

> Due Process requirements for the implementation of the Policy are included in the Policy itself. These requirements include: (1) the right to request an evidentiary hearing before an Administrative Enforcement Order becomes final; (2) the submitting for public

[89] *Carstens v. Pillsbury*, (1916) 172 Cal. 572, 577.
[90] Cal Pub Util Code § 1701 (a)

> notice and comment of a draft Resolution regarding the disposition of any proposed Administrative Enforcement Order or proposed Administrative Consent Order; (3) a Commission vote before any Administrative Enforcement Order or Administrative Consent Order becomes final; (4) the traditional rehearing and court review processes of any Commission vote on the matter.[91]

The due process requirements for the implementation of the Enforcement Policy include more than the list provided above by the Commission in the Resolution. In addition to those rights, due process also requires abiding by the governing statutes, such as 1701, 1701.1, and 1701.2, and observing other rights, such as the automatic right to a peremptory challenge of an ALJ. This right is codified in the California Code of Civil Procedure under California Code of Civil Procedure Section 170.6 which allows a party who timely files an "affidavit of prejudice" to disqualify a judge without any showing of cause. The affidavit of prejudice is not contestable and the disqualification of the judge is automatic.[92] This same right is preserved in Section 1701.2(c).

The Ruling is nothing more than the Commission's attempt to circumvent having to abide by procedural due process. Regardless of the type of "process", formal or informal, the instant matter is still a proceeding and needs to be properly categorized so that all parties know what rules apply. Yet the Ruling insists, "In fact, Administrative Enforcement Orders are not categorized as they are part of a program separate from the formal proceedings recognized by Rules 4 (complaints), 5 (investigations), and 6 (rulemakings) that do receive Commission categorization."[93] Regardless of the type of program a proceeding is a part of, it is still a proceeding and an appropriate category for it must be identified.

PU Code Section 1701.1(d) defines the categories of proceedings:

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[91] Resolution M-4846, at p. 9.
[92] CCP §170.6(a).
[93] Ruling, at p. 3.

(d)

(1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations that may establish rules affecting an entire industry.

(2) Adjudication cases, for purposes of this article, are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702.

(3) Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(4) Catastrophic wildfire proceedings, for purposes of this article, are proceedings in which an electrical corporation files an application to recover costs and expenses pursuant to Section 451 or 451.1, as applicable, related to a covered wildfire, as defined in Section 1701.8.[94]

Thus, as a proceeding, it is statutorily required that a category be assigned, and the only applicable category is adjudicatory. As will be explained in detail below, an AEO is an enforcement investigation. Because the statute uses the broader "enforcement cases" and not "proceeding" the statute is intended to encompass all cases at the Commission.

The CALJ Ruling then proceeds to make an incorrect assertion of FETP's acknowledgment that this proceeding has not been categorized yet:

> "FETP appears to recognize that it is precluded from making its *Request* but has attempted to construct a workaround of Rule 9.2(a). While acknowledging that "the Commission has yet to categorize proceeding H.24-02-005, it appears to be adjudicatory in nature as defined by Rule 1.3(a)." (*Request*, at 2.)

Acknowledging that the Commission has yet to categorize a proceeding in no way demonstrates a recognition of FETP that it is precluded from making this Request. FETP simply provided a

[94] Cal Pub Util Code § 1701.1 (d)

category since one was not provided because this is a proceeding before the Commission, there is an assigned ALJ, a proceeding number, it is referred to as a proceeding, etc. therefore, it is a proceeding.

3. A Formal Proceeding is Not Required Under Section 1701.2(a)

Additionally, pursuant to Subsections 1701.2(a) and (c), an assigned category is not required to invoke the right to a peremptory challenge. Rather, a formal proceeding is not required under 1701.2(a), because the statute uses the broader term "cases" instead of "proceeding". The instant matter is indisputably a case because it has a docket number, an assigned ALJ, and a hearing will be held. Once staff triggered 1701.2(a) by issuing the AEO, then 1701.2(c) applies which states that parties are entitled to one peremptory challenge in all "cases".

The language in Section 1701.2(c) is clear that all that is required is the assignment of an administrative law judge.

> (c) The commission shall provide by rule for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. **The rule shall provide that all parties are entitled to one peremptory challenge of the assignment of the administrative law judge in all cases.** All parties are entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been an interested person in the case.

There is no indication in the statute that a case be categorized in order for a party to have a right to a peremptory challenge as the CALJ Ruling suggests under the Commission's Rules.[95]

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[95] Ruling, at p. 4.

Even if one were to follow the erroneous application of Rules 1.3 and 5.1 set forth in the Ruling, as a governing statute, Section 1701.2(c) supersedes the Commission's Rules.[96]

4. Commission Practice Not Supported by Statute Cannot Be Maintained

It appears the Commission in practice has never received a peremptory challenge in an AEO proceeding. This does not change the fact that by statute, FETP had a right to make its reassignment request.[97] Although the Commission has apparently never applied a category to an AEO proceeding or case, peremptory challenges remain a valid right to the defendant in these proceedings.

It has long been held by the California Supreme Court that a practice of the Commission that cannot be supported by statute cannot be maintained.[98] In fact, the Commission has also made a similar Conclusion of Law in the Application of Southern California Gas Company to revise its rates in the Consolidated Adjustment Mechanism in 1987. In that case the Commission found, "[Conclusion of Law #] 2. The Constitution authorizes the Legislature to enact provisions that assure fundamental fairness and due process in proceedings before the Commission. The Commission's ability to establish its own procedures is limited by the Constitution, and the

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[96] *Los Angeles & S. L. R. Co. v. Railroad Com. of California*, (1929) 207 Cal. 123, 129-130; see also, Application of Southern California Gas Company to revise its rate under the Consolidated Adjustment Mechanism, 1987 Cal. PUC LEXIS 419, at *26 and 59-60 (Cal. P.U.C. December 9, 1987), "Subject to statute and due process, the commission may establish its own procedures." This provision is illuminating because it makes clear that, at least in the area of procedure, the Constitution authorizes the Legislature to enact statutes that limit the Commission's powers, contrary to PSD's general position" … "Conclusion of Law 2. The Constitution authorizes the Legislature to enact provisions that assure fundamental fairness and due process in proceedings before the Commission. The Commission's ability to establish its own procedures is limited by the Constitution, and the Constitution does not empower the Commission to establish procedures that supercede statutory privileges."

[97] Cal. Pub. Util. Code § 1701.2(c); see also, *Los Angeles & S. L. R. Co. v. Railroad Com. of California*, (1929) 207 Cal. 123, 129-130.

[98] *Los Angeles & S. L. R. Co. v. Railroad Com. of California*, (1929) 207 Cal. 123, 129-130.

Constitution does not empower the Commission to establish procedures that supercede statutory privileges."[99]

VII. REQUESTED RELIEF AND REQUEST FOR ORAL ARGUMENT

A. Modifications to Resolution ALJ-481 and the amended AEO

Mr. Grenoble requests that Resolution ALJ-481 be modified by striking text in strikethrough font and adding text in bold/underlined font and by adding the requested modifications to the AEO below:

SUMMARY

In this Resolution, the California Public Utilities Commission (Commission) dismisses the request for hearing of Foothills Education & Technology Partnerships (FETP) of the Proposed Administrative Enforcement Order (Proposed AEO) #CPUC-12-AEO, which was issued on January 12, 2024. Among other things, the Proposed AEO issued by the Commission's Consumer Protection and Enforcement Division (CPED) alleges that FETP violated the California Teleconnect Fund or CTF program, Decision 15-07-007, and Rule 1.1 of the Commission's Rules of Practice and Procedure or Rules. The AEO seeks **to impose** a penalty of $7,000 and a ban from participating in the CTF program for seven years **against FETP**.

FINDINGS AND CONCLUSIONS

10. The hearing request of Proposed AEO CPUC-12-AEO should be dismissed for failure to prosecute **and the AEO shall be amended as set forth below**.

ORDERING PARAGRAPH

The Request for Hearing of Proposed Administrative Enforcement Order #CPUC-12-AEO is dismissed for failure to prosecute **and the AEO shall be amended as set forth below**.

AMENDEMENTS TO THE AEO

SUMMARY

[99] Application of So Cal Gas Co., 1987 Cal. PUC LEXIS 419, at *59-60 (Cal. P.U.C. December 22, 1987).

“The AEO seeks to penalize FETP $7,000 and to ban it from participating in the CTF program for seven years."

PAGE 3

FETP was ~~exclusively~~ managed by Creighton Grenoble as the executive director since 2014 and was governed by a rotating board of directors comprised of Superintendents from FETP’s member school districts.5

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Although FETP is no longer in operation, its demonstrated noncompliance requires a level of penalty that reflects the seriousness of the violation while considering its non-operational status and remaining financial resources. ~~Given Mr. Grenoble’s remaining business operations,~~ CPED recommends FETP be assessed a fine of $7,000.

PAGE 14 (as amended on May 21, 2024)

Based on all of the factors outlined above, a fine of $7,000 and a ban against FETP ~~and its CEO, Creighton Grenoble,~~ from benefiting from or participating in any Commission program for a period no less than seven years is reasonable and appropriate under Resolution M-4846.”

B. Request for Oral Argument

Pursuant to Rule 16.3(a), Mr. Grenoble requests an oral argument regarding this application for rehearing. Oral argument is warranted to assist the Commission in resolving the legal issues raised in this application because it appears that they are an issue of first impression and therefore a determination on these issues is likely to have significant precedential effect.

Signed and dated October 23, 2025 at Walnut Creek, CA.

Respectfully Submitted,

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