

AGUIRRE & SEVERSON, LLP
ATTORNEYS AT LAW

501 West Broadway, Suite 1050
San Diego, CA 92101
Telephone (619) 876-5364
Facsimile (619) 876-5368

6 April 2015

Assemblymember Anthony Rendon
Chair, Assembly Committee on Utilities and Commerce
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0063

Re: Response to Public Utilities Commission President Picker's letter

In his 3 April 2015 letter to you, California Public Utilities Commission (CPUC) President Michael Picker does not sound like he believes it is "imperative to investigate and scrutinize the entire [San Onofre] settlement process in order to ensure that the settlement process was legitimate and uncorrupted," as you requested. Instead, President Picker provides "faulty rationales for decisions and actions" of the CPUC in the San Onofre case.¹

The San Onofre "settlement" refers to an agreement to end the incipient investigation into who should pay the \$5,000,000,000 in damages caused by the closure of the San Onofre nuclear power plant after its four defective new steam generators failed in January 2012. The CPUC made utility customers pay for most, if not all, of the damages.²

Evidence shows there may have been a criminal or unlawful scheme to close the investigation. On 23 January 2015, San Francisco Superior Court Judge Linda Colfax found probable cause to believe there was evidence "used as the means of committing a felony" located at former CPUC President Michael Peevey's home in La Canada, California.

Found in Peevey's home office desk drawer were notes of a secret deal to end the CPUC's San Onofre investigation. Special Agent Reye Diaz of the California Department of Justice described the notes as "RSG Notes on Hotel Bristol Stationary." The "RSG" was an abbreviation for the Replacement Steam Generators. An article written by Jeff McDonald of the San Diego Union Tribune reported the RSG notes were uncovered in the search.

The Union Tribune RSG article forced Edison to admit its lawyer Stephen Pickett and then Peevey met on 26 March 2013 at the Bristol Hotel in Warsaw, Poland. Ed Randolph, Director of the CPUC

¹ The Japanese Diet Fukushima report cited "faulty rationales for decisions and actions" offered by Japanese regulators as the root cause of the Fukushima disaster.

² As discussed below, the CPUC represented utility customers benefited from the settlement because amounts they would have charged was reduced. However, these amounts were not part of the proceedings, were not audited, and were not reflected in any customer bill.

Energy Division, also was present. Edison admitted a “framework” to end the investigation was discussed at the meeting and recorded by Pickett in notes (on Bristol Hotel stationery) kept by Peevey.³ Those were the notes agent Reyes found in Peevey’s desk drawer. The collaborators were in Poland at the Bristol Hotel to attend a meeting sponsored the California Foundation on the Environment and Economy (CFEE).⁴

All four generators were operational as of February 2011. They failed in January 2012. The failure of the generators caused a chain reaction, forcing the plant to close, and advancing the problem of deciding where and how to store the 3,600,000 pounds of high-level deadly nuclear waste San Onofre produced.⁵ Determining how the steam generators failed was critical to deciding who should pay the damages. It was important to know if Edison acted knowingly, recklessly, or negligently.

The generators failed because they developed cracks in the tubes used to generate steam to turn the turbines. Thus, it was essential that the following questions be answered: (1) What error(s) led to the tube failure(s)?; (2) At what stage were those errors made?; (3) Who made those errors?; (4) What might have been done, and by whom, and at what stage, to have averted those errors?; and (5) What arrangements in place elsewhere, technical or administrative or both, that were successful in averting these errors somehow didn’t work adequately for the SONGS RSGs?⁶ The plan at Warsaw was to keep these questions from being explored or answered in the CPUC San Onofre investigation.

After the plant failed in January 2012, Peevey and Commissioner Michel Florio were able to postpone the start of any investigation for months. It was not until November 2012 that the CPUC issued an Order of Investigation in the San Onofre case.⁷ However, the investigation was immediately put on hold. Following an ex parte discussion between the assigned-Administrative Law Judge and Edison’s Vice President for San Onofre, Russell Worden, and after ex parte meetings between Commissioner Florio’s staff and Edison’s Senior Vice President of Regulatory Affairs, Les Starck, and Edison Director of Regulatory Affairs, Mike Hoover, the investigation was paused under a 10 December 2012 CPUC Administrative Law Judge (working under Florio) ruling.⁸

³ The notes were the subject of a public records request in June 2013, but the CPUC and Peevey failed to produce them.

⁴ CPUC Commissioners meet outside public view with utility executives at utility sponsored CFEE” conferences” and “Study Travel Projects.”

⁵ Edison has delegated the duty to safely store the 3,600,000 pounds of high level nuclear waste in shallow graves of canisters along the shoreline in North County San Diego. As discussed later, Edison attempted to shift blame for the defective steam generators to a subcontractor, Mitsubishi Heavy Industries (MHI).

⁶ CPUC’s retained expert, Dr. Robert Budnitz, provided these questions. The CPUC stopped him from answering them.

⁷ The cost of the Replacement Steam Generators (RSGs) were never permanently in rates, but the CPUC acted as if they had been permanently placed in rates. But Edison had failed to take the needed steps to get final approval – something it was required to do within six months of the RSGs being operational in February 2011.

⁸ Under the 10 December 2012 ruling, the assigned Administrative Law Judge issued a ruling stating, “The Commission intends to approach this inquiry in stages,” with the investigation into

The case was on hold when Peevey and Pickett met in Warsaw on 26 March 2013.⁹ The investigation was never allowed to proceed. After the secret meeting at the Bristol hotel, there were 35 secret follow-up meetings Edison attended along with the CPUC Office of Ratepayer Advocate and The Utility Reform Network (TURN). No other parties were informed of, or invited to attend, the “settlement” meetings.¹⁰

During 2012-2014, there were countless back-door meetings with Edison about San Onofre involving the CPUC. In addition to the meeting in Poland and the other 35 secret meetings, there were meetings in London, Los Angeles (the private California Club) and San Francisco. Commissioners Picker, Peevey, and Sandoval participated in several of those meetings. There were also many phone conversations between Edison and CPUC officials regarding San Onofre. Picker participated in many of these secret discussions, both while at the Governor’s office and when he was at the CPUC. After the secret Warsaw meeting, Picker met with Peevey about San Onofre at the very private club – the California Club – in Los Angeles. **Picker has failed to produce his emails with Edison and others regarding the plan to end the investigation.**¹¹

The “settlement” was announced on 27 March 2014 through a media blitzkrieg unleashed to mislead the public they were to receive a \$1.4 billion refund. According to the rationale offered, the investigation was no longer needed because utility customers would be paid back for the steam generators. However, customers were required to pay the remaining \$3.3 billion in damages. The press juggernaut was coordinated with Peevey and Florio, who issued press releases the same day the settlement was announced:

Said President Peevey, “I am pleased that the parties have come to a proposed settlement that they believe is in the interest of ratepayers. The proposed settlement will come before the CPUC for consideration after a public hearing to evaluate it closely.”

Said Commissioner Florio, “After an 18 month proceeding, it is encouraging that the parties have come to a proposed resolution. If approved, it would save us another two years of litigation and offer ratepayers a more expeditious relief.”

TURN went so far as to issue a press release claiming utility customers were getting a \$1.4 billion refund.¹² Several newspapers were misled and carried headlines proclaiming the refunds were coming. As stated above, not a single utility customer bill shows any reduction due to the San Onofre settlement.

who was responsible for the failed steam generators to come at the end stages *after* it was decided how much would be paid. There was no citation to any such CPUC determination.

⁹ On 6 March 2013 a “root cause” report was issued showing Edison had been warned about the tube defects but decided not to use correction options in order to evade safety license requirements.

¹⁰ CPUC Rule 12 requires all parties to be invited to one settlement conference. No such conference was held. Instead, there was only a meeting on 27 March 2014 to announce the “done deal.”

¹¹ A lawsuit has been filed against Picker to require him to reveal his San Onofre related emails and communications.

¹² TURN removed and replaced the offering press release changing the word “refund” to “savings.”

Under the “settlement,” utility customers are required to continue to pay Edison for the failed plant, even though it produces no electricity for customers. They are also required for expensive replacement power Edison bought to replace power no longer generated at San Onofre. The CPUC imposed these charges without determining if Edison officials acted wrongfully.

After the “settlement” was announced, the CPUC gave utility customer advocates less than three hours to challenge the \$5 billion settlement at a 14 May 2014 “evidentiary” hearing. However, during cross-examination, Edison President Ronald L. Litzinger admitted there was nothing in the record that would allow the CPUC to evaluate the extent of Edison’s culpability.¹³ When asked during the hearing whether he had secret meetings with Edison to discuss how to kill the San Onofre investigation, Peevey lashed out, but did not answer the question and did not mention his secret Warsaw meeting:

COMMISSIONER PEEVEY: The only comment I would make is that I came here today hoping to be educated. I walk out of here without that happening. I am very disappointed by the whole back and forth here. It has not illuminated the settlement one iota. As far as TURN goes, I think it's general knowledge my relationship with TURN is, to be fair, chilly. And I have never talked to Mr. Freedman on this topic during that whole time at all. Period. Mr. Freedman. That's it. Sorry.

MR. AGUIRRE: What about Southern Cal Edison?

COMMISSIONER PEEVEY: Sorry. Edison?

MR. AGUIRRE: Yeah.

COMMISSIONER PEEVEY: I'm not here to answer your questions.

ALJ DARLING: Mr. Aguirre.

COMMISSIONER PEEVEY: I'm not here to answer your goddamn question. Now shut up. Shut up.

Peevey’s outburst came after utility consumer advocates gave the following offer of proof when the Administrative Law Judge asked for one:

Let me give you my offer of proof. It's our contention that the representation by the Commission that there was going to be an investigation into the reasonableness of Southern California Edison's deployment of the defective steam generators was a promise of an investigation with the intent not to perform it. It is our contention that you, Ms. Darling, Judge Darling, entered a ruling that put the investigation off into the remote future in order to avoid any such investigation. It's our position that Mr. Peevey helped to orchestrate this settlement through Mr. Freedman and others, and it wasn't a settlement negotiation. It was a meeting to figure out how not to have the reasonableness investigation. The rulings that you

¹³ 14 May 2014 Reporter Transcript, p. 2745

made prohibiting any kind of discovery into the relevant issues, when the dis- -- when the settlement was announced, the coordinated press releases that falsely stated, from Mr. Florio and Mr. Peevey, that the parties had settled which was picked up as part of the blitzkrieg in which the ratepayers were misinformed that they were going to get a \$1.4 billion refund was a collusive, not bona fide basis for this settlement. And we have a right to try to develop that record, which you are not permitting us to do.

And let me just ask this.

MR. AGUIRRE: Mr. Peevey—

ALJ DARLING: --any questions-

MR. AGUIRRE—did you have any discussions with any parties”

ALJ DARLING: No.

MR. AGUIRRE: -- about the settlement process while it was taking place, sir? ¹⁴

Picker claims in his 3 April 2015 letter he approved the settlement based on the “record.” However, there being no examination permitted by the CPUC into whether Edison acted reasonably, recklessly or knowingly, how can the decision to make utility customers pay \$3.3 billion be justified? The Chairman asked at the 19 March 2015 Committee hearing how this could be, and Michael Picker answered falsely:

Picker: “At the point that it became very clear that you could not make the system functional everything beyond that went to the cost of the utility.”¹⁵

The opposite of what Picker said was true. When it became very clear you could not make the San Onofre system work, the cost was shifted to utility customers, not Edison. ¹⁶ Again, no Edison bill shows any reduction attributed to the San Onofre settlement. ¹⁷ Also, Picker seems to be operating under the misapprehension that Edison was found to have acted reasonably. When the Chairman asked Picker why Edison should receive any part of a recovery from the manufacturer of the defective generators, Picker implied in his answer that Edison acted “fairly and honestly” in procuring the equipment.”¹⁸

¹⁴ 14 May 2014 Reporter Transcript pp. 2772-2773.

¹⁵ See 19 March 2015 hearing at 1:53:25.

¹⁶ The reported “savings” supposedly came from a reduction in charges that had not yet been billed to customers.

¹⁷ There was no audit of the settlement; Edison did not submit it to any reputable third party expert to evaluate its fairness. The CPUC did not evaluate the settlement against the level of Edison officials’ wrongdoing in deploying the defective generators. There was no \$1,400,000 refund.

¹⁸ See 19 March 2015 hearing at 1:53:25 2:00:02

The record does not support Picker's claim Edison acted "fairly and honestly." Again, Edison itself admitted in its responses to data request the CPUC did not determine Edison acted reasonably. The CPUC blocked every effort utility customer advocates made to gather evidence relevant to Edison's conduct. However, there was substantial evidence gathered from other sources showing Edison officials may have engaged in serious wrongdoing in deploying the defective steam generators.

A 30 November 2004 letter from Edison Vice President for San Onofre, Dwight Nunn, admitted facts that show a Nuclear Regulatory Commission (NRC) safety license amendment was required for the new steam generators at San Onofre, but which Edison failed to obtain. An Edison engineer on the project admitted Edison intentionally evaded the NRC licensing.¹⁹ An NRC official admitted (based on what is now known by the public, but which was known to Edison at the time) a license amendment was required, but none would have been granted on the proposed experimental generators. Edison made significant changes in the design of the RSGs which required Edison to obtain a safety license amendment.²⁰ It never did so. The CPUC prohibited the utility customer advocates from developing or presenting this evidence.

While Picker proclaims his goal to be transparent, again, the opposite is true. Two sets of very expensive lawyers have been hired to assert privileges to avoid production of evidence, even evidence of criminal wrongdoing. Picker retained criminal defense attorneys to provide him and others with a criminal defense at \$800 per hour with a budget of \$5.2 million without first determining whether it was in the CPUC's best interest to do so, and without finding those receiving the defense acted in good faith. This retention was made in violation of Government Code § 995.8.

The same criminal defense firm is representing the CPUC witnesses, which only works to stymie any investigation. Picker is using the law firms to choke off document production and to restrain witness cooperation. Picker has been asked to bring the CPUC into compliance with Government Code § 995.8. He has been asked to waive all privileges. The public good in ferreting out crimes and wrongful conduct far outweighs any secrecy values.

Picker's choices and decisions to ratify and participate in the old Peevey ways at the CPUC was brought to light in a series of disturbing emails between him and Susan Kennedy regarding his sponsorship of the Peevey celebration dinner on 12 February 2015. In one exchange, Picker makes fun of the fact that he intentionally misled a reporter about whether he paid for the Peevey dinner. Other emails are more damaging because they show Picker is under the heavy influence of Ms. Kennedy, who has a multi-million contract before the CPUC.

Picker reassigned the investigation proceedings to Commissioner Sandoval, without providing any reason for the change. However, Commissioner Sandoval met ex parte with Edison executives relating to the San Onofre failure.²¹ Much of the irregularity of the proceedings was brought to the

¹⁹ San Onofre engineer Boguslaw Olech made the admissions in a January 2012 article in the *Nuclear Engineering International*.

²⁰ On 13 May 2013 the Atomic Safety and Licensing Board issued a decision finding the new steam generators had: 377 more tubes than the original; did not have a stay cylinder supporting the tube sheet; and had a broached tube design rather than an "egg crate" tube support. See, 13 May 2013 report (pp. 3-4)

²¹ 4 April 2012 meeting with Edison executives, with Sandoval's comments recorded in notes. She discussed the root cause issue of the RSG failure. (CPUC document PRA 1262 3236-3244)

attention of Commissioner Sandoval and the other commissioners. None of them made any inquiry in the facts. They blindly voted in lock-step with Peevey in favor of the proposal to kill the San Onofre investigation. This reassignment does nothing to improve the transparency of the Commission or the trust of the public in the Commission.

So far, none of the California legislative committees have permitted those advocates who opposed the CPUC-Edison plan to kill the San Onofre investigation to come before them. In the interest of developing a proper and accurate legislative record, and to support your goal of legislative oversight of the CPUC, I earnestly and respectfully request an opportunity to appear before your Committee and urge you to schedule a joint appearance before the Committee with Mr. Picker and me, placing us both under oath to provide testimony on these critical issues.

With the bulk of \$5 billion in damages for the failed nuclear plant being imposed on Southern California residents, and with the safety threat posed by 3.6 million pounds of nuclear waste left sitting on Southern California shores, the voting constituents should be permitted to witness a discussion under oath as to what really happened at the nuclear plant, and how Edison and the CPUC handled it. As you so eloquently said, it is “imperative to investigate and scrutinize the entire [San Onofre] settlement process in order to ensure that the settlement process was legitimate and uncorrupted.”

Very truly yours,

/s/ Michael J. Aguirre
Michael J. Aguirre, Esq.