Michael J. Aguirre, Esq., SBN 060402
Maria C. Severson, Esq., SBN 173967
AGUIRRE, & SEVERSON LLP
501 West Broadway Suite 1050
San Diego, CA 92101
Telephone: (619) 876-5364
Facsimile: (619) 876-5368

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CITIZENS OVERSIGHT, INC., a Delaware non-profit corporation; RUTH HENRICKS, an individual; NICOLE MURRAY RAMIREZ, an individual; NIEL LYNCH, an individual; HUGH MOORE, an individual; DAVID KEELER; an individual; FRANCIS KARL HOLTZMAN, an individual; ROGER JOHNSON, an individual; on behalf of themselves and a class of others similarly situated,

Plaintiffs,

v.

CALIFORNIA PUBLIC UTILITIES COMMISSION; MICHAEL R. PEEVEY and MICHEL PETER FLORIO, in their official capacity as Commissioners; SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation; and DOES 1-100,

Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF*

TABLE OF CONTENTS

Plaintiffs are customers ("customers" or "Customers") of Southern California Edison Company (SCE) and San Diego Gas & Electric (SDG&E). They seek an order declaring the California Public Utilities Commission (CPUC), two of its controlling commissioners, Michel Florio and Michael Peevey, and SCE are taking plaintiffs' property through monthly bills for electricity from the San Onofre Nuclear Power Plant (San Onofre) without just compensation because SCE has not distributed electricity from San Onofre to plaintiffs' homes, businesses, and entities since January 2012. Plaintiffs seek an injunction requiring the CPUC and SCE to cause restitution to be made to the 17,400,000 utility customers whose property has been so taken without just compensation as required under the Fifth Amendment to the United States Constitution.

NATURE OF THE ACTION

1. The case arises out of a failed project to install four new steam generators at San Onofre in North County, San Diego. The project failed.

2. Plaintiffs invoke the Court's Article III jurisdiction to stop the CPUC and SCE from continuing to take the private property of customers without just compensation in violation of the Fifth Amendment to the United States Constitution. Since January 2012, the CPUC and SCE have forced SDG&E and SCE's 17,400,000 customers to pay more than $700,000,000 for the failed steam generator project and $3,000,000,000 ($3 billion) or more for the idle power plant.

3. By making customers pay for the failed steam generators and shuttered plant, the CPUC and SCE are taking customers' private property without just compensation. Defendants are forcing charges on plaintiffs for the failed steam generator project and the defunct plant. The billing to Plaintiffs continued, even after the generators are cold and the plant is closed, and not used or useful. The

taking without just compensation started in January 2012, the month the generators died and the plant stopped producing electricity.

4. The only way the CPUC could force customers to pay for the failed generators and closed plant would be with a showing under Cal. Pub. Util. Code § 451 that SCE acted reasonably in obtaining the generators. SCE and the CPUC did not attempt to make such a showing for good reason: Substantial evidence exists to show SCE did not act reasonably when it obtained and deployed the steam generators. For example, SCE obtained and deployed the new steam generators without a safety license amendment from the Nuclear Regulatory Commission (NRC). Two engineers who worked on the steam generator project, Buguslaw Olech (SCE) and Tomoyuki Inoue of Mitsubishi Heavy Industries (MHI), admitted avoiding of a safety license amendment was an SCE directive.

5. SCE adopted a design for the new steam generators that was materially different from the old steam generators. The new design had significant design safety implications. The steam in the newly designed generators ran with a higher void fraction. Void fraction is a measurement of the dryness of steam circulating around the tubes in the steam generator. The higher the void fraction, the lower the damping effect of the moisture in the steam. Damping contributes to preventing tube vibration.

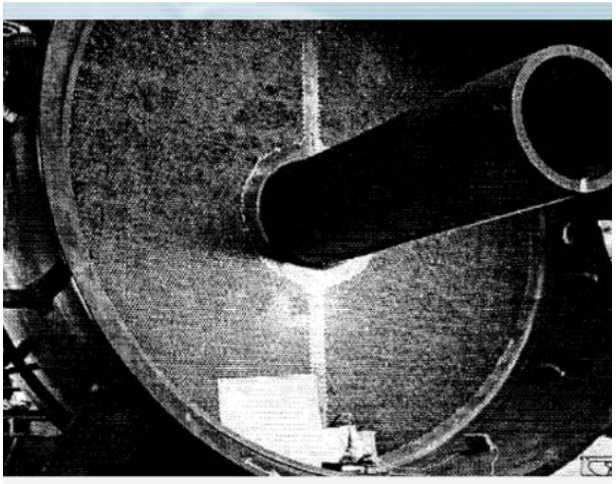
6. MHI has admitted that the new steam generators produce higher void fraction. They also admitted that the Anti-Vibration Bar design team eschewed changes to address the problem in order to avoid an NRC review under 15 U.S.C. § 50.90. Under the new design, SCE added 4% more center tubes which increased the void fraction in the "U-bend" region of the generators. Hot steam at the U-bend region was a substantial factor in causing the new steam generators to fail.

7. In January 2012, the same month the steam generators failed, the two engineers published an article in *Nuclear Engineering International* with a diagram

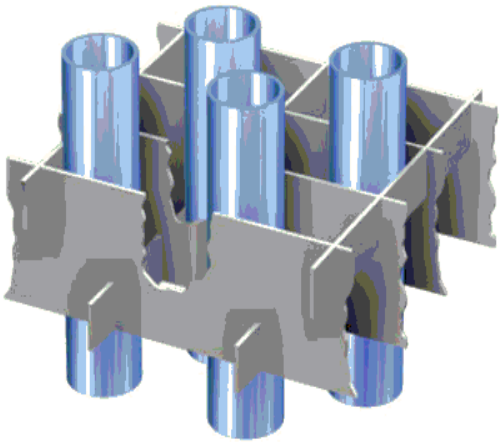
of the new steam generators showing substantial changes from the old steam generators, with significant safety implications. The *sine qua non* criteria for obtaining a safety license permit under 15 U.S.C. § 50.59 are changes affecting safety.

8. The new design adopted for the new steam generators was materially different from the old steam generators. The new version raised serious safety issues which went unresolved, and eventually caused the generators to fail. The stay cylinders were removed, the "egg crate" protection was eliminated, while 4% more tubes at the center the new steam generators were added:

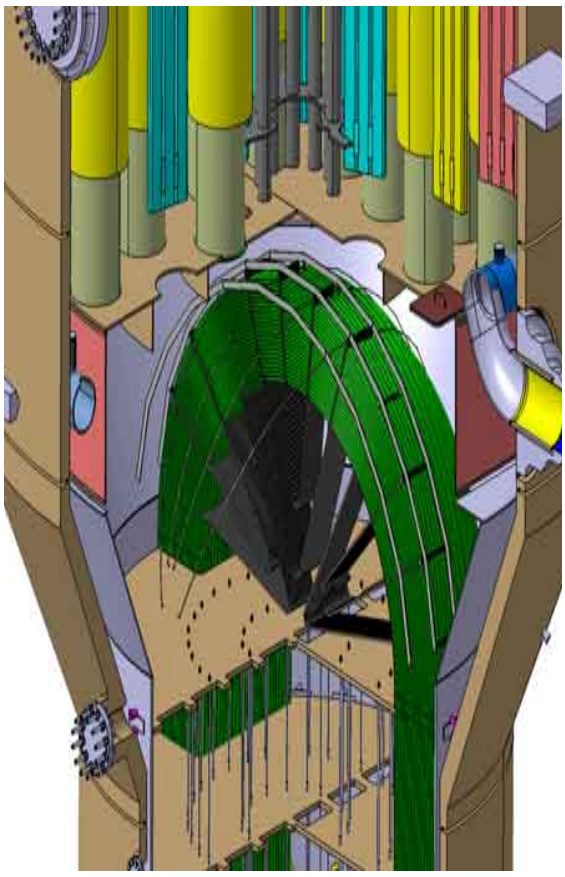
STAY CYLINDERS WERE ELIMINATED



NO EGG CRATE TUBE PROTECTORS WERE INSTALLED

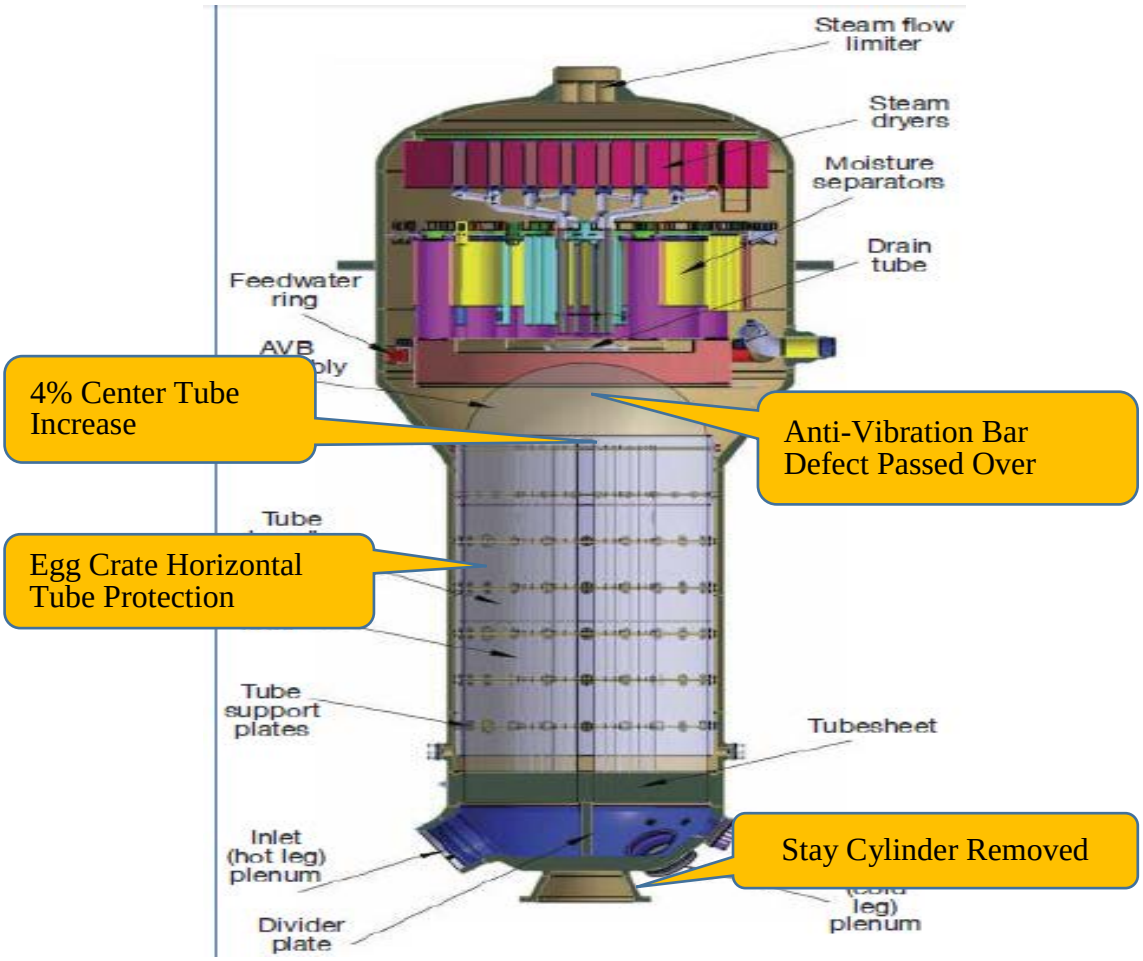


4% MORE TUBES ADDED AT THE CENTER



9. The two engineers who worked on the steam generator project, SCE's Olech and MHI's Inoue, provided a diagram of the newly designed steam generators, shown below[1]:

NEW STEAM GENERATORS
FAILED IN ONE YEAR (39 YEARS TOO SOON)



10. SCE has admitted there were design errors that caused the steam generators to fail, but blamed them on the generators' manufacturer, MHI. An MHI report found that the design errors that crippled the generators and ended the plant were discovered but not removed in order to avoid NRC safety licensing. In short,

[1] The diagram depicted here was provided by SCE and MHI and does not depict all changes made. The heading and captioned comments have been added by Plaintiffs.

there was a substantial basis for finding utility customers could not be charged for the generators and the plant because to do so would amount to imposing unjust and unreasonable rates in violation of California Public Util. Code § 451.

11. The CPUC, under Commissioners Peevey and Florio, denied customers a hearing on the issue of whether collection of plaintiffs' private property through monthly utility bills should stop because SCE acted unreasonably in obtaining and deploying the defective steam generators rendered useless, along with the plant, in January 2012.

12. "It is clear that somewhere along the line [the new steam generators] went from conceptual design to detailed design to fabrication to testing to installation to operation, one or more errors was made,[2]" according to the CPUC's own expert consultant, Robert J. Budnitz, Ph.D. SCE evaded—and the CPUC refused to follow—the plan Dr. Budnitz provided for getting at the truth. The CPUC obstructed the investigation and did not permit Dr. Budnitz to complete the work plan under his CPUC contract in which he proposed to determine: (1) What error(s) led to the San Onofre SGs 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?; (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?

13. Mr. Peevey as CPUC President and Mr. Florio as the Commissioner assigned to the new generator proceedings have worked to thwart any investigation or determination of whether SCE was responsible for the failure and outage. In June 2012 through October 2012, Mr. Florio and Mr. Peevey kept a CPUC review of SCE's of the failed steam generator project off the CPUC public agenda. In January 2013, Peevey and Florio issued CPUC orders stalling a review of the issue

[2] Underline appears in original.

to some remote and indeterminate date. In April 2014, Florio and Peevey caused the CPUC to permanently stay any review into whether SCE or customers should pay for the defective steam generators.

14. In this action, plaintiffs assert their rights under the Fifth Amendment of the United States to be free of the CPUC's and SCE's taking of the private property of customers in the form of monthly bills for the costs of the idle generators and plant. Plaintiffs bring this action on behalf of themselves and the 17,400,000 customers who are similarly situated.

JURISDICTION AND VENUE

15. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337 and 1343; and 28 U.S.C. §§ 2201 and 2202.

16. The parties acknowledge jurisdiction. (*S. Cal. Edison Co. v. Lynch*, 307 F. 3d 794 (9th Cir. 2002). (Exhibit 1)

17. Venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1391.

THE PARTIES

PLAINTIFFS

18. Plaintiff Citizens Oversight, Inc. is a Delaware non-profit corporation. Defendants SCE and the CPUC have and are taking Citizen Oversight's and its Southern California members' property without just compensation in the form of payments on monthly bills to pay for the 4 new defective steam generators at San Onofre.

19. Plaintiff Ruth Henricks is a resident of the City and County of San Diego, California. Defendants SCE and the CPUC have and are taking Ms. Henricks' property without just compensation in the form of payments on monthly bills to pay for the 4 new defective steam generators at San Onofre.

20. Plaintiff Nicole Murray Ramirez is a resident of the County of San Diego, State of California. Defendants SCE and the CPUC have and are taking Nicole Murray Ramirez' property without just compensation in the form of payments on monthly bills to pay for the 4 new defective steam generators at San Onofre.

21. Plaintiff Niel Lynch is a resident of the County of San Diego, State of California. Defendants SCE and the CPUC have and are taking Mr. Lynch's property without just compensation in the form of payments on monthly bills to pay for the 4 new defective steam generators at San Onofre.

22. Plaintiff Hugh Moore is a resident of the City and County of San Diego, California. Defendants SCE and the CPUC have and are taking Mr. Moore's property without just compensation in the form of payments on monthly bills to pay for the 4 new defective steam generators at San Onofre.

23. Plaintiff David Keeler is currently a resident of the City Westminster, County of Orange, California and previously a resident of the City of Santee, County of San Diego. Defendants SCE and the CPUC have and are taking Mr. Keeler's property without just compensation in the form of payments on monthly bills to pay for the 4 new defective steam generators at San Onofre.

24. Plaintiff Francis Karl (Joe) Holtzman is currently a resident of the City of Mission Viejo, County of Orange, California. Defendants SCE and the CPUC have and are taking Mr. Holtzman's property without just compensation in the form of payments on monthly bills to pay for the 4 new defective steam generators at San Onofre.

25. Plaintiff Roger Johnson is currently a resident of the City of San Clemente, County of Orange, California. Defendants SCE and the CPUC have and are taking Mr. Johnson's property without just compensation in the form of

payments on monthly bills to pay for the 4 new defective steam generators at San Onofre.

26. Plaintiffs bring this action on behalf of themselves and 17,400,000 similarly situated customers whose private property is the subject of CPUC's and SCE's taking without just compensation in the form of bills for the closed plant and failed steam generators rendered useless since January 2012.

CLASS ALLEGATIONS

27. Plaintiffs bring this action under Federal Rule of Civil Procedure Rule 23, on behalf of all persons or entities who, after January 2012 were charged for the costs of the failed generator project at San Onofre and for the cost of the nuclear plant after it was idled by the failure of the steam generators.

28. The requirements of Rule 23(a) are satisfied. There are over 17,400,000 customers that are members of the class. The class members are so numerous that joinder of all members is impracticable.

29. The class members at this time can only be ascertained from books and records maintained by Defendant SCE or its agents.

30. Common questions of law and fact exist as to all class members. These questions predominate over any questions unique to any individual member and include, without limitation:

- Whether the CPUC and SCE had any legal basis to take class member plaintiffs' private property without just compensation in the form of forced charges for the useless steam generators and the idled San Onofre plant;
- Whether the CPUC and SCE appropriated class member plaintiffs' property without just compensation in violation of the United States Constitution;

- Whether the CPUC and SCE illegally exacted class member plaintiffs' property by forcing class members to pay for the defective generators and closed plant.

31. Plaintiffs' claims are typical of those of other class members. The CPUC and SCE's actions alleged herein have impacted class members equally because such actions have been directed at obtaining the private property of SCE and SDG&E's customers without just compensation to pay for the discarded steam generators and the inactive power plant at San Onofre. Accordingly, Plaintiffs' claims against the CPUC and SCE are based on the conduct alleged herein and are identical to the claims of other class members.

32. Plaintiffs will fairly and adequately protect the interests of class members. Plaintiffs have a long history of advocating for the utility customers in Southern California.

33. Plaintiffs are committed to prosecuting this action to a final resolution and, in furtherance thereof, have retained experienced and competent class counsel.

34. Plaintiffs seek class certification under Rule 23(b)(3) because as described above, common questions of fact and law predominate over any individual issues and a class action is superior to other methods of adjudicating the controversy.

DEFENDANTS

35. Defendant California Public Utilities Commission (CPUC) is a regulatory agency that is charged under California law with the legal duty of ensuring public utilities, like SCE, charge its customers only just and reasonable electricity rates under Cal Pub Util. Code § 451.

36. Defendant Michael Peevey is a former SCE executive who serves as CPUC President. Mr. Peevey was the CPUC Commissioner who authored the

CPUC decision in December 2005 allowing SCE to purchase the 4 new steam generators. He is sued in his official capacity only.

37. Defendant Michel Florio serves as a Commissioner of the CPUC. Florio acts as the assigned Commissioner for matters involving the 4 new steam generators and the San Onofre power plant. He is sued in his official capacity only.

38. Defendant Southern California Edison Company (SCE) was incorporated in the State of California on 6 July 1909. SCE is located at 2244 Walnut Grove Avenue, Rosemead, California. SCE charges ratepayers for the San Onofre Nuclear power station and the 4 new steam generators identified in this operative complaint in the Counties of San Diego, Orange, Los Angeles, Ventura, Mono, Inyo, Tulare, Imperial, Los Angeles, Riverside, and Ventura.

39. Interested Party San Diego Gas & Electric (SDGE) is a partial owner of the San Onofre power plant. SDG&E is not named as a party in this action. SDG&E opposed the SCE's plan to buy 4 new steam generators to replace the 4 old steam generators at San Onofre. SDG&E opposed SCE's plan for replacing the old steam generators with 4 new ones because SCE had historically been unable "to reliably forecast its SONGS capital budget." SDG&E noted in January 2000 that SCE forecasted its capital additions for 2004 at $37 million, whereas actual additions were $143 million. SCE's first capital additions forecasts for 2005 and 2006 were $50 million and $80 million respectively. SCE's most recent forecasts are $114 million for each of these two years.

PRIVATE PROPERTY TAKEN

40. After the 4 new steam generators failed and the San Onofre plant was rendered useless in January 2012, the CPUC and SCE made Plaintiffs pay the costs. SCE had not obtained final CPUC authority to put the steam generator costs into rates, as the 2005 Decision allowing SCE to proceed provisionally required.

41. Having failed, SCE could not show the steam generators would be used or useful in producing electricity for customers, and therefore, its costs could not be put into rates. Under the direction of Peevey, the CPUC allowed SCE to impose the failed plant and generators' costs on customers without legal authority. The CPUC and SCE, without legal authority, forced customers to pay those costs; in so doing, defendants took the customers' private property without just compensation.

42. Under Commissioner Peevey, the CPUC allowed SCE to increase the amounts charged customers as follows:

Date	Advice Letter	Purpose
12/31/12	2834-E	2013 revenue requirement for replacement of Unit 2 and Unit 3: $130.766 M
12/31/12	2834-E	2013 forecast for Unit 2 and Unit 3 of removal and disposal costs: $17.924 M

43. When the plant closed after the generators failed, the CPUC was required to remove the costs of the plant from SCE's rate base and to relieve customers of the burden of paying the costs since the plant was not used or useful in producing electricity for customers. Under the direction of Commissioners Peevey and Florio, the CPUC failed to remove the San Onofre plant from SCE's rate base and to relieve customers of the burden of its costs. Since January 2012, the CPUC and SCE have taken approximately $1 billion per year of the private property of Southern California ratepayers without just compensation to pay for the idle San Onofre power plant.

44. The CPUC has refused and failed to enforce the December 2005 Decision requirement that SCE file an Application for CPUC authority to put the new steam generator costs in rates. Specifically, in the December 2005 authorizing

Decision, SCE was required to file an Application with the CPUC to request authority to put the new steam generator costs in rates in August 2011—**six months after the plant was returned to commercial service.**

45. The CPUC has never duly authorized the costs of San Onofre's 4 new steam generators to be imposed permanently in plaintiffs' rates, even though the plant costs were required to be taken out of rates after the generator failure in January 2012. Yet, SCE and the CPUC have taken over $3 billion of customers' private property to pay for the cost of the idle plant in violation of the Fifth Amendment to the United States Constitution.

46. Mr. Peevey was also the CPUC commissioner who authored the December 2005 decision allowing SCE to proceed with the new steam generators at San Onofre. Mr. Peevey broke with normal rate-base setting practice and allowed SCE to provisionally place the costs of the steam generators into rates. Normally, new construction like the new steam generator project at San Onofre had to be shown to be "used and useful" in producing electricity before the costs could be put into rates.

47. Whether San Onofre's plant construction and new steam generators can be included in the rate base depends on whether it satisfies the "Used and Useful" test. Under this test, only the costs of plants that are actually used and useful to the **utility** in providing service are included in the **rate base**. The Used and Useful test excludes plants that are not yet providing service from the **rate base.** It also requires the removal of undepreciated capital costs from the rate base where plants are no longer used due to obsolescence.

48. However, the decision Mr. Peevey authored in December 2005 allowed SCE to charge plaintiffs for the new steam generators. These charges were conditioned on SCE returning to the CPUC with an application to permanently place the costs in rates:

- SCE may include the revenue requirement for steam generator replacement for each unit in rates on January 1 of the year following commercial operation of each unit. Implementation shall be by advice letter.

- SCE may include the revenue requirement for removal and disposal of the original steam generators for each unit in rates on January 1 of the year following completion of the removal and disposal of the original steam generators for each unit. Implementation shall be by advice letter.

- After completion of the SGRP, SCE will be required to file an application for inclusion of the costs thereof permanently in rates, regardless of whether the costs exceed $680 million. If a reasonableness review is performed, it will be done in connection with the application.

49. The Peevey 2005 Decision was written to give the *appearance* that SCE would still be required to demonstrate it acted reasonably in obtaining and deploying the steam generators, and if not, the costs would be disallowed.

50. SCE admitted "[t]he SONGS Unit 2 steam generator replacement was completed on April 11, 2010" and "the SONGS Unit 3 generators replacement was completed on February 18, 2011." SCE reported to its investors in its *2010 SEC 10-K Report* that the generator replacement was completed by February 2011:

> **SCE completed the replacement of the steam generators at San Onofre Unit 2 and Unit 3 in April 2010 and February 2011, respectively."**

51. SCE did not file the application in rates in August 2011, as provided for in the December 2005 Decision authorizing SCE to proceed. Instead, on 13 April 2011, SCE sent a letter telling the CPUC Executive Director that SCE would postpone filing until the "second quarter of 2012" its application for authority to permanently include in rates the capital costs incurred in the procurement, the installation costs of the steam generator project, and the related removal and disposal costs.

52. In its letter to the CPUC Executive Director, SCE acknowledged the CPUC Decision authorizing SCE to proceed with the steam generator project,

provided upon completion, SEC "shall be required to file an application for inclusion of the SGRP [Steam Generator Replacement Program] costs permanently in rates." SCE also admitted in its 13 April 2011 letter: "The replacement of the steam generators in Units 2 and 3 at SONGS has now been completed. The units returned to commercial operation in April 11, 2010 and February 18, 2011."

53. The San Onofre power plant has not been used or useful since January 2012. However, the CPUC has continued to charge plaintiffs for its costs without allowing them to participate in a hearing on whether San Onofre should be removed from rates, and the funds returned to plaintiffs.

54. In June 2012, SCE was required to, but did not, file an application to include in rates the costs of the replacement steam generator project. San Onofre was no longer used or useful because the steam generators failed due to defects, and put San Onofre permanently out of service as of June 2014. As of the filing of this complaint, the CPUC has allowed and duly authorized SCE to charge plaintiffs for the failed steam generator project and the damage it caused.

55. SCE used the Advice Letter procedure to place into rates the costs of the new steam generators, but never obtained CPUC authority to place the steam generators in rates permanently.

56. SCE began charging ratepayers for the steam generators that failed one year into the 40-year life cycle SCE claimed for them:

Date 57.	Advice Letter	Purpose
12/28/05	1951-E	2006 annual revenue requirement of $3.03 M
11/30/06	2067-E	2007 annual revenue requirement of $3.18 M
11/30/07	2187-E	2008 annual revenue requirement of $3.60 M
11/24/08	2292-E	2009 annual revenue requirement of $3.78 M
11/16/09	2402-E	2010 annual revenue requirement of $3.84 M
11/10/10	2521-E	2011 Revenue requirement of $56.694 million
11/22/10	2529-E	2011 $4.06 M (Removal)
12/27/11	2648-EA	2012 revenue requirement for replacement of Units 2 and 3 of $115.239 M

PLAN TO VIOLATE CUSTOMERS' 5th AMENDMENT JUST COMPENSATION RIGHTS

58. Commissioners Peevey and Florio, working with SCE, developed and executed a plan to allow SCE to take its customers' private property without just compensation in the form of bills SCE sent directly and indirectly for San Onofre plant and generator costs after January 2012. This taking was in violation of customers' just compensation rights. Customers had to pay the costs the CPUC and SCE imposed, even though the generators and plant produced no electricity. If the customers did not pay, electricity to their homes and businesses would have been shut off.

59. Under defendants' plan, SCE was to be relieved of having to show: (1) why the defective replacement steam generators' costs should be placed permanently in rates; (2) whether SCE acted reasonably in obtaining and deploying the defective steam generators; (3) if it is just and reasonable to impose the damage SCE caused on ratepayers pursuant to Pub. Util. Code § 451; and (4) whether to remove all costs related to the San Onofre plant from SCE and SDG&E's rates.

60. In order to take customer funds under Pub. Util. Code § 451 for the steam generator project, SCE was required to show it acted reasonably in obtaining and deploying the steam generators. The CPUC did not require SCE to answer this basic question. Florio, Peevey and SCE worked together to create a public appearance that SCE would be required to answer, but in fact, the plan was to allow SCE to evade providing answers. The CPUC and SCE did this because the they knew SCE could not make a showing of reasonableness after the steam generators failed. Customers cannot be made to pay because SCE did not provide any answer to the question of whether it acted reasonably in obtaining and deploying the steam generators.

61. In denying ratepayers the opportunity to notice and a reasonable hearing, the CPUC denied the most fundamental precepts of due process rights

guaranteed under the U.S. Constitution. The CPUC, under direction of Commissioners Florio and Peevey, violated 17,400,000 customers' right to just compensation for the taking of their private property rights.

62. Under the direction of Commissioners Peevey and Florio, the CPUC became intertwined with SCE's goal of avoiding a review of its conduct in obtaining and deploying the new steam generators. The CPUC failed its fiduciary duty to protect customers and instead, forced them to give up their private property to SCE without just compensation.

THE CPUC'S RELATIONSHIP WITH UTILITIES

63. In this case, Commissioners Florio and Peevey used their command and control to deny any hearing on whether SCE acted reasonably to determine whether the costs of the failed steam generator project and the resulting closed plant could be imposed on ratepayers as just and reasonable rates. As alleged, they postponed putting the issue on the calendar for months, announcing in October 2012 a hearing would be held.

64. They again postponed the hearing in January 2013, and blocked the hearing again in April 2014. No hearing was ever held. In the meantime, the CPUC through its ORA (Office of Ratepayer Advocate) concocted a plan to forever end any hearing on the issue by claiming a phantom "refund" agreement had been reached. SCE admits in public documents the "refund" will have no material effect on their income.

65. Facts were revealed in another major CPUC case that illustrate the breakdown in the CPUC system and its failure to provide due process to the public. The plausibility of plaintiffs' claim of collusion between the CPUC Commissioners Florio and Peevey, and SCE is illustrated by Peevey's and Florio's collusive actions in another recent case proceeding concurrently with San Onofre. (Exhibit 2)

/ / /

THE PG&E SCANDAL

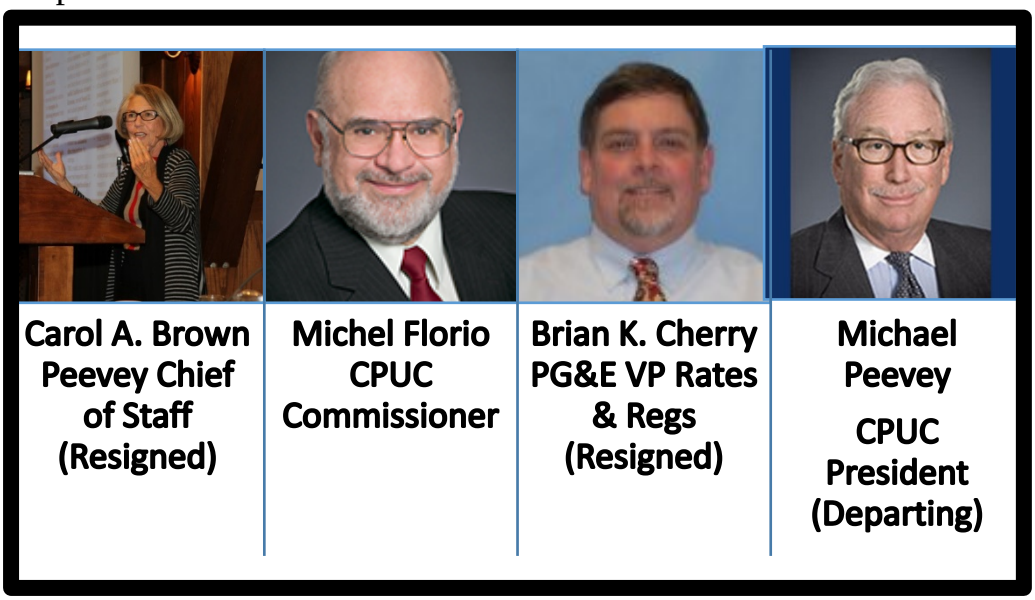
66. In December 2013, Pacific Gas & Electric (PG&E) filed its 2015 Gas Transmission and Storage rate case asking the CPUC to impose $1,209, 000,000 in rates to maintain and modernize PG&E's pipelines. PG&E's request to the CPUC to take more money from ratepayers was a sensitive issue.

67. In May 2013, seven (7) months before PG&E's rate increase filing, CPUC staff proposed to order PG&E to pay $2,250,000,000 in fines for failing to maintain its gas main in San Bruno, California. That failure resulted in a catastrophic explosion on 9 September 2010 that leveled the Bay Area neighborhood and killed eight people:

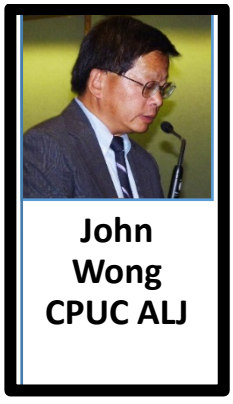
"The morning after the 2010 explosion in San Bruno, a PG&E utility inspector looks at the gas main that ruptured. (Don Bartletti / Los Angeles Times)"

68. PG&E officials wanted Commissioners Florio, Peevey and their staff to make sure PG&E's preferred Administrative Law Judge (ALJ) was appointed to hear PG&E's GTS rate increase case. On 14 January 2014, PG&E Vice President for Rates and Regulation, Brian K. Cherry, wrote to Peevey's Chief of Staff, "As long as ALJ Wong has the case (which Florio confirms), we are ok with what Mike (Peevey) wants to do on the assignment." Cherry asks Peevey's Chief of Staff,

Carol Brown, "Can you get it done ASAP please?" Cherry, Brown, Peevey and Florio are pictured here:



69. At 8:42 a.m. on 17 January 2014, PG&E Regulatory Manager, Eileen Cotroneo, emailed Brian K. Cherry: "The GTS Case assignment appeared on the daily calendar -Assigned to ALJ Long and Commissioner Peterman. I will issue a note to our team." PG&E Vice President found this to be disturbing news. Thirty-seven (37) minutes after Ms. Controneo notified Cherry of Long's appointment, Cherry emailed Peevey's Chief of Staff Carol Brown: "Is this right? Judge Long? What happened to Wong?" ALJ John Wong is pictured here:



70. At 9:49 a.m., PG&E Cherry writes Peevey's Chief of Staff Brown: "Please, please check. This is a major problem for us. Florio said he would agree to help Peterman if Wong got it." Commissioner Peterman is pictured here:

71. PG&E Cherry then turns to Commissioner Peevey at 9:55 a.m. that same day, January 17, 2014: "This is a problem. Hope Carol can fix it." Then two hours later, Cherry again writes her, "There is a huge world of difference between Long and Wong. I'm not sure we could get someone worse. This is a very important case that is now in jeopardy."

72. A few hours later, Commissioner Florio joins the back-room wheeling and dealing and tells Cherry at 1:18 p.m.: "I'm horrified! He still has not produced a PD for Sempra's Psep/TCAP after much prodding and cajoling—we are considering asking that another ALJ be assigned to finish for him. Plus he may retire any day, and uses that as a threat to deflect any direction. Sepideh spoke to John Wong and he said he's just too overloaded, which we didn't know. John is a true workhorse so it must be true. If I were you I would bump him—you really can't do any worse! Even a brand new ALJ would at least work hard and try—you'll get neither from him … Keep me posted and I'll do what I can on this end… Peevey referred to his Chief of Staff, Sepideh Khorsrowjah, contacting John Wong. She is pictured here:

Sepideh Khosrowjah

Chief of Staff for Florio

73. Ten days later on 27 January 2014, at 3:36 p.m., Peevey Chief of Staff Carol Brown sends a cryptic note with two names: "Wong and Petermen" -- the ALJ and Commissioner PG&E wanted assigned to its GTS case. In fact, *those two were assigned* those roles. Two minutes later at 3:38 p.m., PG&E's Brian Cherry writes Carol Brown with profuse thanks: "Thank You, Thank You. Thank You."

74. PGE has self-confessed that its conduct was wrongful. In the San Onofre case, a Public Records request has been made to the CPUC for emails and writings between SCE and the CPUC showing similar conduct, and a similar request to SCE, but both have stonewalled any production. (Exhibit 3)

SAN ONOFRE PROCEEDINGS MANUEVERING

75. SCE used its backdoor access to Commissioners Peevey and Florio to keep the question of whether SCE acted reasonably in connection with obtaining and deploying the new generators at San Onofre for at least five months.

76. On 21 June 2012, the CPUC was set to consider "Item 30," which provided for the CPUC to look into the outages caused by San Onofre's failed steam generators.

77. On 19 June 2012, SCE Senior VP for RegulatoryAffairs, Lee Starck, sent a secret email to MP1@cpuc.ca.gov (Michael Peevey) with a letter dated 19

June 2012 urging the CPUC to "defer" consideration of the issues. Peevey and Florio honored SCE's request by taking turns in arranging postponements. The Agenda Changes for the 21 June 2012 CPUC meeting provides "ITEM NO: 30, HELD TO: 8/2/12, HELD BY: Peevey, REASON: Further Review."

78. On 2 August 2012, the CPUC Agenda listed as "Item 5" whether to investigate what caused SCE's San Onofre power plant's closure. The matter was again deferred, this time for Florio. The Agenda Changes for 2 August 2012, Item 5 provided: "ITEM NO: 5, HELD TO: 8/23/12, HELD BY: Florio, REASON: Further Review."

79. The CPUC agendas for 23 August 2012, 13 September 2012, 27 September 2012, and 11 October 2012, did not have items for the San Onofre closing. The entire time Peevey and Florio were manipulating the CPUC agenda to postpone taking up the question of whether SCE acted reasonably in deploying the steam generators, customers were being charged as if the plant was fully operational. Customers were also charged for replacement power during this period.

80. In late October 2012, the CPUC announced it would look into the San Onfore plant's closing, with a press release:

California Public Utilities Commission

505 Van Ness Ave., San Francisco

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 SONGS 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**.

81. Florio and Peevey attempted to create the false impression conveyed in the press release that the CPUC was to look into whether SCE acted reasonably in obtaining and deploying the steam generators. A prehearing conference (PHC) was held in San Francisco and presided over by Florio. At the PHC, Florio made definitive statements that a review of whether SCE acted reasonably in obtaining and deploying the steam generators was being postponed. Again, by forcing ratepayers to pay for the steam generators and closed plant, the CPUC was customers of their private property without just compensation.

82. On 28 January 2013, under Florio and Peevey's direction, the CPUC issued an order postponing any consideration of whether SCE acted unreasonably to a later, undetermined date. There was no such review or hearing before 24 April 2014. On 24 April 2014, again under the direction of Peevey and Florio, an order was issued ending any inquiry into whether SCE acted reasonably in obtaining an deploying the steam generators. Again, during this period, the CPUC continued to make ratepayers pay for the failed plant and generators.

83. During the interval the CPUC delays provided, the CPUC (Office of Ratepayer Advocate) and SCE, under the direction of Peevey and Florio, pieced together in secret a Plan to end any review of the reasonableness of SCE's action in obtaining and deploying the steam generators. Rather than returning in excess of $3 billion ($3,000,000,000) of customers' private property given to SCE without just compensation, the CPUC proposes to cancel out the debt by giving a credit in SCE's claimed under-collected "Energy Resource Recovery Account" (ERRA). The CPUC and SCE cannot even agree on when, how much and how any such crediting is to occur.

84. The proposal is nothing more than window dressing—a contrivance to let SCE off the hook. According to the plan, once SCE is free of any review of its actions in obtaining and deploying the failed generators, "Refunds due to ratepayers

will be credited to each utility's under-collected Energy Resource Recovery Account balance." In the CPUC's plan to kill any review of whether SCE acted reasonably in obtaining and deploying the steam generators, refunds are defined to mean a reduction in the amount due for "otherwise approved rate increases" in "future ERRA proceedings."

85. SCE's reports to investors undermine any claim ratepayers will recover $1.3 billion from SCE: "SCE does not expect implementation of rate recoveries and rate refunds contemplated by the Settlement Agreement will have a material impact on future net income." (27 March 2014 SCE Form 8-K p. 4) The refund "mechanism" is a phantom. It is so small, it is not expected to even have a material impact on SCE's income. The CPUC was charged with a simple fiduciary duty: to find out whether ratepayers were required to pay for the steam generators and the damage they caused.

86. Instead, the CPUC under the direction of Florio and Peevey, denied customers an impartial, unbiased review of the issue. Under the direction of Florio and Peevey, SCE forced its customers to relinquish their private property without just compensation in violation of the Fifth Amendment to the United States Constitution to pay for the idle generators and plants.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Declaration of Taking Without Just Compensation and Injunction Thereon)
Against CPUC, SCE

87. Plaintiffs re-allege and incorporate the allegations of all prior paragraphs of the complaint, as though fully set forth herein.

88. Defendants CPUC and SCE have impermissibly infringed upon Plaintiffs' rights to just compensation since January 2012 by forcing SDG&E and SCE's 17,4,000,000 customers to pay over $700,000,000 for the failed steam

generator project and over $3 billion for the San Onofre power plant they rendered useless.

89. In making customers pay for the failed steam generators and permanently shut plant, the CPUC and SCE are taking customers' private property without just compensation, forcing charges on plaintiffs for the failed steam generator project and the defunct plant, even after the generators are cold and the plant is closed. The taking without just compensation started in January 2012, the month the generators died and the plant stopped producing electricity.

90. A case of actual controversy exists regarding Plaintiffs' right to just compensation from Defendants' imposition of rates on Plaintiffs, along with the other facts alleged herein, establish that a substantial controversy exists between the adverse parties of sufficient immediacy and reality as to warrant a declaratory judgment in Plaintiffs' favor.

91. Plaintiffs have suffered actual adverse and harmful effects, including but not limited to the illegal taking or exacting plaintiffs' private property to pay for the failed steam generators and the idle nuclear power plant without just compensation, and SCE and the CPUC obtaining from Plaintiffs and the class members over $3,000,000,000.

92. The CPUC and SCE violated fundamental principles of the Due Process, Takings and Equal Protection Clauses of the United States Constitution.

93. The CPUC and SCE are required, in taking private property, to adhere to due process of law and to respect the legal rights of affected parties.

94. The Government violated the statutory, contractual, and Constitutional rights of Plaintiffs and the Class in taking or illegally exacting over $3,000,000,000 from plaintiffs and the class without just compensation.

/ / /

/ / /

PRAYER FOR RELIEF

WHEREFORE, as relief for the harms alleged herein, Plaintiffs as aggrieved parties respectfully request this Court:

1. Declare that Plaintiffs' private property was taken without just compensation, and that the taking without just compensation started in January 2012, the month the generators died and the plant stopped producing electricity.

2. Declare that Plaintiffs have suffered actual adverse and harmful effects, including but not limited to the illegal taking or exacting plaintiffs' private property to pay for the failed steam generators and the idle nuclear power plant without just compensation.

3. Declare that the CPUC and SCE violated fundamental principles of the Due Process, Takings and Equal Protection Clauses of the United States Constitution.

4. Declare that the Government violated the statutory, contractual, and Constitutional rights of Plaintiffs and the Class in taking or illegally exacting over $3,000,000,000 from plaintiffs and the class without just compensation.

5. Grant a preliminary and permanent injunction prohibiting Defendants, their affiliates, agents, employees, and attorneys, and any and all other persons in active concert or participation with them, from seeking to collect from Plaintiffs for the failed steam generator project and the defunct plant.

6. Grant an order of restitution to Plaintiffs of property taken without just compensation relating to the failed steam generator project and the defunct plant in an amount no less than $3,000,000,000, or according to proof at trial, for the unconstitutional taking of Plaintiffs' private property without just compensation;

7. An award attorneys' fees and costs to Plaintiffs to the extent permitted by law; and

/ / /

8. That this Court award such other and further relief as it deems proper.

Respectfully submitted,

AGUIRRE & SEVERSON LLP

Dated: _November 13, 2014

/s/Maria C. Severson
Maria C. Severson
Attorneys for Plaintiffs

EXHIBIT 1

S. Cal. Edison Co. v. Lynch

United States Court of Appeals for the Ninth Circuit

March 4, 2002, Argued and Submitted, Pasadena, California ; September 23, 2002, Filed

No. 01-56879, No. 01-56993, No. 01-57020

Reporter
307 F.3d 794; 2002 U.S. App. LEXIS 19802; 2002 Cal. Daily Op. Service 9737; 2002 Daily Journal DAR 11033; 54 Fed. R. Serv. 3d (Callaghan) 286

SOUTHERN CALIFORNIA EDISON COMPANY, Plaintiff-Appellee, v. LORETTA M. LYNCH; HENRY M. DUQUE; RICHARD A. BILAS; CARL W. WOOD; GEOFFREY F. BROWN, Commissioners of California Public Utilities Commission, Defendants-Appellees. UTILITY REFORM NETWORK, Defendant-intervenor-Appellant. SOUTHERN CALIFORNIA EDISON COMPANY, Plaintiff-Appellee, RELIANT ENERGY SERVICES, INC.; MIRANT AMERICAS ENERGY MARKETING, LP, Intervenors-Appellants, v. LORETTA M. LYNCH; HENRY M. DUQUE; RICHARD A. BILAS; CARL W. WOOD; GEOFFREY F. BROWN, Defendants. SOUTHERN CALIFORNIA EDISON COMPANY, Plaintiff-Appellee, CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSN., Intervenor-Appellant, v. LORETTA M. LYNCH; HENRY M. DUQUE; RICHARD A. BILAS; CARL W. WOOD; GEOFFREY F. BROWN, in their official capacities as Commissioner of the California Public Utilities Commission, Defendants-Appellees.

Subsequent History: Later proceeding at *S. Cal. Edison Co. v. Lynch, 2002 U.S. App. LEXIS 19796 (9th Cir. Cal., Sept. 23, 2002)*
Request granted Southern California Edison Co. v. Lynch, 2002 Cal. LEXIS 7961 (Cal., Nov. 20, 2002)
Certified question answered by S. Cal. Edison Co. v. Peevey, 2003 Cal. LEXIS 6095 (Cal., Aug. 21, 2003)

Prior History: [**1] Appeal from the United States District Court for the Central District of California. D.C. No. CV-00-12056-RSWL. Ronald S.W. Lew, District Judge, Presiding.
S. Cal. Edison Co. v. Lynch, 2001 U.S. App. LEXIS 24540 (9th Cir. Cal., Oct. 30, 2001)

Disposition: Judgment of the district court affirmed in part and questions based on California state law to the Supreme Court of California certified.

Core Terms

district court, rates, stipulated judgment, state law, settlement, electricity, costs, Intervenors, decisions, regulated, issues, wholesale, parties, state court, requirements, intervene, public utility, Obligations, Procurement, abstention, stranded, retail, administrative agency, proceedings, generation, transition, customers, deprived, internal quotation marks, federal district court

Case Summary

Procedural Posture

Plaintiff utility sued defendant public utility commissioners for refusing to allow a rate increase. The United States District Court for the Central District of California allowed intervention by defendant-intervenor public interest group, denied intervention by proposed intervenor electricity generators and trade association, and entered a stipulated judgment based on the original parties'

agreement. The group and proposed intervenors appealed.

Overview

The utility claimed the refusal to allow it to increase its rates was preempted by the federal filed-rate doctrine. The circuit court held that the trial court properly denied the proposed intervenors' motions to intervene under *Fed. R. Civ. P. 24*, as the fact that the generators were owed money by an entity affiliated with the utility, and that the trade association had an undifferentiated, generalized interest in the outcome of the suit were insufficient interests in the subject matter of the action to require intervention as a matter of right. None of the substantive arguments based on federal statutory or constitutional law compelled reversal of the approval of the stipulated judgment. However, the circuit court believed that by entering into the stipulation, the commissioners violated *Cal. Pub. Util. Code § 368* (regulating rates); the Bagley-Keene Open Meeting Act, *Cal. Gov't Code §§ 11120*-11132.5; *Cal. Pub. Util. Code § 454(a)* (requiring a public hearing and findings before certain actions); and *Cal. Const. art. III, § 3.5* (banning agencies from refusing to enforce a statute).Therefore, it certified these state law issues to the Supreme Court of California.

Outcome

The district court was affirmed on all claims, except for the challenges founded on California law, which were certified to the California Supreme Court. Further proceedings in the case were stayed pending a response from the supreme court on the request for certification.

LexisNexis® Headnotes

Civil Procedure > Parties > Intervention > General Overview

Civil Procedure > Parties > Intervention > Motions to Intervene

Civil Procedure > Parties > Intervention > Intervention of Right

HN1 An applicant for intervention in a pending federal action as a matter of right must satisfy four requirements, namely that: (1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest.

Civil Procedure > Parties > Intervention > General Overview

HN2 An applicant for intervention has a "significant protectable interest" in an action if (1) it asserts an interest that is protected under some law, and (2) there is a "relationship" between its legally protected interest and the plaintiff's claims. The relationship requirement is met if the resolution of the plaintiff's claims actually will affect the applicant. The "interest" test is not a clear-cut or bright-line rule, because no specific legal or equitable interest need be established. Instead, the "interest" test directs courts to make a practical, threshold inquiry, and is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.

Civil Procedure > Parties > Intervention > General Overview

Civil Procedure > Parties > Intervention > Intervention of Right

HN3 A contingent, unsecured claim against a third-party debtor falls far short of the direct, non-contingent, substantial and legally protectable interest required for intervention as a matter of right.

Civil Procedure > Parties > Intervention > General Overview

Civil Procedure > Parties > Intervention > Intervention of Right

Energy & Utilities Law > Electric Power Industry > General Overview

Energy & Utilities Law > Electric Power Industry > State Regulation > General Overview

HN4 An undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right.

Civil Procedure > Pleading & Practice > Motion Practice > General Overview

Civil Procedure > Parties > Intervention > General Overview

Civil Procedure > Parties > Intervention > Permissive Intervention

HN5 A court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common. Even if an applicant satisfies those threshold requirements, the district court has discretion to deny permissive intervention.

Civil Procedure > ... > Justiciability > Standing > General Overview

Civil Procedure > Appeals > General Overview

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Adverse Determinations

HN6 A nonparty has standing to appeal a district court's decision only in exceptional circumstances. The United States Court of Appeals for the Ninth Circuit has allowed such an appeal only when (1) the appellant, though not a party, participated in the district court proceedings, and (2) the equities of the case weigh in favor of hearing the appeal.

Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > General Overview

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

Civil Procedure > ... > Jurisdiction on Certiorari > Considerations Governing Review > State Court Decisions

HN7 The Rooker-Feldman doctrine is founded on the unremarkable proposition that federal district courts are courts of original, not appellate, jurisdiction. It is based on negative inferences drawn from *28 U.S.C.S. § 1331*, which establishes the district court's original jurisdiction, and *28 U.S.C.S. § 1257*, which allows Supreme Court review of final judgments or decrees rendered by the highest court of a state in which a decision could be had. Applying these jurisdictional limitations, the Rooker-Feldman doctrine bars direct federal district court appellate review of state court judicial proceedings.

Administrative Law > Judicial Review > Reviewability > Jurisdiction & Venue

Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > General Overview

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Civil Procedure > ... > Jurisdiction on Certiorari > Considerations Governing Review > State Court Decisions

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN8 The Rooker-Feldman doctrine does not apply to the actions of a state administrative agency. The primary statute from which the Rooker-Feldman doctrine has been drawn - *28 U.S.C.S. § 1257* - does not, by its terms, describe state administrative decisions. More importantly, the Supreme Court has rejected a claim that the Rooker-Feldman doctrine bars federal district court review of adjudicatory decisions of state administrative agencies. The Rooker-Feldman doctrine merely recognizes that *28 U.S.C.S. §*

1331 is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to the Supreme Court, 28 U.S.C.S. § 1257(a). The doctrine has no application to judicial review of executive action, including determinations made by a state administrative agency.

Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > General Overview

Civil Procedure > ... > Jurisdiction on Certiorari > Considerations Governing Review > State Court Decisions

HN9 The Rooker-Feldman doctrine does not bar the exercise of federal court jurisdiction when the federal court litigant was not a party to the state court action. Mere participation in a state case as amici does not invoke the Rooker-Feldman bar.

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > Abstention

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN10 An appellate court reviews whether the requirements for abstention have been met de novo, and the district court's decision whether to abstain for an abuse of discretion.

Administrative Law > Judicial Review > Reviewability > Questions of Law

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > Abstention

HN11 District courts have an obligation and a duty to decide cases properly before them, and abstention from the exercise of federal jurisdiction is the exception, not the rule. However, under the Burford abstention doctrine, when timely and adequate state court review is available, a federal court sitting in equity may decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar; or (2) where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > General Overview

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > Abstention

HN12 The United States Court of Appeals for the Ninth Circuit has required certain factors to exist before a district court can abstain under Burford. These are: first, that the state has chosen to concentrate suits challenging the actions of the agency involved in a particular court; second, that federal issues could not be separated easily from complex state law issues with respect to which state courts might have special competence; and third, that federal review might disrupt state efforts to establish a coherent policy.

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > General Overview

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > Abstention

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Waiver & Preservation of Defenses

HN13 A state may voluntarily submit to federal jurisdiction even though it might have had a tenable claim for abstention.

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > Abstention

HN16 Burford abstention is particularly inappropriate when a plaintiff's claim is based on

preemption, because abstaining under Burford would be an implicit ruling on the merits.

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > Abstention

HN14 The fact that a non-state intervening party preferred another forum is not relevant to satisfying the prerequisites for Burford abstention.

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > Abstention

Governments > Courts > Judicial Comity

HN15 If a state voluntarily chooses to submit to a federal forum, principles of comity do not demand that the federal court force the case back into the state's own system.

Civil Procedure > Parties > Intervention > General Overview

Civil Procedure > Parties > Intervention > Intervention of Right

Civil Procedure > Settlements > Settlement Agreements > General Overview

Civil Procedure > Judgments > Entry of Judgments > Consent Decrees

Contracts Law > Types of Contracts > Settlement Agreements

HN17 An intervenor does not have the right to prevent other parties from entering into a settlement agreement. It has never been supposed that one party - whether an original party, a party that was joined later, or an intervenor - could preclude other parties from settling their own disputes and thereby withdrawing from litigation. Thus, while an intervenor is entitled to present evidence and have its objections heard at the hearings on whether to approve a consent decree, it does not have power to block the decree merely by withholding its consent.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN18 District courts have inherent power to control their dockets. Appellate review of such decisions is deferential; an appellate court will reverse a district court's litigation management decisions only if it abused its discretion, or if the procedures deprived the litigant of due process of law within the meaning of the *Fifth* or *Fourteenth Amendments*. Due process requires that a party affected by government action be given the opportunity to be heard at a meaningful time and in a meaningful manner.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN19 In analyzing the constitutional sufficiency of notice, a court must consider: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Civil Procedure > ... > Subject Matter Jurisdiction > Federal Questions > General Overview

Constitutional Law > Congressional Duties & Powers > Commerce Clause > General Overview

Energy & Utilities Law > Administrative Proceedings > General Overview

Governments > Federal Government > US Congress

Governments > Legislation > General Overview

Governments > Legislation > Enactment

Transportation Law > Interstate Commerce > Federal Powers

HN20 To say that nothing in the *Commerce Clause* justifies federal regulation of even the intrastate operations of public utilities misapprehends the proper role of the courts in assessing the validity of federal legislation promulgated under one of Congress' plenary powers. If Congress has the constitutional authority to enact legislation, then the pre-emption question is whether Congress intended to displace state law in that area, not whether the existence of state law forbade Congress from regulating.

Civil Procedure > ... > Subject Matter Jurisdiction > Federal Questions > General Overview

Civil Procedure > Settlements > Settlement Agreements > General Overview

Constitutional Law > Congressional Duties & Powers > Reserved Powers

Constitutional Law > The Judiciary > General Overview

Governments > State & Territorial Governments > Legislatures

HN21 The *Tenth Amendment* cannot be used to bar enforcement of a consensual judgment. A federal district court has the power under U.S. Const. art. III to approve a settlement over a suit alleging federal preemption.

Civil Procedure > Judgments > Entry of Judgments > Consent Decrees

Governments > State & Territorial Governments > Employees & Officials

Transportation Law > Bridges & Roads > Billboards

HN22 State officials cannot enter into a federally-sanctioned consent decree beyond their authority under state law.

Energy & Utilities Law > Electric Power Industry > State Regulation > General Overview

Energy & Utilities Law > Electric Power Industry > State Regulation > Stranded Cost Recovery

Energy & Utilities Law > Utility Companies > Rates > General Overview

Energy & Utilities Law > ... > Rates > Ratemaking Factors > Stranded Costs

HN23 *Cal. Pub. Util. Code § 368* directs the California Public Utilities Commission to set rates at levels equal to the rate schedules as of June 10, 1996, to reduce those levels for residential and small-commercial customers by 10 percent, and to maintain those rates until the utility has fully recovered its stranded costs or until March 31, 2002, whichever comes first. *Cal. Pub. Util. Code § 368(a)*. *Cal. Pub. Util. Code 368* explicitly states that the utility shall be at risk for those costs not recovered during that time period.

Governments > Legislation > Expiration, Repeal & Suspension

Governments > Legislation > Interpretation

HN24 Repeals by implication are heavily disfavored. A finding of implied repeal must be based on a finding that the legislative body actually formulated the intent to repeal the earlier enactment but somehow failed to carry out that intent.

Administrative Law > Governmental Information > Public Information > General Overview

Energy & Utilities Law > Regulators > Public Utility Commissions > General Overview

HN25 See *Cal. Gov't Code § 11126(d)(1)*.

Administrative Law > Governmental Information > Public Information > General Overview

HN26 See *Cal. Gov't Code § 11126(e)(1)*.

Administrative Law > Governmental Information > Public Information > General Overview

HN27 *Cal. Gov't Code § 11126(e)* merely allows a state agency to meet in closed session to confer with, or receive advice from, its legal counsel regarding pending litigation - not to take action, and certainly not to issue regulatory orders.

Administrative Law > Governmental Information > Public Information > General Overview

Energy & Utilities Law > Regulators > Public Utility Commissions > General Overview

Energy & Utilities Law > Utility Companies > Rates > General Overview

HN28 See *Cal. Pub. Util. Code § 454(a)*.

Administrative Law > Governmental Information > Public Information > General Overview

Energy & Utilities Law > Regulators > Public Utility Commissions > General Overview

Energy & Utilities Law > Utility Companies > Rates > General Overview

HN29 California case law holds that the California Public Utilities Commission must hold a hearing and issue findings before adopting an order that affects rates.

Administrative Law > Separation of Powers > Constitutional Controls > General Overview

Civil Procedure > Judgments > Entry of Judgments > Consent Decrees

Energy & Utilities Law > Regulators > Public Utility Commissions > General Overview

Governments > Federal Government > Employees & Officials

HN30 California agencies such as the Public Utilities Commission are explicitly prohibited by the California Constitution from agreeing to be enjoined from enforcing state laws that have not been declared unconstitutional by an appellate court.

Administrative Law > Separation of Powers > Constitutional Controls > General Overview

HN31 See *Cal. Const. art. III, § 3.5*.

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > Erie Doctrine

Civil Procedure > Appeals > Appellate Jurisdiction > Certified Questions

Governments > Courts > Judicial Precedent

HN32 Federal courts are bound by the pronouncements of the state's highest court on applicable state law. Where the decisions of California appellate courts provide no controlling precedent on applicable issues of state law, the criteria for certification are satisfied. Cal. Rules of Court 29.5(a)(3).

Counsel: Robert E. Finkelstein and Randolph L. Wu, The Utility Reform Network, San Francisco, California; Michael J. Strumwasser, Frederic D. Woocher, Johanna R. Shargel, Daniel J. Sharfstein, Strumwasser & Woocher LLP, Santa Monica, California; for the defendant-intervenor-appellant.

Terry J. Houlihan and Geoffrey T. Holtz, McCutchen, Doyle, Brown & Enersen, LLP, San Francisco, California; John C. Morrissey and Brian I. Cheng, McCutchen, Doyle, Brown & Enersen, LLP, Los Angeles; California; for the intervenor-appellant Reliant Energy Services, Inc.

Bryan A. Merryman and Lisa A. Cottle, White & Case LLP, Los Angeles, California, for the intervenor-appellant Mirant Americas Energy Marketing, LP.

Keith R. McCrea and Jim Bushee, Sutherland Asbill & Brennan LLP, Washington, D.C., for the intervenor-appellant California Manufacturers and Technology Association.

Gary M. Cohen, Arocles Aguilar, Harvey Y. Morris, and Carrie G. Pratt, Public Utilities Commission of the State of California, San Francisco, California, for the [**2] defendants-appellees.

Stephen Pickett, Barbara Reeves, and Kris G. Vyas, Southern California Edison Company, Rosemead, California; Ronald L. Olson, John W. Spiegel, and Henry Weissmann, Munger, Tolles & Olson LLP, Los Angeles, California; for the plaintiff-appellee.

Judges: Before: James R. Browning, Sidney R. Thomas and Johnnie B. Rawlinson, Circuit Judges. Opinion by Judge Thomas.

Opinion by: Sidney R. Thomas

Opinion

[*800] THOMAS, Circuit Judge:

In this appeal, we review the district court's order entering a stipulated judgment in an action brought by Southern California Edison Co. ("SoCal Edison"), an electric public utility that provides retail electric service in Southern California, against the Commissioners ("Commissioners") of the California Public Utilities Commission ("the Commission"), which regulates the rates, practices and services of SoCal Edison and other California public utilities. We affirm the judgment of the district court in part and certify questions based on California state law to the Supreme Court of California.

I

The origins of the present controversy began in 1996 with the passage of Assembly Bill 1890 ("AB 1890"), which significantly restructured California's power [**3] industry. Act of September 23, 1996, 1996 Cal. Legis. Serv. 854, *codified in* Cal. Pub. Util. Code §§ 330-398.5. The idea animating AB 1890 was that deregulation would foster competition in electrical generation, which would ultimately provide better service and reduce the price of electricity to consumers. *See generally* Cal. Pub. Util. Code § 330. [1] Under prior law, the Commission set the retail electricity rates charged by utilities providing service in exclusive service territories. *Id.* at § 330(d). These regulated rates included reimbursement for the cost of constructing power plants and contractual obligations for the provision of electrical service. *Id.* at § 330(q). The goal of AB 1890 was to create a deregulated market in which price would be established by competition and [*801] consumers could select their electrical power supplier.

The [**4] legislature recognized that the transition from a regulated environment to a competitive market had the potential to leave the utilities with unrecoverable, or "stranded" costs. In general terms, stranded costs are those costs an electrical supplier incurs in anticipation of serving customers that later become unrecoverable because the supplier either cannot charge a rate that allows cost recovery or is unable to sell sufficient power. This most typically occurs when there is a shift in utility rate philosophy from a "cost plus rate of return" design to a market-driven rate. *Ass'n of Pub. Agency Customers, Inc. v. Bonneville Power Admin., 126 F.3d 1158, 1180 (9th Cir. 1997)*.

Of course, as we have observed, "the term 'stranded costs' is something of a misnomer, for someone always pays for them." *Id.* Under AB 1890, the Commission was charged with the responsibility of calculating the amount of stranded costs. Cal. Pub. Util. Code § 367. The utilities were to recover their allowed stranded costs through individual cost-recovery plans during a transition period when rates were temporarily frozen, under the theory that the utilities would continue to make a profit. [**5] *Id.* at § 368. During this transition period, the utilities were also to dismantle their vertically-integrated operations by selling a large portion of their generation plants, and to sell the output of their remaining generation capacity to a wholesale clearinghouse known as the California Power Exchange Corporation ("CalPx"). Cal. Power Exchange Corp., 245 F.3d at 1114-15. During the transition period, the utilities were required to purchase power from CalPx on behalf of retail customers who had not elected to purchase power elsewhere. *Id. at 1115*. The demise of vertical integration, which was regulated by the state, subjected the utilities' purchases of wholesale power to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"), which

---

[1] The legislation is summarized in Cal. Power Exchange Corp. v. FERC (In re Cal. Power Exchange Corp.), 245 F.3d 1110, 1114-15 (2001).

regulated CalPx as a public utility under the Federal Power Act. *245 F.3d at 1114*.

In 2000, wholesale electricity prices skyrocketed, particularly in the CalPx spot markets. SoCal Edison, which was still subject to the retail rate freeze designed to lock in profit, incurred enormous debt because it was unable to pass its wholesale power costs onto its customers. *Id. at 1115*. [**6] SoCal Edison alleges that it incurred obligations of over $ 6.5 billion for wholesale electricity in excess of what it recovered in retail sales. A series of power emergencies ensued which threatened the continuous provision of electricity in California. *Id. at 1115-16*. FERC responded in a series of regulatory actions detailed in *Cal. Power Exchange Corp. Id. at 1116-19*. In 2001, the California legislature and the Commission took a series of steps to alleviate the power crisis, the result of which was to significantly alter the impact of AB 1890. However, SoCal Edison alleges that the legislation failed to improve SoCal Edison's dire financial condition because SoCal Edison was precluded by a Commission decision from recovering costs incurred during the rate freeze period.

As a result, SoCal Edison filed the instant action for injunctive and declaratory relief against the Commissioners. Among other theories, SoCal Edison alleged that the refusal of the Commission to increase its retail rates as SoCal Edison's wholesale rates rose was preempted under the federal filed-rate doctrine, which holds that a state is preempted from preventing the recovery [**7] in retail rates of costs incurred pursuant to FERC tariffs.

After some preliminary decisions by the district court, The Utility Reform Network [*802] ("TURN"), a non-profit organization devoted to protecting the interests of residential and small-commercial consumers of utility services, moved to intervene. The district court initially denied the motion, but eventually granted TURN permissive intervention. After further proceedings, the case was stayed by agreement of the Commission and SoCal Edison so that the parties could attempt to resolve their disputes. A settlement was negotiated and presented to the district court in the form of a stipulated judgment ("Stipulated Judgment"). Under the terms of the Stipulated Judgment, existing rates were to remain in effect for a two-year period to allow SoCal Edison to recover approximately $ 3.3 billion of its $ 6.3 billion loss during the prior rate-freeze period. TURN objected to the entry of the Stipulated Judgment. The district court allowed TURN one day to register its objections, and one day for SoCal Edison and the Commission to respond. After reviewing the objections, the district court approved the Stipulated Judgment. TURN appeals the [**8] entry of the Stipulated Judgment. Three other parties who were denied intervention appeal the district court's denial of their intervention motions.

We affirm the district court on all claims, except for the challenges founded on California state law, which we certify to the California Supreme Court.

II

The district court did not err in denying the motions to intervene filed by Reliant Energy Services ("Reliant"), Mirant Americas Energy Marketing ("Mirant"), and the California Manufacturers and Technology Association ("CMTA") (collectively, "Proposed Intervenors"). Reliant and Mirant are wholesale generators of electricity. The CMTA is a trade association with approximately 800 manufacturing and technology companies owning and operating facilities in California. We review the district court's denial of intervention as of right is reviewed de novo, *Waller v. Fin. Corp. of Am., 828 F.2d 579, 582 (9th Cir. 1987)*, except for district court's determination of timeliness, a decision which we review for abuse of discretion. *Cunningham v. David Special Commitment Ctr., 158 F.3d 1035.*

1037 (9th Cir. 1998). We review the district court's denial of permissive [**9] intervention for abuse of discretion. Venegas v. Skaggs, 867 F.2d 527, 529 (9th Cir. 1989).

A

The district court properly denied the Proposed Intervenors' motions to intervene as of right, pursuant to Rule 24(a), Federal Rules of Civil Procedure. ***HN1*** An applicant for intervention in a pending federal action as a matter of right must satisfy four requirements, namely that: "(1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest." United States v. City of Los Angeles, 288 F.3d 391, 397 (9th Cir. 2002) (quoting Donnelly v. Glickman, 159 F.3d 405, 409 (9th Cir. 1998) (internal quotation marks omitted)).

The district court correctly denied the Proposed Intervenors' motions to intervene as of right because they did not satisfy the first requirement: that they have a significant protectable interest relating to the property or transaction [**10] that is the subject of the action. We recently discussed the analytical framework for this requirement in City of Los Angeles, 288 F.3d at 398:

[*803]

HN2 "An applicant has a 'significant protectable interest' in an action if (1) it asserts an interest that is protected under some law, and (2) there is a 'relationship' between its legally protected interest and the plaintiff's claims." Donnelly, 159 F.3d at 409. The relationship requirement is met "if the resolution of the plaintiff's claims actually will affect the applicant." Id. at 410. The "interest" test is not a clear-cut or bright-line rule, because "no specific legal or equitable interest need be established." [Greene v. United States, 996 F.2d 973, 976 (9th Cir. 1993).] Instead, the "interest" test directs courts to make a "practical, threshold inquiry," *id.*, and "is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process," County of Fresno v. Andrus, 622 F.2d 436, 438 (9th Cir. 1980) (internal quotation marks and citation omitted).

Reliant [**11] and Mirant argue that they have a significant protectable interest in the litigation because SoCal Edison owes them over $ 260 million arising out of their wholesale electricity transactions which, allegedly due to the Commission's actions, SoCal Edison is unable to repay. The pending litigation would not resolve those claims, and SoCal Edison is in privity with the California Power Exchange Corporation, not with Reliant or Mirant. Thus, Reliant and Mirant are claiming a right to intervene based on ***HN3*** a contingent, unsecured claim against a third-party debtor. This falls far short of the "direct, non-contingent, substantial and legally protectable" interest required for intervention as a matter of right. Dilks v. Aloha Airlines, 642 F.2d 1155, 1157 (9th Cir. 1981) (citation omitted).

CMTA asserts that, as an association of more than 800 companies in the manufacturing and high-technology sectors, its members are "an integral part of the California economy" who "purchase significant quantities of electricity from SoCal Edison." However, ***HN4*** "an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention [**12] as of right." Public Serv. Co. of N.H. v. Patch, 136 F.3d 197, 205 (1st Cir. 1998); *see also* Westlands Water Dist. v. U.S., 700 F.2d 561, 563 (9th Cir. 1983) (Environmental Defense Fund's

interest in water district's water export rights is no different from interest of "substantial portion of the population of northern California" and is thus not "legally protectible" under *Rule 24(a)*). Thus, CMTA does not have the right to intervene in this case under federal law.

B

The district court also did not err in denying Reliant, Mirant, and CMTA permissive intervention. ***HN5*** "[A] court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *City of Los Angeles, 288 F.3d at 403* (quoting *Northwest Forest Res. Council v. Glickman, 82 F.3d 825, 839 (9th Cir. 1996)*). "Even if an applicant satisfies those threshold requirements, the district court has discretion to deny permissive intervention." *Donnelly, 159 F.3d at 412*. [**13]

Here, Proposed Intervenors fail to meet the threshold requirements because no common question of law or fact exists between their claims and the main action. Proposed Intervenors argue that the amount of money that SoCal Edison may collect, and how SoCal Edison uses that money, raises questions of law and fact [*804] common to both the underlying action and any claims Reliant and Mirant have against SoCal Edison and/or the Commission. However, the Proposed Intervenors' concerns as to whether SoCal Edison would repay them are sufficiently different from the issues in the underlying action so as to not meet this factor of the test for permissive intervention. "The intervention rule is ... not intended to allow the creation of whole new lawsuits by the intervenors." *Donnelly, 159 F.3d at 412* (internal quotation marks and citation omitted).

III

Reliant, Mirant, and CMTA argue in the alternative that, even if the district court did not err in denying their motions to intervene, they still have standing to appeal the entry of the Stipulated Judgment. We disagree.

HN6 A nonparty has standing to appeal a district court's decision "only in exceptional circumstances." [**14] *Citibank Int'l. v. Collier-Traino, Inc., 809 F.2d 1438, 1441 (9th Cir. 1987)*. We have allowed such an appeal only when "(1) the appellant, though not a party, participated in the district court proceedings, and (2) the equities of the case weigh in favor of hearing the appeal." *Bank of Am. v. M/V Executive*, 797 F.2d 772, 774 (9th Cir. 1986). Proposed Intervenors have not met these requirements. Apart from their applications for intervention, the Proposed Intervenors did not participate in the district court proceedings. By contrast, the appellant in *Bank of Am.* filed papers and presented oral argument to a magistrate judge and the district court on the merits of the case. *Id.* at 774. Further, there is nothing inequitable about limiting participation in this appeal to submission of amicus briefs. In short, there are no "exceptional circumstances" in this case that justify granting a non-party standing to appeal.

IV

TURN argues that the *Rooker-Feldman* doctrine [2] precluded the district court from exercising original jurisdiction. ***HN7*** The *Rooker-Feldman* doctrine is founded on "the unremarkable

---

[2] The doctrine takes its name from *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 68 L. Ed. 362, 44 S. Ct. 149 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983). *Rooker* held that federal statutory jurisdiction over direct appeals from state courts lies exclusively in the Supreme Court and is beyond the original jurisdiction of federal district courts. *See Rooker*, 263 U.S. at 415-16. *Feldman* held that this jurisdictional bar extends to particular claims that are "inextricably intertwined" with those a state court has already decided. *See Feldman*, 460 U.S. at 486-87.

proposition that federal district courts are [**15] courts of original, not appellate, jurisdiction." *Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1078 (9th Cir. 2000)* (en banc). It is based on negative inferences drawn from *28 U.S.C. § 1331*, which establishes the district court's original jurisdiction, and *28 U.S.C. § 1257*, which allows Supreme Court review of "final judgments or decrees rendered by the highest court of a State in which a decision could be had." *Id.* (internal quotation marks omitted). Applying these jurisdictional limitations, the *Rooker-Feldman* doctrine bars direct federal district court appellate review of state court judicial proceedings. *See Worldwide Church of God v. McNair, 805 F.2d 888, 890 (9th Cir. 1986)*.

[**16] TURN contends that the *Rooker-Feldman* doctrine applies here because SoCal Edison's lawsuit is "inextricably intertwined" [*805] with the actions of the Commission and because the Pacific Gas & Electric Company ("PG&E") sought state judicial review of the Commission's cost-recovery decisions.

HN8 The *Rooker-Feldman* doctrine does not apply to the actions of the Commission because it is a state administrative agency, not a court. The primary statute from which the *Rooker-Feldman* doctrine has been drawn - *28 U.S.C. § 1257* - does not, by its terms, describe state *administrative* decisions. More importantly, the Supreme Court has recently rejected a claim that the *Rooker-Feldman* doctrine barred federal district court review of adjudicatory decisions of state administrative agencies. As the Court noted:

> The Commission also suggests that the *Rooker-Feldman* doctrine precludes a federal district court from exercising jurisdiction over Verizon's claim. *See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983)*; *Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923)*. [**17] The *Rooker-Feldman* doctrine merely recognizes that *28 U.S.C. § 1331* is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to this Court, see *28 U.S.C. § 1257(a)*. *The doctrine has no application to judicial review of executive action, including determinations made by a state administrative agency.Verizon Md. Inc. v. Pub. Serv. Comm'n of Md., 535 U.S. 635, 152 L. Ed. 2d 871, 122 S. Ct. 1753, 1759 n. 3 (2002)* (emphasis added).

TURN also claims that a collateral state court judicial challenge to the Commission action filed by PG&E deprives the district court of jurisdiction over this case. This argument is unavailing. ***HN9*** The *Rooker-Feldman* doctrine does not bar the exercise of federal court jurisdiction when the federal court litigant was not a party to the state court action. *Johnson v. De Grandy, 512 U.S. 997, 1006, 129 L. Ed. 2d 775, 114 S. Ct. 2647 (1994)*. SoCal Edison was not a party to PG&E's state court challenge; thus the *Rooker-Feldman* doctrine did not preclude the federal [**18] district court from exercising jurisdiction in this case. [3] SoCal Edison did file an amicus letter in support of PG&E's petition. However, "mere participation in the state case as amici does not invoke the *Rooker/Feldman* bar." *Bennett v. Yoshina, 140 F.3d 1218, 1224 (9th Cir. 1998)*. Thus, existence of collateral state court proceedings involving a third party did not deprive the district court of original jurisdiction over this action.

V

---

[3] In fact, the district court in PG&E's case rejected the argument that PG&E's state court writ was res judicata of PG&E's federal claims. *Pac. Gas & Elec. Co. v. Lynch*, 2001 U.S. Dist. LEXIS 5500, No. CV 01-1083 RSWLSHX, 2001 WL 840611, at *8 (C.D. Cal. May 2, 2001).

TURN argues the district court should have abstained under the "*Burford* doctrine" from exercising jurisdiction over this lawsuit. *See Burford v. Sun Oil Co., 319 U.S. 315, 332-33, 87 L. Ed. 1424, 63 S. Ct. 1098 (1943)). **HN10** We review whether the requirements for abstention have [**19] been met *de novo*, and the district court's decision whether to abstain for an abuse of discretion. *Fireman's Fund Ins. Co. v. Quackenbush, 87 F.3d 290, 294 (9th Cir. 1996)*.

HN11 "District courts have an obligation and a duty to decide cases properly before them, and 'abstention from the exercise of federal jurisdiction is the exception, not the rule.'" *City of Tucson v. U.S. West [*806] Communications, Inc., 284 F.3d 1128, 1132 (2002)* (quoting *Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 813, 47 L. Ed. 2d 483, 96 S. Ct. 1236 (1976))*.

However, under the *Burford* abstention doctrine, when timely and adequate state court review is available, a federal court sitting in equity may decline to interfere with the proceedings or orders of state administrative agencies:

> (1) when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar; or (2) where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to [**20] a matter of substantial public concern.*New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 361, 105 L. Ed. 2d 298, 109 S. Ct. 2506 (1989)* (internal quotation marks and citation omitted).

HN12 We have required certain factors to exist before a district court can abstain under *Burford. See City of Tuscon, 284 F.3d at 1133*. These are:

> first[,] that the state has chosen to concentrate suits challenging the actions of the agency involved in a particular court; second, that federal issues could not be separated easily from complex state law issues with respect to which state courts might have special competence; and third, that federal review might disrupt state efforts to establish a coherent policy.*Id.* (quoting *United States v. Morros, 268 F.3d 695, 705 (9th Cir. 2001))*.

Here, not only has the state not chosen to concentrate suits challenging the administrative action in a particular court, it has expressly waived any abstention defense to SoCal Edison's action and consented to the Stipulated Judgment. *See Ohio Civil Rights Comm'n v. Dayton Christian Schs., Inc., 477 U.S. 619, 626, 91 L. Ed. 2d 512, 106 S. Ct. 2718 (1986)* [**21] **HN13** ("A State may of course voluntarily submit to federal jurisdiction even though it might have had a tenable claim for abstention."). Thus, the threshold requirements for the exercise of *Burford* abstention by the district court have not been satisfied. [4] **HN14** The fact that a non-state intervening party preferred another forum is not relevant to satisfying the prerequisites for *Burford* abstention. *Cf. Southwest Airlines Co. v. Texas Intern. Airlines, Inc., 546 F.2d 84, 93 (5th Cir. 1977)*. **HN15** "If the State voluntarily chooses to submit to a federal forum, principles of comity do not demand that the federal court force the case back into the State's own system." *Ohio Bureau of Employment Servs. v. Hodory, 431 U.S. 471, 480, 52 L. Ed. 2d 513, 97 S. Ct. 1898 (1977)*. The district court did not err in declining to abstain in this case.

---

[4] We also note that **HN16** "*Burford* abstention is particularly inappropriate when the plaintiff's claim is based on preemption, because abstaining under *Burford* would be an implicit ruling on the merits." *Morros, 268 F.3d at 705* (quoting *Knudsen Corp. v. Nevada State Dairy Comm'n, 676 F.2d 374, 377 (9th Cir. 1982)*). Here, SoCal Edison alleges that the federal filed-rate doctrine facially preempts any Commission refusal to permit recovery of SoCal Edison's wholesale procurement costs.

[**22] VI

The district court did not exceed its authority by approving the stipulated settlement between SoCal Edison and the Commission without TURN's consent, a decision which we review *de novo*. *Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1287 (9th Cir. 1992)*. ***HN17*** An intervenor [*807] does not have the right to prevent other parties from entering into a settlement agreement. *Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO v. City of Cleveland, 478 U.S. 501, 528-29, 92 L. Ed. 2d 405, 106 S. Ct. 3063 (1986)*. As the Court explained:

> it has never been supposed that one party - whether an original party, a party that was joined later, or an intervenor - could preclude other parties from settling their own disputes and thereby withdrawing from litigation. Thus, while an intervener is entitled to present evidence and have its objections heard at the hearings on whether to approve a consent decree, it does not have power to block the decree merely by withholding its consent.

Thus, TURN's consent was not a necessary precursor to the district court's accepting the Stipulated Judgment.

TURN points out that *Firefighters* provides an exception where [**23] "nonconsenting intervenors" have brought "valid claims" that are "properly raised." *478 U.S. at 529*. However, as TURN itself admits, the organization "as defendants were not expected to raise claims and [its] members cannot challenge the terms of the settlements in later suits." Instead, what TURN claims to possess is a "legally cognizable interest in protecting the refund rights of its 30,000 rate-paying members, in securing the lower rates that state law guarantees them and the stipulated judgment denies them, and in preventing the rate increases that will inevitably result from this judgment." These interests do not amount to the kind of "valid claims" the *Firefighters* Court had in mind. Furthermore, TURN's attempt to narrow the scope of the *Firefighters* exception as applying only to plaintiffs, and not defendants such as TURN, is unavailing because the *Firefighters* case clearly references "third parties" in general. *See Firefighters, 478 U.S. at 529*. In sum, TURN's consent was not required for the district court to approve the settlement.

VII

Nor did the district court's approval of the settlement deny TURN due process. TURN argues that [**24] the district court did not afford it sufficient time to submit briefs opposing the proposed settlement.

HN18 District courts have "inherent power" to control their dockets. *Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992)*. Our review of such decisions is deferential; we will reverse a district court's litigation management decisions only if it abused its discretion, *see id.*, or if the procedures deprived the litigant of due process of law within the meaning of the *Fifth* or *Fourteenth Amendments*. *See Barona Group of Capitan Grande Band of Mission Indians v. Am. Mgmt. & Amusement, Inc., 824 F.2d 710, 721-22 (9th Cir. 1987), amended by 840 F.2d 1394, 1405-06 (9th Cir. 1988)*. Due process requires that a party affected by government action be given "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge, 424 U.S. 319, 333, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976)* (internal quotation marks and citation omitted). ***HN19*** In analyzing the constitutional sufficiency of notice, we must consider:

> first, the private interest that will be affected by the official action; second, [**25] the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's

> interest, including the function involved and the fiscal and administrative burdens [*808] that the additional or substitute procedural requirement would entail. *Id. at 335*.

Although the district court expedited the notice and hearing process in this case, TURN filed an extensive brief raising all of the salient issues. In turn, the district court required TURN's opponents to file their response brief on an expedited schedule, which they did. TURN does not quantify either the probable increased value of alternative procedures, or the risk of an erroneous deprivation of the interest through the procedures used. Indeed, TURN does not contend that it was prevented from presenting its case; its essential complaint is that the district court did not consider adequately the arguments that TURN made. However, that argument goes to the merits, not to procedural due process.

For the same reasons, TURN has not established prejudice. TURN has failed to demonstrate that the district [**26] court's scheduling order substantially prejudiced TURN's ability to present its arguments. *See U.S. v. Fitch, 472 F.2d 548, 549 n. 5 (9th Cir. 1973)*(rejecting challenge to contempt judgment based on insufficient notice where "appellants have shown no prejudice."); *Hoffman for and on Behalf of NLRB v. Beer Drivers & Salesmen's Local Union No. 888, 536 F.2d 1268, 1273 (9th Cir. 1976)* (rejecting due process claim based on "insufficient notice of hearing" because "there is no indication that the parties were not fully aware of the issues or were in any way deprived of a full opportunity to explore the issues of fact or be heard on the issues of law").

Given the totality of the circumstances of this case, we cannot say that the expedited briefing schedule deprived TURN of procedural due process.

VIII

Contrary to TURN's assertion, the district court did not violate the *Tenth Amendment* in approving the Stipulated Judgment. The application of federal preemption, as sought by SoCal Edison in its complaint, would not intrude on the rights reserved under the *Tenth Amendment*. Further, ***HN20*** "to say that nothing in [**27] the *Commerce Clause* justifies federal regulation of even the intrastate operations of public utilities misapprehends the proper role of the courts in assessing the validity of federal legislation promulgated under one of Congress' plenary powers." *FERC v. Mississippi, 456 U.S. 742, 753, 72 L. Ed. 2d 532, 102 S. Ct. 2126 (1982)*. "If Congress has the constitutional authority to enact legislation, then the pre-emption question is whether Congress intended to displace state law in that area, not whether the existence of state law forbade Congress from regulating." *United States v. Geiger, 263 F.3d 1034, 1040 (9th Cir. 2001)* (*citing Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 540-41, 150 L. Ed. 2d 532, 121 S. Ct. 2404 (2001)*).

The district court's approval of the Stipulated Judgment does not mandate state participation in the enforcement of a federal statutory scheme such as in *Printz v. United States, 521 U.S. 898, 138 L. Ed. 2d 914, 117 S. Ct. 2365 (1997)*, nor require a state legislature to adopt federal regulations such as in *New York v. United States, 505 U.S. 144, 120 L. Ed. 2d 120, 112 S. Ct. 2408 (1992)*. [**28] Rather, the judgment simply confirms a settlement of a valid federal preemption claim. ***HN21*** The *Tenth Amendment* cannot be used to bar enforcement of consensual judgments. *United States v. District of Columbia, 210 U.S. App. D.C. 87, 654 F.2d 802, 808 (D.C. Cir. 1981)*. In short, the district court had the power under Article III to approve a settlement over a suit alleging [*809] federal preemption, and did not unconstitutionally commandeer California's regulatory apparatus in doing so.

IX

In sum, none of the substantive arguments based on federal statutory or constitutional law compel

reversal of the district court's approval of the Stipulated Judgment. There is, however, a serious question of whether the agreement between the Commission and SoCal Edison violated state law, both in substance and in the procedure by which the Commission agreed to it. If so, then the Commission lacked capacity to consent to the Stipulated Judgment, and we would be required to vacate it as void. ***HN22*** State officials cannot enter into a federally-sanctioned consent decree beyond their authority under state law. *See Keith v. Volpe, 118 F.3d 1386, 1393 (9th Cir. 1997)* (consent decree could [**29] not be interpreted to supplant California Outdoor Advertising Act because state agency would not have had authority to agree to such a decree); *Wash. v. Penwell, 700 F.2d 570, 573 (9th Cir. 1983)* (vacating a consent decree that required the state of Oregon to fund a prisoners' legal services program because the state Attorney General acted beyond his authority and therefore "the consent decree was void to the extent that it exceeded defendants' authority").

A

On a substantive level, there is a serious question as to whether the Stipulated Judgment's rate-making terms violate *§ 368* of AB 1890. ***HN23*** *California Public Utilities Code § 368* directed the Commission to set rates "at levels equal to the ... rate schedules as of June 10, 1996," to reduce those levels for residential and small-commercial customers by ten percent, and to maintain those rates until the utility has fully recovered its stranded costs *or until March 31, 2002, whichever comes first. Cal. Pub. Util. Code § 368(a)* (emphasis added). *Section 368* explicitly states that the utility "shall be at risk for those costs not recovered during that time period." *Id.*

The Stipulated Judgment appears to violate [**30] *§ 368* in two respects. First, the settlement expressly maintains the rate-freeze beyond March 31, 2002, in violation of *§ 368*, and the settlement expressly does so for the purpose of allowing SoCal Edison to recover its past procurement costs. The contested language of the Stipulated Judgment reads as follows:

> The Parties hereby agree that during the Recovery Period [SoCal Edison] shall recover in retail electric rates its Procurement Related Obligations recorded in the PROACT [Account for Recovery of Procurement Related Obligations established pursuant to § 2.1(a) of the Agreement]. The Parties acknowledge that they each currently project that the maintenance of Settlement Rates will likely result in sufficient Surplus for [SoCal Edison] to recover substantially all of its unrecovered Procurement Related Obligations *prior to the end of 2003*.Stipulated Judgment, § 2.2, emphasis added. The agreement defines "Recovery Period" as:
>
> the period commencing September 1, 2001 and ending on the earlier of the date that [SoCal Edison] recovers all Procurement Related Obligations recorded in the PROACT *or December 31, 2005*. The Recovery Period includes [**31] the Rate Repayment Period.Stipulated Judgment, § 1.1(q), emphasis added. These provisions appear to violate *§ 368*, which clearly limits the utilities to March 31, 2002 and disallows SoCal Edison [*810] from applying collections past this date to prior procurement costs.

Second, the settlement also appears to violate *§ 368*'s rate-freeze guarantee that protects consumers from price increases during the transition to a competitive market. The Stipulated Judgment allows the SoCal Edison to "pocket" for itself the above-rate-freeze-level rates that the Commission adopted in 2001 solely in order to pay the state for wholesale power the California Department of Water Resources was procuring for the utilities. As a result, under the Stipulated Judgment, the

SoCal Edison will collect a "surcharge" rate that is above the rates in effect on June 10, 1996, in violation of § 368.

The testimony of the Commission President Loretta Lynch, in response to the California Legislature's query as to why the Commission did not agree to the SoCal Edison-Commission settlement months earlier, supports this conclusion. She explained as follows:

> MS. LYNCH: Well, actually the Commission is [**32] prevented under state law under 1890 from allowing that recovery, and what we did with the [SoCal Edison] settlement was essentially agree to a settlement that federal law trumped state law, but the Commission on its own could not trump state law. The Commission must follow state law.

We are not dissuaded by SoCal Edison's and the Commission's argument that, whatever restrictions § 368 may once have imposed on the Commission, subsequent legislative changes and Commission decisions have restored the Commission's traditional authority to permit utilities to recover their costs - specifically, those costs associated with its utility retained generation, which includes its nuclear power plants and contracts involving Qualifying Facilities - even after the AB 1890 rate freeze. Most notably, the Appellees cite Assembly Bill 6X ("AB 6X"), which in 2001 amended or deleted three provisions of AB 1890, which had previously provided for the transition from regulated status to unregulated status for utility generation.

However, AB 6X as well as Assembly Bill 1X ("AB 1X") were not intended to relieve the utilities of their regulatory bargain but rather to protect the state from further [**33] damage due to the utilities' imminent inability to meet their utility obligation of providing power to their customers. The Appellees' interpretation of AB 1X and AB 6X is contradicted by the fact that the legislature retained Cal. Pub. Util. Code §§ 367, 368(a), and ***HN24*** repeals by implication are "heavily disfavored." *See, e.g.,* NLRB v. Kolkka, 170 F.3d 937, 941 (9th Cir. 1999). A finding of implied repeal must be based on a finding that the legislative body actually formulated the intent to repeal the earlier enactment but somehow failed to carry out that intent. Kenai Peninsula Borough v. State of Alaska, 612 F.2d 1210, 1214 (9th Cir. 1980) ("There can be no implied repeal unless the intention of the legislative body to repeal is clear."). The legislative history here demonstrates no such intent. Moreover, there is nothing in the 2001 legislation that is inconsistent with the rate-freeze or with holding the utilities to the risk of not fully recovering stranded costs. Finally, both the Commission and SoCal Edison recognized, when AB 1X and AB 6X were enacted, that these acts left the utilities responsible for unrecovered stranded costs. Thus, on a substantive [**34] level, the Stipulated Judgment appears to violate state law.

B

On a procedural level, there is a serious question as to whether the Stipulated Judgment violates state laws, specifically those requiring open government and reasoned [*811] decisions reached upon an evidentiary record. It appears that the Commission adopted the agreement with SoCal Edison in violation of both the Bagley-Keene Open Meeting Act ("Bagley-Keene Act"), Cal. Gov't Code §§ 11120-11132.5, and § 454 of the Public Utilities Code.

First, the Stipulated Judgment seems to violate the Bagley-Keene Act because the parties approved it in a secret meeting. Section 11126(d)(1), in particular, requires that ***HN25*** "notwithstanding any other provision of law, any meeting of the Public Utilities Commission *at which the rates of entities under the commission's jurisdiction are changed* shall be open and public." Cal. Gov't

Code § 11126(d)(1) (emphasis added). The Stipulated Judgment, which extinguished ratepayers' refund rights, precluded a reduction in rates that were otherwise subject to reduction, and granted SoCal Edison significant concessions for years to come, changes rates such that the open meeting requirement of *§ 11126(d)(1)* [**35] is triggered.

SoCal Edison and the Commission argue that the Stipulated Judgment does not change existing rates. Rather, in their view, the agreement obligates the Commission to allow SoCal Edison to charge *existing* rates. But the provision of the agreement to which SoCal Edison cites merely defines the phrase "settlement rates" without saying anything about what the Commission is obligated to do. *See* Settlement Agreement, § 1.1(w).

The Commission has claimed that it could settle the litigation in a "closed session" pursuant to *section 11126(e)(1)* of the Government Code, which provides that:

> ***HN26*** nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session *to confer with, or receive advice from*, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.*Cal. Gov't Code § 11126(e)(1)* (emphasis added). However, *§ 11126(e)* ***HN27*** merely allows the agency to meet in closed session "to confer with, or receive advice from, its legal counsel regarding pending litigation" - not to take [**36] action, and certainly not to issue regulatory orders. *Id.*

Second, the Commission appears to have violated Public Utilities Code *§ 454* with its decision to extinguish ratepayer refund rights and to lock in higher rates, without a public hearing and without findings. *Section 454* provides that:

> ***HN28*** except as provided in Section 455 [which deals with rate schedules not resulting in a rate increase], no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, *except upon a showing before the commission and a finding by the commission that the new rate is justified.Cal. Pub. Util. Code § 454(a)* (emphasis added). ***HN29*** California case law also holds that the Commission must hold a hearing and issue findings before adopting an order that affects rates. *See Cal. Mfrs. Ass'n v. Pub. Utils. Comm'n, 24 Cal. 3d 251, 595 P.2d 98, 102, 155 Cal. Rptr. 664 (Cal. 1979)*(annulling the Commission rate-increase decisions for absence of supporting findings and evidence).

SoCal Edison and the Commission argued below that *§ 454* did not apply because the Commission was not changing rates but rather [**37] agreeing not to change rates. The Appellees make a similar argument on appeal; they maintain that *§ 454* applies only when a utility seeks to "increase" rates, not when a utility keeps existing rates in place, as they claim the Stipulated Judgment provides for.

[*812] However, this argument conforms neither to the text nor to the order or its result. First, as a textual matter, the SoCal Edison-Commission agreement does far more than just agree not to reduce rates. Under the Stipulated Judgment the Commission agrees not to penalize SoCal Edison for failing to meet the Commission's capital-structure requirements, not to "unreasonably withhold" consent to SoCal Edison's payment of dividends to shareholders, to allow SoCal Edison up to $ 900 million per year in rates for capital additions, to approve SoCal Edison compromising certain claims against wholesale-power sellers, and to announce that SoCal Edison may recover past costs that would not be recoverable under the TURN Accounting

Proposal adopted by the Commission. Each of these constitutes a "change" in SoCal Edison's rate.

Second, as an economic matter the agreement will result in huge changes in the rates SoCal Edison customers will [**38] pay. Before the entry of the Stipulated Judgment, any over-collection in rates was subject to refund under the Commission Decision 01-03-082. After the entry of the Judgment, it is not. TURN estimates that the SoCal Edison-Commission deal adds $ 3.3 billion to ratepayers' electric costs.

C

As we have noted, as a matter of federal law, state officials cannot enter into a federally-sanctioned consent decree beyond their authority under state law. In addition, ***HN30*** California agencies such as the Commission are explicitly prohibited by the state constitution from agreeing to be enjoined from enforcing state laws that have not been declared unconstitutional by an appellate court. *Article III, section 3.5, of the California Constitution* provides that:

> ***HN31*** an administrative agency, including an administrative agency created by the Constitution ... has no power ... (c) to declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations. *CAL. CONST. art. III,* [**39] *§ 3.5*. In assenting to the judgment here, the Commission ("an administrative agency created by the Constitution," *see*CAL. CONST. art. XII) was refusing to enforce both the substantive limits on the utilities' transition cost recovery and the procedures required of the Commission when making rate orders. By stipulating to the judgment, the Commission agreed not only to exempt SoCal Edison from AB 1890 but also to be enjoined from enforcing AB 1890. Thus, assuming our interpretation of California state law is correct, the Stipulated Judgment must be vacated as void.

D

However, ours is not the final word on California state law. ***HN32*** Federal courts are bound by the pronouncements of the state's highest court on applicable state law. *Davis v. Metro Productions, Inc., 885 F.2d 515, 524 (9th Cir. 1989)*. However, the decisions of California appellate courts provide no controlling precedent on these issues of state law; thus, this case satisfies the criteria for certification. *See* Cal. Rules of Court 29.5(a)(3). Resolution of the state law issues involved in this litigation will have a substantial effect on California law and the citizens of California. Accordingly, [**40] principles of comity suggest that those decisions should be made by California courts. Thus, by separate order accompanying this decision, we certify these issues of state law to the Supreme Court of California and respectfully [*813] request the Court to accept certification.

X

We affirm the judgment of the district court in all respects, except for the state law claims identified in section IX. We respectfully certify those issues to the Supreme Court of California. We stay further proceedings in this case pending a response from the Supreme Court of California on the request for certification.

AFFIRMED IN PART; CERTIFIED IN PART.

EXHIBIT 2

From: Brown, Carol A.
Sent: 1/13/2014 3:06:18 PM
To: Cherry, Brian K (/O=PG&E/OU=CORPORATE/CN=RECIPIENTS/CN=BKC7)
Cc:
Bcc:
Subject: RE: GTS

He told me if Wong was the judge it would not matter who the assigned commissioner was - he is just overwhelmed with big cases and does not want this one

-----Original Message-----
From: Cherry, Brian K [mailto:BKC7@pge.com]
Sent: Monday, January 13, 2014 2:49 PM
To: Brown, Carol A.
Subject: Re: GTS

Can you wait ? Florio said he would take it if Wong was ALJ.

Sent from my iPad

On Jan 13, 2014, at 2:35 PM, "Brown, Carol A." <carol.brown@cpuc.ca.gov<mailto:carol.brown@cpuc.ca.gov>> wrote:

Hello: it looks like it will be assigned to Peterman - Florio is way too busy and wants to mentor Peterman through the process. Peevey is OK with it - but wanted you to know the assignment is based on Florio's request (he does have SB and SONGS)

From: Brown, Carol A.
Sent: 1/15/2014 8:18:12 AM
To: Cherry, Brian K (/O=PG&E/OU=CORPORATE/CN=RECIPIENTS/CN=BKC7)
Cc:
Bcc:
Subject: RE:

It's in the works

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Cherry, Brian K"
Date:01/14/2014 5:26 PM (GMT-08:00)
To: "Brown, Carol A."
Subject:

As long as ALJ Wong has the case (which Florio confirms), we are ok with what Mike wants to do on the assignment. Can you get it done ASAP please ?.

From: Cherry, Brian K
Sent: 1/17/2014 3:52:07 PM
To: Brown, Carol A. (carol.brown@cpuc.ca.gov)
Cc:
Bcc:
Subject: RE: GT& S Case Assigned

Thanks.....

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Friday, January 17, 2014 3:52 PM
To: Cherry, Brian K
Subject: RE: GT& S Case Assigned

Take a deep breath - I am working on it

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Cherry, Brian K"
Date:01/17/2014 11:49 AM (GMT-06:00)
To: "Brown, Carol A."
Subject: RE: GT& S Case Assigned

Please, please check. This is a major problem for us. Florio said he would agree to help Peterman if Wong got it.

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Friday, January 17, 2014 9:48 AM
To: Cherry, Brian K
Subject: RE: GT& S Case Assigned

I can see if anything can be done

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Cherry, Brian K"
Date:01/17/2014 11:38 AM (GMT-06:00)
To: "Brown, Carol A."
Subject: RE: GT& S Case Assigned

There is a huge world of difference between Long and Wong. I'm not sure we could get someone worse. This is a very important case that is now in jeopardy.

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Friday, January 17, 2014 9:33 AM
To: Cherry, Brian K
Subject: RE: GT& S Case Assigned

I was told it would be Wong
We don't control judge assignments.
Think carefully before you bounce him -you could get some one worse.

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Cherry, Brian K"
Date:01/17/2014 11:19 AM (GMT-06:00)
To: "Brown, Carol A."
Subject: RE: GT& S Case Assigned

We will bounce him and I don't want to do that.

-----Original Message-----
From: Cherry, Brian K
Sent: Friday, January 17, 2014 9:17 AM
To: Brown, Carol A. (carol.brown@cpuc.ca.gov)
Subject: FW: GT& S Case Assigned

Is this right ? Judge Long ? What happened to Wong ?

> On Jan 17, 2014, at 8:42 AM, "Cotroneo, Eileen" <EFM2@pge.com> wrote:
>
> The GTS case assignment appeared on the daily calendar - assigned to ALJ Long and Commissioner Peterman. I will issue a note to our team.
>
> Eileen
>
> Eileen Cotroneo
> (415)973-2751 Office
> (415)260-0555 Mobile

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

From: Cherry, Brian K
Sent: 1/17/2014 9:55:00 AM
To: Michael R. Peevey (michael.peevey@cpuc.ca.gov) (michael.peevey@cpuc.ca.gov)
Cc:
Bcc:
Subject: FW: GT& S Case Assigned

This is a problem. Hope Carol can fix it.

From: Cherry, Brian K
Sent: Friday, January 17, 2014 9:49 AM
To: 'Brown, Carol A.'
Subject: RE: GT& S Case Assigned

Please, please check. This is a major problem for us. Florio said he would agree to help Peterman if Wong got it.

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Friday, January 17, 2014 9:48 AM
To: Cherry, Brian K
Subject: RE: GT& S Case Assigned

I can see if anything can be done

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Cherry, Brian K"
Date:01/17/2014 11:38 AM (GMT-06:00)
To: "Brown, Carol A."
Subject: RE: GT& S Case Assigned

There is a huge world of difference between Long and Wong. I'm not sure we could get someone worse. This is a very important case that is now in jeopardy.

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Friday, January 17, 2014 9:33 AM
To: Cherry, Brian K
Subject: RE: GT& S Case Assigned

I was told it would be Wong
We don't control judge assignments.
Think carefully before you bounce him -you could get some one worse.

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Cherry, Brian K"
Date:01/17/2014 11:19 AM (GMT-06:00)
To: "Brown, Carol A."
Subject: RE: GT& S Case Assigned

We will bounce him and I don't want to do that.

-----Original Message-----
From: Cherry, Brian K

Sent: Friday, January 17, 2014 9:17 AM
To: Brown, Carol A. (carol.brown@cpuc.ca.gov)
Subject: FW: GT& S Case Assigned

Is this right ? Judge Long ? What happened to Wong ?

> On Jan 17, 2014, at 8:42 AM, "Cotroneo, Eileen" <EFM2@pge.com> wrote:
>
> The GTS case assignment appeared on the daily calendar - assigned to ALJ Long and Commissioner Peterman. I will issue a note to our team.
>
> Eileen
>
> Eileen Cotroneo
> (415)973-2751 Office
> (415)260-0555 Mobile

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

From: Cherry, Brian K
Sent: 1/17/2014 1:35:31 PM
To: Florio, Michel Peter (MichelPeter.Florio@cpuc.ca.gov)
Cc:
Bcc:
Subject: RE: GT& S Case Assigned

We could get Bushey...

From: Florio, Michel Peter [mailto:MichelPeter.Florio@cpuc.ca.gov]
Sent: Friday, January 17, 2014 1:18 PM
To: Cherry, Brian K
Subject: RE: GT& S Case Assigned

I'm horrified! He still has not produced a PD for Sempra's PSEP/TCAP after much prodding and cajoling-- we are considering asking that another ALJ be assigned to finish for him. Plus he may retire any day, and uses that as a threat to deflect any direction. Sepideh spoke to John Wong and he said he's just too overloaded, which we didn't know. John is a true workhorse so it must be true. If I were you I would bump him-- you really can't do any worse! Even a brand new ALJ would at least work hard and try -- you'll get neither from him... Keep me posted and I'll do what I can on this end.....

Sent from my Verizon Wireless 4G LTE Smartphone

-------- Original message --------
From: "Cherry, Brian K"
Date:01/17/2014 9:26 AM (GMT-08:00)
To: "Florio, Michel Peter"
Subject: FW: GT& S Case Assigned

If I don't bounce him, I will need an alternate.

> On Jan 17, 2014, at 8:42 AM, "Cotroneo, Eileen" <EFM2@pge.com> wrote:
>
> The GTS case assignment appeared on the daily calendar - assigned to ALJ Long and Commissioner Peterman. I will issue a note to our team.
>
> Eileen
>
> Eileen Cotroneo
> (415)973-2751 Office
> (415)260-0555 Mobile

From: Brown, Carol A.
Sent: 1/22/2014 2:18:06 PM
To: Cherry, Brian K (/O=PG&E/OU=CORPORATE/CN=RECIPIENTS/CN=BKC7)
Cc:
Bcc:
Subject: RE: Re:

Wong was never promised by Judge Clopton – and she is in charge of the judges!

From: Cherry, Brian K [mailto:BKC7@pge.com]
Sent: Wednesday, January 22, 2014 2:17 PM
To: Brown, Carol A.
Subject: RE: RE:

No. It just isn't what was understood.

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Wednesday, January 22, 2014 1:53 PM
To: Cherry, Brian K
Subject: RE: RE:

What can I say? Would you rather have Long?

From: Cherry, Brian K [mailto:BKC7@pge.com]
Sent: Wednesday, January 22, 2014 1:47 PM
To: Brown, Carol A.
Subject: RE: RE:

Let's just say she has a history of being very hard on us. You may recall the Billing OII where we got screwed royally…

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Wednesday, January 22, 2014 1:40 PM
To: Cherry, Brian K
Subject: RE: RE:

I can't control everything! Wong is overbooked and Julie knows what she is doing and is not too busy – she just finished burning up vacation -

---

From: Cherry, Brian K [mailto:BKC7@pge.com]
Sent: Wednesday, January 22, 2014 1:38 PM
To: Brown, Carol A.
Subject: RE: RE:

Julie Halligan ?

Thanks for helping Carol, but I think Tom is going to have a harder time on HECA internally as a result of not getting Wong.

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Wednesday, January 22, 2014 1:35 PM
To: Cherry, Brian K
Cc: Florio, Michel Peter; Khosrowjah, Sepideh
Subject: RE: RE:

The judge division kindly re-visited its assignment and the matter will now be under the guidance of Judge Julie Halligan who is excited about the assignment and it will allow her to use her vast gas pipeline experience! This notice has not been issued – so do not

broadcast too broadly!

From: Cherry, Brian K [mailto:BKC7@pge.com]
Sent: Wednesday, January 22, 2014 9:29 AM
To: Brown, Carol A.
Subject: RE: RE:

Please. Thanks. We are nearing the 10 day pre-emptory limit.

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Wednesday, January 22, 2014 5:43 AM
To: Cherry, Brian K
Subject: RE:

I will check

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Cherry, Brian K"
Date:01/21/2014 4:58 PM (GMT-08:00)
To: "Brown, Carol A."
Subject:

Any progress ?

Brian K. Cherry
PG&E Company
VP, Regulatory Relations
77 Beale Street
San Francisco, CA. 94105
(415) 973-4977

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

From: Florio, Michel Peter
Sent: 1/22/2014 5:44:18 PM
To: Cherry, Brian K (/O=PG&E/OU=CORPORATE/CN=RECIPIENTS/CN=BKC7)
Cc:
Bcc:
Subject: RE: Letter from House Energy & Commerce Democratic Women to NARUC

The only one that I know for sure is Core Aggregation Pipeline capacity, which is my case. But there must be others. John is a workhorse and would never shirk an interesting assignment.

From: Cherry, Brian K [mailto:BKC7@pge.com]
Sent: Wednesday, January 22, 2014 5:24 PM
To: Florio, Michel Peter
Subject: RE: Letter from House Energy & Commerce Democratic Women to NARUC

Yes indeed. Do you know what cases Wong is working on that is keeping him so busy ?

From: Florio, Michel Peter [mailto:MichelPeter.Florio@cpuc.ca.gov]
Sent: Wednesday, January 22, 2014 5:23 PM
To: Cherry, Brian K
Subject: RE: Letter from House Energy & Commerce Democratic Women to NARUC

Really helps to have female officers, eh? My how the world has changed . . . . . .

From: Cherry, Brian K [mailto:BKC7@pge.com]
Sent: Wednesday, January 22, 2014 9:41 AM
To: Florio, Michel Peter
Subject: FW: Letter from House Energy & Commerce Democratic Women to NARUC

Thought you might enjoy this.

From: Lavinson, Melissa A
Sent: Saturday, January 18, 2014 6:06 AM
To: Williams, Geisha; Burt, Helen; Austin, Karen
Cc: Pruett, Greg S; Bottorff, Thomas E; Cherry, Brian K; Malnight, Steven; Foster, Christopher
Subject: Letter from House Energy & Commerce Democratic Women to NARUC

Geisha, Helen and Karen,

Discussion of letter from Members of Congress to NARUC dated January 17, 2014 redacted, unrelated to ex parte issue.
Referenced attachment provided.

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

From: Cherry, Brian K
Sent: 1/22/2014 5:28:35 PM
To: Brown, Carol A. (carol.brown@cpuc.ca.gov)
Cc:
Bcc:
Subject: RE: Re:

No. Hobson's choice.

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Wednesday, January 22, 2014 1:53 PM
To: Cherry, Brian K
Subject: RE: RE:

What can I say? Would you rather have Long?

From: Cherry, Brian K [mailto:BKC7@pge.com]
Sent: Wednesday, January 22, 2014 1:47 PM
To: Brown, Carol A.
Subject: RE: RE:

Let's just say she has a history of being very hard on us. You may recall the Billing OII where we got screwed royally…

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Wednesday, January 22, 2014 1:40 PM
To: Cherry, Brian K
Subject: RE: RE:

I can't control everything! Wong is overbooked and Julie knows what she is doing and is not too busy – she just finished burning up vacation -

---

From: Cherry, Brian K [mailto:BKC7@pge.com]
Sent: Wednesday, January 22, 2014 1:38 PM
To: Brown, Carol A.
Subject: RE: RE:

Julie Halligan ?

Thanks for helping Carol, but I think Tom is going to have a harder time on HECA internally as a result of not getting Wong.

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Wednesday, January 22, 2014 1:35 PM
To: Cherry, Brian K
Cc: Florio, Michel Peter; Khosrowjah, Sepideh
Subject: RE: RE:

The judge division kindly re-visited its assignment and the matter will now be under the guidance of Judge Julie Halligan who is excited about the assignment and it will allow her to use her vast gas pipeline experience! This notice has not been issued – so do not broadcast too broadly!

From: Cherry, Brian K [mailto:BKC7@pge.com]
Sent: Wednesday, January 22, 2014 9:29 AM
To: Brown, Carol A.
Subject: RE: RE:

Please. Thanks. We are nearing the 10 day pre-emptory limit.

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Wednesday, January 22, 2014 5:43 AM
To: Cherry, Brian K
Subject: RE:

I will check

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Cherry, Brian K"
Date:01/21/2014 4:58 PM (GMT-08:00)
To: "Brown, Carol A."
Subject:

Any progress ?

Brian K. Cherry
PG&E Company
VP, Regulatory Relations
77 Beale Street
San Francisco, CA. 94105
(415) 973-4977

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

PG&E is committed to protecting our customers' privacy.
To learn more, please visit http://www.pge.com/about/company/privacy/customer/

From: Cherry, Brian K
Sent: 1/24/2014 2:54:13 PM
To: Brown, Carol A. (carol.brown@cpuc.ca.gov)
Cc:
Bcc:
Subject: RE:

You will own me if you do. ;-)

From: Brown, Carol A. [mailto:carol.brown@cpuc.ca.gov]
Sent: Friday, January 24, 2014 2:53 PM
To: Cherry, Brian K
Subject: RE:

Working on it – I hope all the mess is worth it

From: Cherry, Brian K [mailto:BKC7@pge.com]
Sent: Friday, January 24, 2014 2:25 PM
To: Brown, Carol A.
Subject:

Any news on the reassignment ?

From: Cherry, Brian K
Sent: 1/27/2014 3:38:14 PM
To: Brown, Carol A. (carol.brown@cpuc.ca.gov)
Cc:
Bcc:
Subject: RE: OK

Thank you. Thank you. Thank you.

Brian K. Cherry
PG&E Company
VP, Regulatory Relations
77 Beale Street
San Francisco, CA. 94105
(415) 973-4977

On Jan 27, 2014, at 3:36 PM, "Brown, Carol A." <carol.brown@cpuc.ca.gov> wrote:

> Wong and peterman

From: Cherry, Brian K
Sent: 1/29/2014 6:59:35 PM
To: Florio, Michel Peter (MichelPeter.Florio@cpuc.ca.gov)
Cc:
Bcc:
Subject: RE: CPUC-FPSS Subscription: 'PG&E GT&S'

Yes. Now you can help Carla in a way that works with a seasoned ALJ.

Sent from my iPad

On Jan 29, 2014, at 6:52 PM, "Florio, Michel Peter" <MichelPeter.Florio@cpuc.ca.gov> wrote:

I trust you're happier now?? Not sure how this came about, but John is the best . . . .

From: fpss-no-reply@cpuc.ca.gov [mailto:fpss-no-reply@cpuc.ca.gov]
Sent: Wednesday, January 29, 2014 5:52 PM
To: Florio, Michel Peter
Subject: CPUC-FPSS Subscription: 'PG&E GT&S'

Below are the documents you have subscribed to using the California Public Utilities Commission Subscription Service. Details of this subscription are listed below the document links.

Proceeding #	Document Type	Title	Links	Publish Date/Tim
A1312012	Notice	Notice filed by CALJ/CLOPTON/CPUC on 01/29/2014 Conf# 71591 (Certificate Of Service)	PDF (229 KB)	1/29/2014 12:03:21 PM
A1312012	Notice	Notice filed by CALJ/CLOPTON/CPUC on 01/29/2014 Conf# 71591	PDF (103 KB)	1/29/2014 12:03:20 PM

Subscription Details:
Subscription Name: PG&E GT&S
Subscription Type: Specific Proceeding
Proceeding Number: A1312012
Delivery Frequency: Daily
Email Address: mf1@cpuc.ca.gov

==========

Use the links below to manage your subscription:

To delete this subscription go to: Delete Subscription

To manage your subscription service go to: Manage Subscriptions

For help with the system go to: Help

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2015-2017 (U 39 G)	Application 13-12-012 (Filed December 19, 2013)
And Related Matter.	Investigation 14-06-016

PACIFIC GAS AND ELECTRIC COMPANY'S NOTICE OF IMPROPER EX PARTE COMMUNICATIONS

MARTIN S. SCHENKER
COOLEY LLP
101 California Street
5th Floor
San Francisco, CA 94111-5800
Phone: (415) 693-2154
Fax: (415) 693-2222
E-Mail: mschenker@cooley.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: September 15, 2014

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2015-2017 (U 39 G)	Application 13-12-012 (Filed December 19, 2013)
And Related Matter.	Investigation 14-06-016

PACIFIC GAS AND ELECTRIC COMPANY'S NOTICE OF IMPROPER EX PARTE COMMUNICATIONS

Pacific Gas and Electric Company ("PG&E") hereby provides notification that PG&E has become aware of ex parte communications between PG&E and Commission personnel concerning this proceeding. PG&E believes that these communications violated the Commission's Rules of Practice and Procedure governing ex parte communications.

The written communications at issue are dated from January 9, 2014 to January 29, 2014. The subject matter of the communications is the assignment of this proceeding to particular Administrative Law Judges and Commissioners. Written ex parte communications on this subject matter of which PG&E is currently aware are included in Attachment A of this notice. PG&E believes that oral ex parte communications concerning the same topic occurred during this same time period.

PG&E cautions that its evaluation of the facts and circumstances surrounding these communications is ongoing. PG&E will provide notice in the event additional ex parte communications are identified.

The undersigned is counsel in this proceeding only for purposes of representing PG&E on issues related to these ex parte communications.

Respectfully Submitted,

MARTIN S. SCHENKER

By: */s/ Martin S. Schenker*
MARTIN S. SCHENKER

Cooley LLP
101 California Street
5th Floor
San Francisco, CA 94111-5800
Phone: (415) 693-2154
Fax: (415) 693-2222
E-Mail: mschenker@cooley.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: September 15, 2014

ATTACHMENT A

From: Cherry, Brian K
Sent: 1/9/2014 10:25:43 AM
To: Brown, Carol A. (carol.brown@cpuc.ca.gov) (carol.brown@cpuc.ca.gov)
Cc:
Bcc:
Subject: FW: GT&S Rate Case

Just wondering....

From: Horner, Trina
Sent: Thursday, January 09, 2014 10:25 AM
To: Cherry, Brian K
Subject: RE: GT&S Rate Case

No. have you heard anything?

From: Cherry, Brian K
Sent: Thursday, January 09, 2014 9:42 AM
To: Horner, Trina
Subject: GT&S Rate Case

No GT&S Assigned Commissioner and ALJ yet ?

From: Cherry, Brian K
Sent: 1/13/2014 2:48:56 PM
To: Brown, Carol A. (carol.brown@cpuc.ca.gov)
Cc:
Bcc:
Subject: RE: GTS

That will be a problem.

Sent from my iPad

On Jan 13, 2014, at 2:35 PM, "Brown, Carol A." <carol.brown@cpuc.ca.gov> wrote:

> Hello: it looks like it will be assigned to Peterman – Florio is way too busy and wants to mentor Peterman through the process. Peevey is OK with it – but wanted you to know the assignment is based on Florio's request (he does have SB and SONGS)

EXHIBIT 3

Mia Severson

From: Mia Severson <mseverson@amslawyers.com>
Sent: Wednesday, September 17, 2014 8:05 AM
To: 'news@cpuc.ca.gov'; 'public.advisor@cpuc.ca.gov'
Cc: 'mseverson@amslawyers.com'
Subject: CPUC - Public records request re Peevey, Florio and SCE

Greetings,
This is a request for records pursuant to the California Public Records Act for the following records:

- **All documents showing communications between Commissioner Peevey or his staff and anyone employed with, or representing Southern California Edison or its lawyers, including emails, letters, faxes, phone messages, texts for the period of 2005 through present**
- **All documents showing communications between Carol and anyone employed with or representing Southern California Edison or its lawyers, including emails, letters, faxes, phone messages, texts for the period of 2005 through present**
- **All documents showing communications between Commissioner Florio or his staff and anyone employed with or representing Southern California Edison or its lawyers, including emails, letters, faxes, phone messages, texts**

Maria "Mia" Severson, Esq.
Aguirre & Severson LLP
501 West Broadway, Ste. 1050
San Diego, CA 92101
Tel. 619.876.5364
Fax 619.876-5368
Cell 858-602-8155

Mia Severson

From: Alviar, Janet <janet.alviar@cpuc.ca.gov>
Sent: Wednesday, October 08, 2014 10:42 AM
To: 'Mia Severson'
Cc: Reiger, J. Jason; Koltz, Jonathan; Reynolds, John; 'Mike Aguirre'
Subject: RE: Response to your Public Records Request re (PRA #1262) Peevey, Florio and SCE Communications

Thank you for your email regarding status of when you can expect the requested documents regarding the above matter. At this date we do not have a specific date by which time we estimate to have a full response. However, I assure you we take our responsibilities under the Public Records Act seriously and are diligently working on gathering and reviewing the relevant records. We will provide a response to you as soon as we are able. We will also work to provide rolling partial responses to you as soon as they become available, if you should so desire.

Sincerely,

Janet V. Alviar

From: Mia Severson [mailto:mseverson@amslawyers.com]
Sent: Tuesday, October 07, 2014 6:12 PM
To: Alviar, Janet
Cc: Reiger, J. Jason; Koltz, Jonathan; Reynolds, John; 'Mike Aguirre'; mseverson@amslawyers.com
Subject: RE: Response to your Public Records Request re (PRA #1262) Peevey, Florio and SCE Communications

Greetings,
It has been two weeks since the letter responding to my Public Records Act request.
Can you please advise of (1) the status of the provision of the records, i.e., how many have been gathered, etc., and (2) when I can expect the requested documents?
Thank you.

Maria "Mia" Severson, Esq.
Aguirre & Severson LLP
501 West Broadway, Ste. 1050
San Diego, CA 92101
Tel. 619.876.5364
Fax 619.876-5368
Cell 858-602-8155

From: Alviar, Janet [mailto:janet.alviar@cpuc.ca.gov]
Sent: Tuesday, September 23, 2014 4:14 PM
To: 'mseverson@amslawyers.com'
Cc: Reiger, J. Jason; Koltz, Jonathan; Reynolds, John
Subject: Response to your Public Records Request re (PRA #1262) Peevey, Florio and SCE Communications

Good Afternoon Ms. Severson:

Attached please find our response letter to your public records request re above matter. If problems occur in opening attachment, please let me know.

Thank you,

Janet V. Alviar
Legal Analyst

STATE OF CALIFORNIA EDMUND G. BROWN, JR. *Governor*

PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298
ID 94-3031353

September 23, 2014

VIA ELECTRONIC MAIL

Maria "Mia" Severson, Esq.
Aguirre & Severson LLP
mseverson@amslawyers.com

Re: Public Records Request
CPUC Reference No.: PRA #01262

Dear Ms. Severson:

You ask the California Public Utilities Commission (Commission) to provide you a copy of the following:

- any and all communications between the Commissioner Peevey or his staff and everyone employed with, or representing Southern California Edison or its lawyers, including emails, letters, faxes, phone messages, texts for the period of 2005 through present
- All documents showing communications between Carol and anyone employed with or representing Southern California Edison or its lawyers, including emails, letters, faxes, phone messages, texts for the period of 2005 through present
- All documents showing communications between Commissioner Florio or his staff and anyone employed with or representing Southern California Edison or its lawyers, including emails, letters, faxes, phone messages, texts

The Commission's staff has already begun the process of searching for records responsive to your request; however, it will take a considerable amount of Commission staff time to properly comply with your request. Pursuant to Cal. Gov't Code § 6253, *et seq.*, I'm informing you that the Commission staff will need additional time in order to properly respond to your request.

Please refer to PRA #01262 in all of your communications with the Commission regarding the above-referenced matter.

Very truly yours,

Jason Reiger
Staff Counsel

Mia Severson

From: Mia Severson <mseverson@amslawyers.com>
Sent: Monday, November 03, 2014 9:08 AM
To: 'Alviar, Janet'
Subject: CPUC - Status of Response to Records Request (PRA #1262)

Thank you for the response to PRA #1298.

Can you let me know the date on which I can expect the Response to my Public Records Request re (PRA #1262) Peevey, Florio and SCE Communications sent to the CPUC in September?
Thank you.

Maria "Mia" Severson, Esq.
Aguirre & Severson LLP
501 West Broadway, Ste. 1050
San Diego, CA 92101
Tel. 619.876.5364
Fax 619.876-5368
Cell 858-602-8155