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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 CITIZENS OVERSIGHT, INC., a
12 Delaware non-profit corporation;
13 RUTH HENRICKS, an individual;
14 NICOLE MURRAY RAMIREZ, an
15 individual; NIEL LYNCH, an
16 individual; HUGH MOORE, an
17 individual; DAVID KEELER; an
18 individual; ROGER JOHNSON, an
19 individual; on behalf of themselves
20 and a class of others similarly
21 situated,

22 Plaintiffs,

23 v.

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

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF***

*This errata corrects paragraph 67. No other changes have been made.

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NATURE OF THE ACTION 1

NEW STEAM GENERATORS FAILED
IN ONE YEAR (39 YEARS TOO SOON) 4

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CLAIMS FOR RELIEF 23

FIRST CLAIM FOR RELIEF 23
(Declaration of Taking Without Just Compensation
and Injunction Thereon)
Against CPUC, SCE

PRAYER FOR RELIEF 25

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

12 **NATURE OF THE ACTION**

13
14 1. The case arises out of a failed project to install four new steam
15 generators at San Onofre in North County, San Diego. The project failed.

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

22 3. By making customers pay for the failed steam generators and shuttered
23 plant, the CPUC and SCE are taking customers’ private property without just
24 compensation. Defendants are forcing charges on plaintiffs for the failed steam
25 generator project and the defunct plant. The billing to Plaintiffs continued, even
26 after the generators are cold and the plant is closed, and not used or useful. The
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1 taking without just compensation started in January 2012, the month the generators
2 died and the plant stopped producing electricity.

3 4. The only way the CPUC could force customers to pay for the failed
4 generators and closed plant would be with a showing under Cal. Pub. Util. Code §
5 451 that SCE acted reasonably in obtaining the generators. SCE and the CPUC did
6 not attempt to make such a showing for good reason: Substantial evidence exists to
7 show SCE did not act reasonably when it obtained and deployed the steam
8 generators. For example, SCE obtained and deployed the new steam generators
9 without a safety license amendment from the Nuclear Regulatory Commission
10 (NRC). Two engineers who worked on the steam generator project, Buguslaw
11 Olech (SCE) and Tomoyuki Inoue of Mitsubishi Heavy Industries (MHI), admitted
12 avoiding of a safety license amendment was an SCE directive.

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

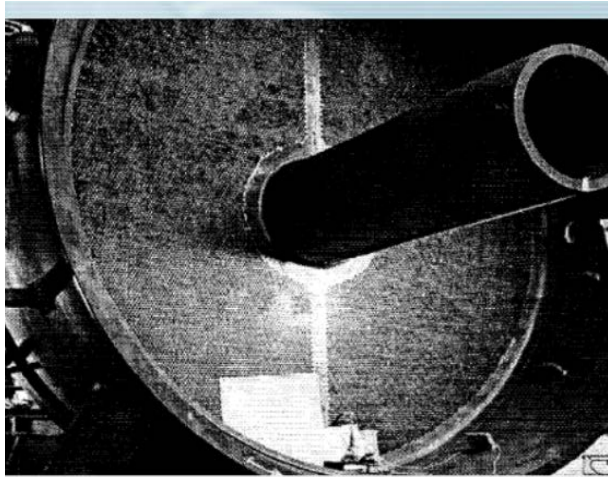
20 6. MHI has admitted that the new steam generators produce higher void
21 fraction. They also admitted that the Anti-Vibration Bar design team eschewed
22 changes to address the problem in order to avoid an NRC review under 15 U.S.C. §
23 50.90. Under the new design, SCE added 4% more center tubes which increased
24 the void fraction in the “U-bend” region of the generators. Hot steam at the U-bend
25 region was a substantial factor in causing the new steam generators to fail.

26 7. In January 2012, the same month the steam generators failed, the two
27 engineers published an article in *Nuclear Engineering International* with a diagram
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1 of the new steam generators showing substantial changes from the old steam
2 generators, with significant safety implications. The *sine qua non* criteria for
3 obtaining a safety license permit under 15 U.S.C. § 50.59 are changes affecting
4 safety.

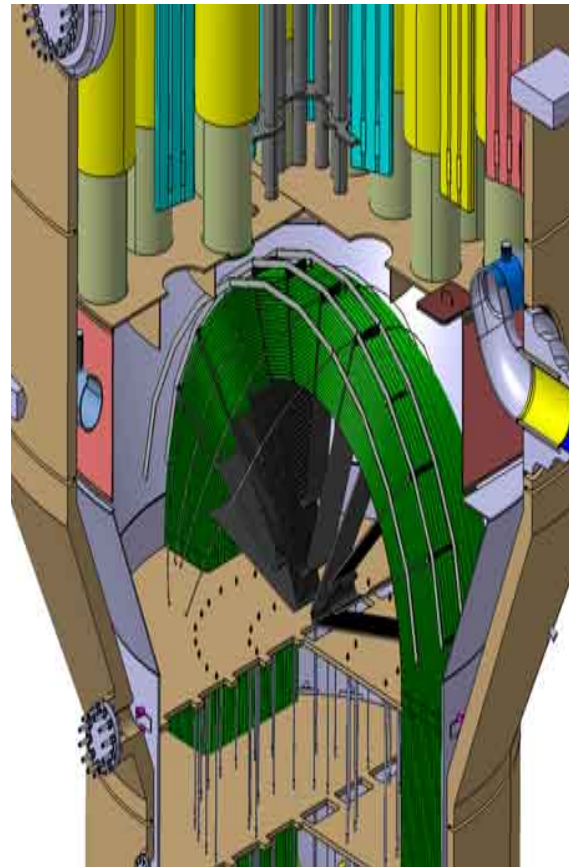
5 8. The new design adopted for the new steam generators was materially
6 different from the old steam generators. The new version raised serious safety
7 issues which went unresolved, and eventually caused the generators to fail. The
8 stay cylinders were removed, the “egg crate” protection was eliminated,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

10 **STAY CYLINDERS WERE REMANDED ELIMINATED**



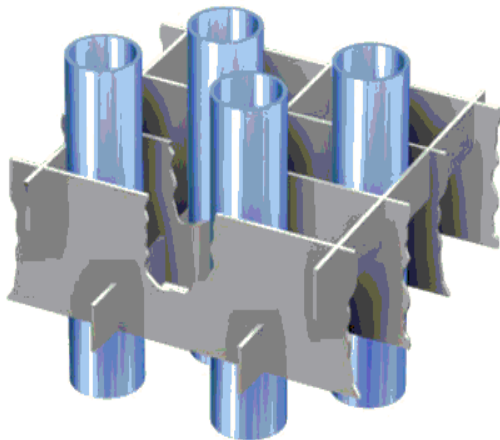
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**4% MORE TUBES ADDED AT
THE CENTER**



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**NO EGG CRATE TUBE PROTECTORS
WERE INSTALLED**



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

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

9 12. "It is clear that somewhere along the line [the new steam generators]
10 went from conceptual design to detailed design to fabrication to testing to
11 installation to operation, one or more errors was made,²" according to the CPUC's
12 own expert consultant, Robert J. Budnitz, Ph.D. SCE evaded—and the CPUC
13 refused to follow—the plan Dr. Budnitz provided for getting at the truth. The
14 CPUC obstructed the investigation and did not permit Dr. Budnitz to complete the
15 work plan under his CPUC contract in which he proposed to determine: (1) What
16 error(s) led to the San Onofre SGs tube failure(s)?; (2) At what stage were those
17 errors made?; (3) Who made those errors; (4) What might have been done, and by
18 whom, and at what stage, to have averted those errors?; (5) What arrangements in
19 place elsewhere, technical or administrative or both, that were successful in
20 averting these errors somehow didn't work adequately for the SONGS RSGs?

21 13. Mr. Peevey as CPUC President and Mr. Florio as the Commissioner
22 assigned to the new generator proceedings have worked to thwart any investigation
23 or determination of whether SCE was responsible for the failure and outage. In
24 June 2012 through October 2012, Mr. Florio and Mr. Peevey kept a CPUC review
25 of SCE's of the failed steam generator project off the CPUC public agenda. In
26 January 2013, Peevey and Florio issued CPUC orders stalling a review of the issue
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² Underline appears in original.

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

4 14. In this action, plaintiffs assert their rights under the Fifth Amendment
5 of the United States to be free of the CPUC's and SCE's taking of the private
6 property of customers in the form of monthly bills for the costs of the idle
7 generators and plant. Plaintiffs bring this action on behalf of themselves and the
8 17,400,000 customers who are similarly situated.

9 **JURISDICTION AND VENUE**

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11 15. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§
12 1331, 1337 and 1343; and 28 U.S.C. § 2201.

13 16. The parties acknowledge jurisdiction. (*S. Cal. Edison Co. v. Lynch*,
14 307 F. 3d 794 (9th Cir. 2002). (Exhibit 1)

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

17 **THE PARTIES**

18 **PLAINTIFFS**

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

24 19. Plaintiff Ruth Henricks is a resident of the City and County of San
25 Diego, California. Defendants SCE and the CPUC have and are taking Ms.
26 Henricks' property without just compensation in the form of payments on monthly
27 bills to pay for the 4 new defective steam generators at San Onofre.
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1 20. Plaintiff Nicole Murray Ramirez is a resident of the County of San
2 Diego, State of California. Defendants SCE and the CPUC have and are taking
3 Nicole Murray Ramirez' property without just compensation in the form of
4 payments on monthly bills to pay for the 4 new defective steam generators at San
5 Onofre.

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

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

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

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

24 25. Plaintiff Roger Johnson is currently a resident of the City of San
25 Clemente, County of Orange, California. Defendants SCE and the CPUC have and
26 are taking Mr. Johnson's property without just compensation in the form of
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1 payments on monthly bills to pay for the 4 new defective steam generators at San
2 Onofre.

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

7 **CLASS ALLEGATIONS**

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9 27. Plaintiffs bring this action under Federal Rule of Civil Procedure Rule
10 23, on behalf of all persons or entities who, after January 2012 were charged for the
11 costs of the failed generator project at San Onofre and for the cost of the nuclear
12 plant after it was idled by the failure of the steam generators.

13 28. The requirements of Rule 23(a) are satisfied. There are over
14 17,400,000 customers that are members of the class. The class members are so
15 numerous that joinder of all members is impracticable.

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

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

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

- 1
- Whether the CPUC and SCE illegally exacted class member plaintiffs' property by forcing class members to pay for the defective generators and closed plant.
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5 31. Plaintiffs' claims are typical of those of other class members. The
6 CPUC and SCE's actions alleged herein have impacted class members equally
7 because such actions have been directed at obtaining the private property of SCE
8 and SDG&E's customers without just compensation to pay for the discarded steam
9 generators and the inactive power plant at San Onofre. Accordingly, Plaintiffs'
10 claims against the CPUC and SCE are based on the conduct alleged herein and are
11 identical to the claims of other class members.

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

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

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

21 **DEFENDANTS**

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

26 36. Defendant Michael Peevey is a former SCE executive who serves as
27 CPUC President. Mr. Peevey was the CPUC Commissioner who authored the
28

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

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

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

12 39. Interested Party San Diego Gas & Electric (SDGE) is a partial owner
13 of the San Onofre power plant. SDG&E is not named as a party in this action.
14 SDG&E opposed the SCE's plan to buy 4 new steam generators to replace the 4 old
15 steam generators at San Onofre. SDG&E opposed SCE's plan for replacing the old
16 steam generators with 4 new ones because SCE had historically been unable "to
17 reliably forecast its SONGS capital budget." SDG&E noted in January 2000 that
18 SCE forecasted its capital additions for 2004 at \$37 million, whereas actual
19 additions were \$143 million. SCE's first capital additions forecasts for 2005 and
20 2006 were \$50 million and \$80 million respectively. SCE's most recent forecasts
21 are \$114 million for each of these two years.

22 **PRIVATE PROPERTY TAKEN**

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24 40. After the 4 new steam generators failed and the San Onofre plant was
25 rendered useless in January 2012, the CPUC and SCE made Plaintiffs pay the costs.
26 SCE had not obtained final CPUC authority to put the steam generator costs into
27 rates, as the 2005 Decision allowing SCE to proceed provisionally required.
28

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

8 42. Under Commissioner Peevey, the CPUC allowed SCE to increase the
9 amounts charged customers as follows:
10

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

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

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

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

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

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

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

24 48. However, the decision Mr. Peevey authored in December 2005
25 allowed SCE to charge plaintiffs for the new steam generators. These charges were
26 conditioned on SCE returning to the CPUC with an application to permanently
27 place the costs in rates:
28

- 1 • SCE may include the revenue requirement for steam generator
2 replacement for each unit in rates on January 1 of the year following
3 commercial operation of each unit. Implementation shall be by advice
4 letter.
- 5 • SCE may include the revenue requirement for removal and disposal of the
6 original steam generators for each unit in rates on January 1 of the year
7 following completion of the removal and disposal of the original steam
8 generators for each unit. Implementation shall be by advice letter.
- 9 • After completion of the SGRP, SCE will be required to file an application
10 for inclusion of the costs thereof permanently in rates, regardless of
11 whether the costs exceed \$680 million. If a reasonableness review is
12 performed, it will be done in connection with the application.

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

16 50. SCE admitted “[t]he SONGS Unit 2 steam generator replacement was
17 completed on April 11, 2010” and “the SONGS Unit 3 generators replacement was
18 completed on February 18, 2011.” SCE reported to its investors in its *2010 SEC*
19 *10-K Report* that the generator replacement was completed by February 2011:

20 **SCE completed the replacement of the steam generators at San**
21 **Onofre Unit 2 and Unit 3 in April 2010 and February 2011,**
22 **respectively.”**

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

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

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

6 53. The San Onofre power plant has not been used or useful since January
 7 2012. However, the CPUC has continued to charge plaintiffs for its costs without
 8 allowing them to participate in a hearing on whether San Onofre should be removed
 9 from rates, and the funds returned to plaintiffs.

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

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

19 56. SCE began charging ratepayers for the steam generators that failed one
 20 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

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

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

9 **THE CPUC'S RELATIONSHIP WITH UTILITIES**

10 63. In this case, Commissioners Florio and Peevey used their command
11 and control to deny any hearing on whether SCE acted reasonably to determine
12 whether the costs of the failed steam generator project and the resulting closed plant
13 could be imposed on ratepayers as just and reasonable rates. As alleged, they
14 postponed putting the issue on the calendar for months, announcing in October
15 2012 a hearing would be held.

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

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

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THE PG&E SCANDAL

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

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



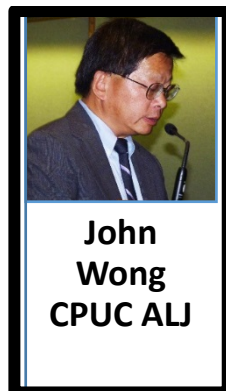
20 **“The morning after the 2010 explosion in San Bruno,**
21 **a PG&E utility inspector looks at the gas main that ruptured.**
(Don Bartletti / Los Angeles Times)”

22 68. PG&E officials wanted Commissioners Florio, Peevey and their staff
23 to make sure PG&E’s preferred Administrative Law Judge (ALJ) was appointed to
24 hear PG&E’s GTS rate increase case. On 14 January 2014, PG&E Vice President
25 for Rates and Regulation, Brian K. Cherry, wrote to Peevey’s Chief of Staff, “As
26 long as ALJ Wong has the case (which Florio confirms), we are ok with what Mike
27 (Peevey) wants to do on the assignment.” Cherry asks Peevey’s Chief of Staff,
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1 Carol Brown, “Can you get it done ASAP please?” Cherry, Brown, Peevey and
2 Florio are pictured here:



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



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



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

17 72. A few hours later, Commissioner Florio joins the back-room
18 wheeling and dealing and tells Cherry at 1:18 p.m.: “I’m horrified! He still
19 has not produced a PD for Sempra’s Psep/TCAP after much prodding and
20 cajoling—we are considering asking that another ALJ be assigned to finish
21 for him. Plus he may retire any day, and uses that as a threat to deflect any
22 direction. Sepideh spoke to John Wong and he said he’s just too overloaded,
23 which we didn’t know. John is a true workhorse so it must be true. If I were
24 you I would bump him—you really can’t do any worse! Even a brand new
25 ALJ would at least work hard and try—you’ll get neither from him ... Keep
26 me posted and I’ll do what I can on this end... Peevey referred to his Chief
27 of Staff, Sepideh Khorsrowjah, contacting John Wong. She is pictured here:
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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 Regulatory Affairs, Lee Starck, sent a secret email to MP1@cpuc.ca.gov (Michael Peevey) with a letter dated 19

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

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

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

17 80. In late October 2012, the CPUC announced it would look into the San
18 Onofre plant’s closing, with a press release:



19 **California Public Utilities Commission**
20 **505 Van Ness Ave., San Francisco**

21 **CPUC OPENS FORMAL INVESTIGATION INTO SAN ONOFRE OUTAGES**

22 SAN FRANCISCO, October 25, 2012 - The California Public Utilities
23 Commission (CPUC) today opened a formal investigation into the extended
24 outages of Units 2 and 3 at the San Onofre Nuclear Generating Station
25 (SONGS). The investigation will determine **whether to remove all costs**
26 **related to SONGS from the rates of Southern California Edison (SCE)**
27 **and San Diego Gas and Electric (SDG&E) going forward, and whether**
28 **to refund SONGS-related costs already collected in rates back to**
January 1, 2012.

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

9 82. On 28 January 2013, under Florio and Peevey’s direction, the CPUC
10 issued an order postponing any consideration of whether SCE acted unreasonably
11 to a later, undetermined date. There was no such review or hearing before 24 April
12 2014. On 24 April 2014, again under the direction of Peevey and Florio, an order
13 was issued ending any inquiry into whether SCE acted reasonably in obtaining an
14 deploying the steam generators. Again, during this period, the CPUC continued to
15 make ratepayers pay for the failed plant and generators.

16 83. During the interval the CPUC delays provided, the CPUC (Office of
17 Ratepayer Advocate) and SCE, under the direction of Peevey and Florio, pieced
18 together in secret a Plan to end any review of the reasonableness of SCE’s action in
19 obtaining and deploying the steam generators. Rather than returning in excess of
20 \$3 billion (\$3,000,000,000) of customers’ private property given to SCE without
21 just compensation, the CPUC proposes to cancel out the debt by giving a credit in
22 SCE’s claimed under-collected “Energy Resource Recovery Account” (ERRA).
23 The CPUC and SCE cannot even agree on when, how much and how any such
24 crediting is to occur.

25 84. The proposal is nothing more than window dressing—a contrivance to
26 let SCE off the hook. According to the plan, once SCE is free of any review of its
27 actions in obtaining and deploying the failed generators, “Refunds due to ratepayers
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1 will be credited to each utility’s under-collected Energy Resource Recovery
2 Account balance.” In the CPUC’s plan to kill any review of whether SCE acted
3 reasonably in obtaining and deploying the steam generators, refunds are defined to
4 mean a reduction in the amount due for “otherwise approved rate increases” in
5 “future ERRA proceedings.”

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

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

19 **CLAIMS FOR RELIEF**

20 **FIRST CLAIM FOR RELIEF** 21 **(Declaration of Taking Without Just Compensation** 22 **and Injunction Thereon)**

23 **Against CPUC, SCE**

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

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

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

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

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

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

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

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

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

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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

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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