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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10
11 MICHAEL J. AGUIRRE,

12 Plaintiff,

13 v.

14 EDMUND G. BROWN, THE GOVERNOR
15 OF THE STATE OF CALIFORNIA,

16 Defendants.

Case No.

**COMPLAINT FOR PUBLIC RECORDS
ACT VIOLATION; DECLARATORY
RELIEF AND WRIT OF MANDATE**

17
18 1. Petitioner Michael J. Aguirre (“Petitioner”), pursuant to Code of Civil Procedure
19 § 1085, Government Code § 6258 (the California Public Records Act (“CPRA”)), and Article I
20 Section 3 of the California Constitution alleges, as follows:

21 **I.**

22 **PARTIES**

23 2. Petitioner is Michael J. Aguirre, counsel to Ruth Henricks, one of the parties in the
24 Order Instituting Investigation (“OII”) proceedings pending before the California Public Utilities
25 Commission (“CPUC”) relating to the failed San Onofre Nuclear plant.

26 3. Respondent is Edmund G. Brown (“Respondent”), Governor of the State of
27 California.

28 ///

1 **II.**

2 **JURISDICTION AND VENUE**

3 4. Jurisdiction is proper in the Superior Court for the County of San Francisco
4 pursuant to Government Code Section 6268, California Code of Civil Procedure Section 1085,
5 and Article VI Section 10 of the Constitution of the State of California.

6 5. Venue is proper in the County of San Francisco pursuant to California Code of
7 Civil Procedure Section 393, because the acts and omissions complained of herein occurred in
8 part in the County of San Francisco.

9 **III.**

10 **GENERAL ALLEGATIONS**

11 6. When four nuclear power plant steam generators costing over \$680,000,000 and
12 supposed to last 40 years quit working after only 11 months, causing the San Onofre nuclear
13 power station to shut down, the public has a profound interest in finding out what went wrong.
14 The public interest in unearthing the relevant facts is especially acute when utility executives and
15 regulators join together to: (1) force ratepayers to pay over \$3.3 billion for the now closed plant;
16 (2) issue a permit allowing the 1,600,000 pounds of nuclear waste produced at the plant to be
17 entombed below water on a San Diego beach; and (3) replace the lost power with carbon -based
18 sources instead of renewable ones.

19 7. The public has learned that in March 2013, California Public Utility Commission
20 (CPUC) officials and the long time legal counsel for Southern California Edison (SCE) held an
21 unlawful secret meeting in Warsaw, Poland at the Bristol Hotel to prepare a term sheet of deal
22 points for killing the CPUC investigation (the OII) into who was responsible for deploying the
23 defective steam generators.

24 8. The public has learned the CPUC announced in October 2012 it had issued an
25 Order Instituting Investigation (OII), but on 4 December 2012, the CPUC judge assigned to the
26 investigation had a secret conversation with SCE 'sVice President for the San Onofre nuclear
27 power plant, wherein the assigned judge agreed to postpone the investigation into who was
28 responsible for the closed San Onofre nuclear plant.

1 9. The public has learned that before they quit working, SCE had failed to file the
2 application to put the costs of those four new steam generators permanently into rates as required
3 by the December 2005 CPUC decision allowing their purchase. The public learned that SCE
4 executives authorized material and substantial changes from those being replaced to be made in
5 the design of the new steam generators. The public has also learned that SCE executives knew
6 the new designs resulted in steam being produced that was too hot for the new generators to
7 handle. The public has also learned that SCE did not tell Nuclear Regulatory Commission (NRC)
8 officials of the design defects in the new generators during SCE's presentation to the NRC
9 showing why SCE should not be required to obtain a safety license amendment.

10 10. The public has learned that in May 2013, United States Senator Barbara Boxer
11 released a November 2004 letter from SCE's Vice President for San Onofre showing SCE
12 officials were aware of material and substantial design changes in the new steam generators that
13 were of the type that would have required SCE to obtain a safety license amendment, which SCE
14 never obtained. The public learned that Senator Boxer, in May 2013, called for the U.S.
15 Department of Justice to commence a criminal investigation into the San Onofre steam generator
16 matter.

17 11. The public has learned that in response to both the November 2004 letter released
18 by Senator Boxer in May 2013 and the Senator's call for a criminal investigation, SCE released a
19 June 2005 letter from SCE's Vice President for San Onofre documenting SCE's awareness of
20 design flaws in the new steam generators.

21 12. The public learned that in June 2013, SCE officials turned to Governor Brown for
22 help with the San Onofre matter. They learned that the SCE Chief Executive Officer reported to
23 the SCE board that Governor Brown had agreed to help SCE's effort to shift public opinion from
24 Senator Boxer's call from a criminal investigation to the question of how to replace San Onofre's
25 lost power.

26 13. The public learned that Governor Jerry Brown, the CPUC President, the California
27 Independent System Operator (ISO) President, and SCE officials established a "loss of [San
28 Onofre] task force" with the mission of determining sources of power to use to replace the

1 2200MW lost at San Onofre. The public learned that the primary staff member from the
2 Governor's office on the Task Force was Michael Picker, the current CPUC President. The
3 Public learned from a University of California report published by the Energy Institute at Haas
4 (UC Berkeley business school) that the replacement power for San Onofre came from carbon-
5 based sources causing new emissions equal to putting an additional 2,00,000 car on California's
6 roads. The public learned the task force members took action that choked off renewables
7 available to replace lost San Onofre power, such as geothermal from Imperial County, when the
8 San Onofre plant shut down. The public also learned that most of the replacement power came
9 from 12 generators in three Los Angeles power plants at Alamitos, Redondo Beach, and
10 Huntington Beach. They also learned that a former SCE employee who had learned how to game
11 the electricity trading market while at SCE's procurement department was hired by JP Morgan to
12 manipulate the market using the 12 steam generators at Alamitos, Redondo, and Huntington
13 Beach. The public learned that fines were imposed, but no one was punished for manipulating
14 the prices for the electricity used to replace what had been lost at San Onofre.

15 14. The public learned that CPUC officials and SCE executives engaged in a pattern of
16 holding secret meetings to implement the plan made in Warsaw to make utility customers pay
17 billions of dollars for the closed plant. The secret meetings culminated in and immediately
18 preceded the May 2014 CPUC hearing at which two CPUC officials falsely denied attending San
19 Onofre-related secret meetings. At the May 2014 session, an SCE official testified under oath
20 that he had not attended secret meetings with CPUC officials when he had, including one held
21 just minutes before his denial at May 2014 hearing.

22 15. The public learned that the CPUC disengaged the CPUC's retained nuclear
23 engineer expert after the expert advised the CPUC that investigating the cause and the parties
24 responsible for the deploying the defective steam generators would require answers to the
25 following questions:

26 *What error(s) led to the tube failure(s)?" or "At what stage were those errors*
27 *made?" or "Who made those errors?" or "What might have been done, and by*
28 *whom, and at what stage, to have averted those errors?" or "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?"

1 Each of these is a much bigger question, one that I am developing insights into
2 but on which my opinion(s) will only crystallize later as I dig into more
information.

3 16. The public learned the CPUC had a practice of meeting with, and disclosing
4 CPUC information to, utility institutional investors. For example, in October 2013, a CPUC
5 commissioner admitted he was meeting with utility investors “every few quarters or so.” The
6 commissioner admitted the investors were “very focused” on learning more about how the CPUC
7 would be handling the San Onofre matter. The commissioner’s message was the CPUC should
8 limit holding SCE officials accountable for San Onofre because Wall Street would make it more
9 expensive for the utilities to borrow money in the future.

10 17. The public also learned that Wall Street had pressured Governor Brown to appoint
11 an investment banker to the CPUC in order to keep the pro-Wall Street CPUC President in power.
12 In March 2011, the Governor appointed a long-time investment banker to the CPUC. The public
13 learned that the Governor replaced the Wall Street-aligned commissioner with the current
14 President, and that before being named CPUC president, the appointee toured Wall Street under
15 the guidance of the departing Wall Street-aligned CPUC president.

16 18. The public learned in February 2015 that the term sheet made at the Warsaw
17 meeting on Bristol Hotel stationery had been seized during the execution of a search warrant at
18 the former CPUC President’s home in Los Angeles. The public learned of evidence showing
19 CPUC officials briefed the CPUC commissioner in charge of the CPUC’s San Onofre’s
20 “investigation” upon returning to San Francisco. The public learned that the terms agreed to in
21 Warsaw were implemented by the CPUC commissioners.

22 19. The public learned that while the San Onofre matter was pending before the
23 CPUC, there were 67 secret San Onofre-related communications between agents of the
24 Governor’s office and the CPUC. The public also learned that the CPUC refused to produce
25 those writings in response to a Public Records Act Request. The public has also learned that the
26 Governor has refused to produce those 67 San Onofre writings under the Public Records Act and
27 Article 1, Section 3 of the California State Constitution.

28

1 20. The public has also learned facts raising doubt about the integrity of the Attorney
2 General's investigation into the San Onofre matter. The Attorney General appeared in the CPUC
3 San Onofre "investigation" as of January 2013, at which time the Attorney General stated:

4 The Attorney General is the chief law enforcement officer of the State and
5 possesses broad powers to act for the protection of the public interest. (California
6 Constitution, article V, section 13; *D 'Amico v. Bd of Medical Examiners* (1974) 11
7 Cal.3d 1, 14-15.) The investigation of the effect on safe and reliable service at just
8 and reasonable rates caused by the outages at SONGS Units 2 and 3 directly
9 impacts California's environment and citizens. Accordingly, the Attorney General
10 has an interest in participating in this proceeding.

11 21. The public has learned that the Attorney General was put on notice of allegations
12 that SCE was unlawfully collecting rates for San Onofre by virtue of filings made with the CPUC
13 in February and March 2013. The Attorney General was on notice that Senator Boxer had called
14 for a criminal investigation in May 2013. The Attorney General was on notice of the two letters
15 (November 2004 and June 2005) and other evidence (a report issued by the steam generator
16 manufacturer showing SCE decided to limit correctives to the design flaws to avoid having to file
17 the required safety license amendment) showing SCE knew of the design problems with the
18 steam generators *before* they were deployed. The Attorney General was on notice of the secret
19 meeting in Warsaw, Poland; the Attorney General's own investigator found the incriminating
20 notes at the CPUC President's home.

21 22. The Public has learned despite knowledge of these facts, the Attorney General
22 failed to execute a search warrant issued by a Superior Court judge after finding probable cause to
23 believe felonies had been committed in connection with the San Onofre matter. Instead, the
24 Attorney General emailed the search warrant to private CPUC legal counsel. The Public has
25 learned that private attorneys have used the search warrant as the basis for taking control of the
26 documents at the CPUC, which raises concerns about whether incriminating documents are being
27 removed or omitted from production.

28 23. The Public has learned that while the CPUC has been given approval by the
Governor for supplemental appropriations of public funds to hire private counsel at a cost in
excess of \$12 million to respond to the CPUC search warrant and related investigation, the

1 Attorney General has not asked for any corresponding appropriations to prosecute unlawful
2 activity committed.

3 24. The Attorney General has not challenged in court the assertions of any privileges
4 by the CPUC or its related agents, officers, or employees that accompany their denial of
5 production of public records. The Attorney General has not raised an objection to one law firm
6 representing the CPUC witnesses and the CPUC, in violation of normal prosecutorial standards
7 and practices. Instead, the Attorney General has changed sides and is now representing the
8 Governor in resisting and denying the public access to certain calendar entries and the 67 secret
9 communications between the CPUC and the Governor's office. On 15 April 2016, the Attorney
10 General wrote:

11 With respect to categories (1) and (2), the calendar entries you seek are exempt
12 from disclosure under Government Code section 6255. The public interest in non-
13 disclosure of the requested records clearly outweighs the public interest in
14 disclosure (Gov. Code, § 6255, subd. (a)), and we decline to provide them on that
15 basis. As the Supreme Court explained in a case involving a similar Public
16 Records Act request for the Governor's daily appointment calendars, "[d]isclosing
17 the identity of persons with whom the Governor has met and consulted is the
18 functional equivalent of revealing the substance or direction of the Governor's
19 judgment and mental processes ... The intrusion into the deliberative process is
20 patent." (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1343.)

21 With respect to categories (5) and (7) [Communications related to San Bruno, San
22 Onofre, and Aliso, communications related to San Bruno, San Onofre, and Aliso
23 with Susan Kennedy] the records you seek constitute "correspondence of and to
24 the Governor or employees of the Governor's Office," and are therefore exempt
25 from disclosure under Government Code section 6254, subdivision(*l*). ** The
26 only other record in this category concerns the seismic safety of the San Onofre
27 Nuclear Generating Station in the days following the earthquake in Japan and the
28 resulting nuclear disaster in Fukushima. That record, however, is "correspondence
of and to the Governor or employees of the Governor's Office," and is therefore
exempt from disclosure under Government Code section 6254, subdivision(*l*).

On April 8, 2016, you sent the Attorney General's Office a letter "expanding
[your] 25 March 2016 request (Expanded Request) [the 67 secret communications
between CPUC and Governor's office related to San Onofre] to include San
Onofre nuclear power-plant related writings between the California Public Utilities
Commission (CPUC) and the Governor's Office." All responsive records to this
"Expanded Request" are subsumed within category (5) of the March 25 request,
and, as explained above, are exempt from disclosure under Government Code
section 6254, subdivision(*l*).

1 the Court finds that the public official's decision to refuse disclosure is not justified, the court
2 shall order the public official to make the records public under Government Code § 6259(b.)

3 32. Respondent's failure to provide a proper response to Petitioner's Public Records
4 Act Request violates the California Public Records Act, which provides: "public records are open
5 to inspection at all times during the office hours of the state or local agency and every person has
6 a right to inspect any public record." (Govt. Code 17 § 6253(a).)

7 33. The Governor's office has a legal obligation to make all public records available
8 for inspection by any member of the public upon request. Respondent has made no valid claim
9 that any of the documents sought are exempted from disclosure under any of the statutory
10 grounds for withholding documents.

11 **IV.**

12 **A WRIT OF MANDATE FOR DECLARATORY**
13 **AND INJUNCTIVE RELIEF IS APPROPRIATE**

14 34. Respondents have a clear, present and sacrosanct duty to comply with the
15 Constitution of the State of California. (Govt. Code § 6250, *et seq.*)

16 35. Petitioner has performed all conditions precedent to filing this petition. There are
17 no administrative exhaustion requirements under Government Code § 6250, *et seq.*

18 36. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of
19 law other than the relief sought in this petition.

20
21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, petitioner prays for judgment by this Court as follows:

23 1. For the issuance of a peremptory Writ of Mandate directing Respondent to comply
24 with the CPRA by making all requested documents available to Petitioner for inspection within
25 ten days of this Court's order for production;

26 2. In the alternative, for the issuance of an order to Respondent to show cause why
27 the Court should not issue such a writ;

EXHIBIT 1



April 15, 2016

By Email and U.S. Mail

Mr. Michael J. Aguirre
Ms. Maria Severson
AGUIRRE & SEVERSON, LLP
501 West Broadway, Suite 1050
San Diego, CA 92102
maguirre@amslawyers.com

RE: Public Records Act Requests dated March 25, 2016 and April 8, 2016

Dear Mr. Aguirre:

On March 25, 2016, you submitted a Public Records Act request to Nancy McFadden seeking the following records:

- (1) Please provide us . . . your calendar entries for meetings between you and any agent, officer or employee of Pacific Gas & Electric, Southern California Edison (SCE), San Diego Gas & Electric (SDG&E), or SoCalGas (SCG) for the period January 2011 to date”;
- (2) “Please provide us . . . your calendar entries for meetings between you and any agent, officer or employee of the California Public Utilities Commission for the period January 2011 to date”;
- (3) “Also please provide any records of communications between you and any agent, officer, or employee of the State of California regarding the timing of any sales of your PG&E stock during the period January 2011 to date”;
- (4) “Also please provide any records of any gifts or things of value you received from SCE, PG&E or SCG for the period January 2011 to date”;
- (5) “Also please provide any records of communication between you and any agent, officer or employee of the California Public Utilities Commission regarding any issues arising from (1) the San Bruno explosion; (2) the San Onofre power plant failure, or (3) the Aliso gas leak”;

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- (6) "Also please provide any record of communication between you and Michael Peevey regarding his March 2013 meeting with an SCE official at the Bristol Hotel in Warsaw, Poland regarding the San Onofre nuclear power plant";
- (7) "Also please provide any record of communication between you and Susan Kennedy regarding any issues arising from (1) the San Bruno explosion; (2) the failure of the San Onofre nuclear power plant or (3) the Aliso gas leak";
- (8) "Finally, please provide any records of communications between you and any agent officer or employee of PG&E, SCE, SDG&E or SCG relating to any issues arising from the (1) San Bruno explosion issue; (2) the failure of the San Onofre nuclear power plant; or (3) the Aliso gas leak."

We located no records responsive to categories (4) and (6).

With respect to category (3), we located records consisting of communications between Ms. McFadden and attorneys in the Governor's Office of Legal Affairs. These communications relate to Consumer Watchdog's complaint against Ms. McFadden lodged with the Fair Political Practices Commission (FPPC). They include, but are not limited to, confidential drafts of an opposition to be filed with the FPPC, and are exempt from disclosure under the Public Records Act. (Gov. Code, § 6254, subd. (k) [incorporating Evid. Code, § 954 [attorney-client privilege] and Code Civ. Proc., § 2018.030 [attorney work product doctrine].)

With respect to categories (1) and (2), the calendar entries you seek are exempt from disclosure under Government Code section 6255. The public interest in non-disclosure of the requested records clearly outweighs the public interest in disclosure (Gov. Code, § 6255, subd. (a)), and we decline to provide them on that basis. As the Supreme Court explained in a case involving a similar Public Records Act request for the Governor's daily appointment calendars, "[d]isclosing the identity of persons with whom the Governor has met and consulted is the functional equivalent of revealing the substance or direction of the Governor's judgment and mental processes . . . The intrusion into the deliberative process is patent." (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1343.)

With respect to categories (5) and (7) the records you seek constitute "correspondence of and to the Governor or employees of the Governor's Office," and are therefore exempt from disclosure under Government Code section 6254, subdivision (I).

With respect to category (8), we are providing you with responsive records that transmit publicly available information. The only other record in this category concerns the seismic safety of the San Onofre Nuclear Generating Station in the days following the earthquake in Japan and the resulting nuclear disaster in Fukushima. That record, however, is "correspondence of and to the Governor or employees of the Governor's Office," and is therefore exempt from disclosure under Government Code section 6254, subdivision (I).

April 15, 2016

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On April 8, 2016, you sent the Attorney General's Office a letter "expanding [your] 25 March 2016 request (Expanded Request) to include San Onofre nuclear power-plant related writings between the California Public Utilities Commission (CPUC) and the Governor's Office." All responsive records to this "Expanded Request" are subsumed within category (5) of the March 25 request, and, as explained above, are exempt from disclosure under Government Code section 6254, subdivision (l).

This completes our responses to your March 25 and April 8 requests.

Sincerely,

A handwritten signature in blue ink that reads "Paul Stein". The signature is fluid and cursive, with the first name "Paul" being larger and more prominent than the last name "Stein".

PAUL STEIN
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

PES:

cc: Jamie Court (Jamie@consumerwatchdog.org)
Liza Tucker (liza@consumerwatchdog.org)

Enclosures

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