



**MALFEASEANCE
AT THE CPUC
THREATENS SAFETY
AND SECURITY
OF THE PEOPLE
OF CALIFORNIA**

**Also Methane Leak, Northern
California Fires Update**

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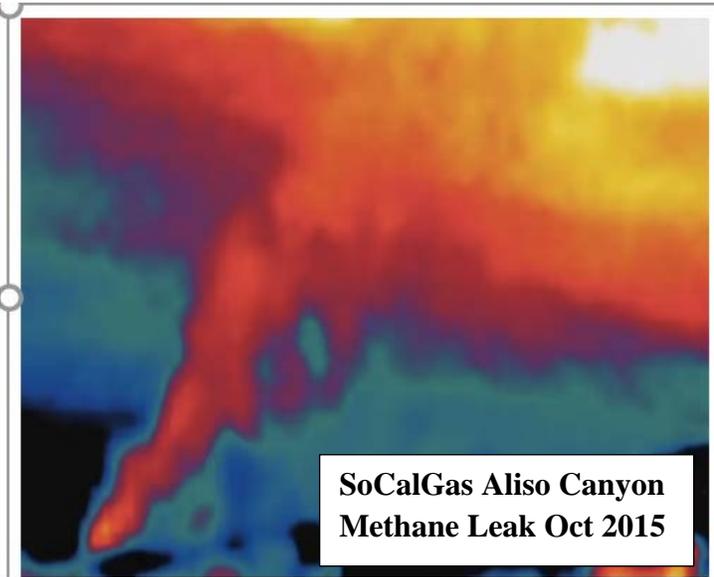
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**SDG&E Fire
2007**



PG&E San Bruno Fire



**SoCalGas Aliso Canyon
Methane Leak Oct 2015**



**PG&E NorCal Fires
Oct 2017**

INTRODUCTION

The California Public Utilities Commission (CPUC) is charged with the duty of enforcing safety rules against California's investor-owned utilities: Pacific Gas & Electric (PG&E), Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E). However, the CPUC is a regulatory agency that has been captured by these three utilities. Utility executives have fallen into the practice of managing the CPUC, rather than managing their companies under the CPUC's intended regulatory regime.

In January 2015, we issued the first version of this report warning that malfeasance and institutional corruption were compromising the ability of the CPUC to protect the safety of the People of the State of California. As we said then, the report is written with the hope of inducing the People of California to action.

Malfeasance has spread into the CPUC's bone marrow. The CPUC was established to regulate California's monopolies that own and operate the utilities that provide electricity in California. However, the opposite is true; the utilities control the CPUC. As a regulatory captured agency of California's three Wall Street electric monopolies, the CPUC has failed, and is failing, to enforce safety rules. This failure has led to SDG&E reclosers igniting catastrophic fires in San Diego that destroyed hundreds of homes.¹ It has led to PG&E gas lines exploding in San Bruno that caused eight deaths.² It has led to the failure of SCE's new steam generators at San Onofre causing a radiation leak, the closure of the plant, and the

¹ <http://www.sandiegouniontribune.com/sdut-wildfire-settlement-raises-utility-cost-recovery-s-2012sep17-story.html>

² <https://ww2.kqed.org/news/2015/09/08/five-years-after-deadly-san-bruno-explosion-are-we-safer/>

storage of nuclear waste on San Diego’s beach.³ It has led to SoCalGas’ (an SDG&E affiliate) historic methane leak at Aliso Canyon.⁴ And just last month, it led to another round of catastrophic fires that killed 42—this time in Northern California where audits revealed the CPUC failed to hold PG&E responsible for PG&E’s failure in thousands of instances over a five-year period to conduct timely inspections.⁵

“Regulatory capture” is a form of political corruption that occurs when a regulatory agency, created to act in the public interest, instead advances the commercial or political concerns of special interest groups that dominate the industry or sector it is charged with regulating. A regulatory agency succumbs to regulatory capture when special interests co-opt policymakers to further the special interests’ own ends.

CPUC President Michael Picker acknowledged the safety lapses at the CPUC when he took over and announced safety would be his highest priority ⁶ However, Picker’s actions and attitudes demonstrate that under his reign, the CPUC continues to operate under the direction of the utilities the CPUC is supposed to regulate. CPUC decision makers conduct the business of the CPUC in secrecy. These decision makers do the CPUC’s business with utility executives in secret at luxury resorts in the United States and in foreign lands, at expensive restaurants, by email and in face-to-face meetings. CPUC decision makers leak

³ <http://www.sandiegouniontribune.com/news/watchdog/sd-me-san-onofre-indepth-20170202-story.html>

⁴ <http://www.dailynews.com/2017/09/22/keep-attention-on-aliso-canyon-gas-leak-and-its-victims-christy-smith/>

⁵ <http://www.mercurynews.com/2017/10/25/pge-missed-electricity-inspections-violated-safety-rules-in-bay-area-including-north-bay-audits/>

⁶ <http://beta.latimes.com/business/la-fi-puc-safety-20141226-story.html>

insider CPUC regulatory information to utility institutional investors and Wall Street analysts.

President Picker's primary focus has been in two areas: (1) covering up the past wrongful conduct of CPUC officials,⁷ and (2) expanding the California electric grid into a regional system in which California voters would lose control over the appointment of the system's governing board.⁸

As stated, utility executives focus on managing the CPUC decision makers rather than prudently managing their companies. The executives seek insulation from their mistakes, such as SDG&E failing to prudently operate its equipment that ignited the 2007 San Diego fires, SCE deploying \$700 million on new steam generators that quit working eleven months after they were turned on, PG&E failing to maintain the gas lines that exploded and killed eight in San Bruno, and SDG&E's affiliate operating the gas wells at Aliso Canyon resulting in the worst methane leak in U.S. history. There is now the specter of PG&E failing to maintain its power lines that caused the 2017 fires in Northern California and killed forty-one victims.

In the earlier version of this report, we explained how the San Diego fires and the radiation leak at and ensuing closure of the San Onofre Nuclear power plant was the result of the CPUC's failure to regulate SD&E. Since then, we have experienced the worst methane gas leak in the Los Angeles area in history. Just this month (October 2017), California experienced its worst fire disaster; PG&E investors fear those fires were caused by PG&E: "PG&E shares dropped more than 7 percent on Monday 16 October 2017 as investors fled on worries the giant

⁷ <http://www.sandiegouniontribune.com/news/watchdog/sdut-cpuc-legal-fees-increase-2016apr05-htmlstory.html>

⁸ http://docketpublic.energy.ca.gov/PublicDocuments/16-RGO-01/TN212307_20160715T084914_Notice_of_Joint_Agencies_Workshop_72616.pdf

electric utility company could suffer steep losses if it's found liable for the Northern California wildfires.”⁹

WHO RUNS THE CPUC?

The CPUC is supposed to be managed by a five-member board appointed by the Governor of the State of California. However, the three utilities are actively involved in the appointment. In 2011, Governor Jerry Brown appointed a PG&E executive to act as his chief of staff. The President of the CPUC, a former SCE executive, worked with the Governor’s chief of staff to keep the CPUC under utility company control with the appointment of a Wall Street investment banker to the board. Internal emails showed Wall Street analysts threatened to lower their utility stock recommendations unless the Governor kept the CPUC free from consumer protection appointees. The current CPUC board is made up exclusively of former Governor appointees and staff:

		
Michael Picker Advisor to Governor 2009	Liane M. Randolph Gov Appt Deputy Secy Cal. Nat. Resources Agency 2011	Carla J. Peterman Gov Appt Cal. Energy Comm. 2011

⁹ <https://www.cnbc.com/2017/10/16/pge-shares-drop-on-growing-concerns-about-california-wildfires-liability.html>



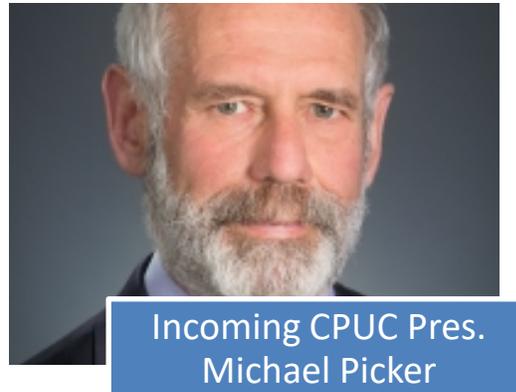
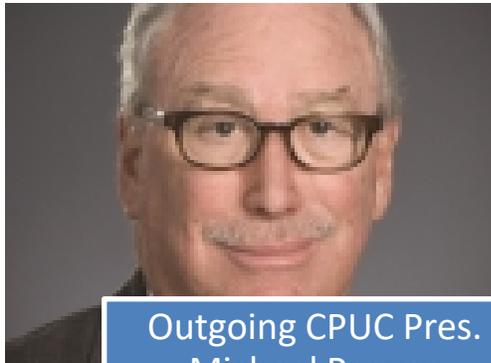
The CPUC has 1,000 staff positions and a budget of \$1.3 billion. Under Public Util. Code § 431, the CPUC annually determines a fee to be paid by “every electrical, gas, telephone, telegraph, water, sewer system, and heat corporation and every other public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission to produce a total amount equal to that amount established in the authorized CPUC budget for the same year, including adjustments for increases in employee compensation and an appropriate reserve to regulate public utilities.”¹⁰

2015 CHAGING OF THE CPUC GUARD

In late 2014, the CPUC President ensconced in the San Bruno judge-fixing scandal and the closing of the \$5 billion San Onofre nuclear power plant was not reappointed. Governor Brown chose a long-time staff member, Michael Picker, to replace Michael Peevey as CPUC President. As with Peevey, Michael Picker was a

¹⁰ Less the amount to be paid from special accounts or funds pursuant to Section 402, reimbursements, federal funds, and any other revenues, and the amount of unencumbered funds from the preceding year.

principal in a lobby firm known as Lincoln Crow Strategic Communications from 2001-2009.



Wall Street Big CPUC Players

Wall Street had favored Peevey's lax attitude toward enforcing the CPUC regulations against offending utility executives. When Governor Brown was making his first appointments to the CPUC, Wall Street weighed in on who should be put on the CPUC. Steve Fleishman of Bank of America/Merrill Lynch Bank viewed Michael Peevey remaining as CPUC President "as key given the consistent influence Peevey has provided the Commission." Jonathan Arnold of Deutsche Bank hoped there would be "no major change in the regulatory tone and direction." Jim von Riesemann of UBS hoped "the new CPUC will continue to equitably balance consumer and shareholder interests." He believed Peevey had done just that, and had been "a stabilizing balance on the commission." A J.P. Morgan analyst reported: "[W]e anticipate that more consumer-friendly policies could be detrimental for the California utilities, and could impair their ability to recover the significant capital investments that the utilities are looking to make in the next several years." The analyst cautioned: "[Michael Peevey's] potential departure from the PUC would create additional turnover and could allow for an even greater

shift in California’s overall regulatory framework.” This, according to J.P. Morgan, “would be perceived as a negative by the market.”

The corruption and malfeasance identified in this report is integral to the ways and means the CPUC has come to operate. The departure of Peevey did not cleanse the CPUC’s bad practices; it created the false impression of, and diminished the energy behind, CPUC reform. The three stock exchange-traded companies—SDG&E, SCE, and PG&E—dominate the CPUC; they have a combined market capitalization in excess of \$85 billion.

More than 300,000 investors own over 1,067,857,440 shares in the three utilities (an average of 3,559 shares): 250,543,688 (Sempra/SDG&E); 325,811,206 (SCE); and 507,782,249 (PG&E). The three utilities have over 22,000,000 customers: PG&E 9.7 million; Sempra 7.3 million; and SCE 5.2 million. The CPUC allowed the three investor-owned utilities to take from their customers over \$141,604,403,000 between 2012 to 2016.

From this cash flow, the three investor-owned utilities paid out over \$9.744 billion in dividends between 2012 to 2016. Four of the 300,000 investors (T. Rowe Price, State Street Corp., Franklin, and Vanguard) collectively hold stock in the three companies (Sempra, SCE and PG&E) with a total market value exceeding \$16,000,000,000. Representatives from these four companies and others have been in constant contact with CPUC Commissioners.

A review of a sample of 7,500 such communications shows Wall Street utility investor interests shapes the body of knowledge used by Commissioners to make utility decisions affecting the public. Wall Street flows information to Commissioners in a number of ways, in addition to through emails:

- (1) Commissioners meet in secret in New York with Wall Street players to discuss pending regulatory matters;

- (2) Wall Street players meet in secret in San Francisco with CPUC Commissioners to discuss pending regulatory matters;
- (3) Wall Street analysts, investment bankers, and utility investors direct a constant flow of ex parte investment information to CPUC Commissioners regarding matters pending before the CPUC; and
- (4) the utilities fund free travel to foreign countries for Commissioners where utility executives and CPUC Commissioners decide, in secret, issues pending before the Commission.

In September 2012, former CPUC Commissioner Mark Ferron asked for research from Wall Street as a quid pro quo for agreeing to meet with Morgan Stanley bankers:

While I enjoy meeting with equity analysts and investors, **I have only one stipulation before agreeing to a meeting: that I am put on the distribution list for research pertaining to California utilities.** Is - this something that you are able to agree to? If so, could you also please send me any recent research (say over the last 6-12 months) on the sector that you think might be relevant?

On 6 June 2014, CPUC Commissioner/now-President Picker expressed his “deep gratitude” to Wall Street analyst Julien Dumoulin-Smith, “whose many research products reach my inbox in great profusion daily.” Those many research products were a fraction of the ones Wall Street utility investor interests regularly sent and continue to send to Commissioners.

Peevey assisted Picker, his replacement as CPUC President, to gain access to Peevey’s Wall Street connections. In May 2014, Peevey asked Bank of America investment banker Gavin Wolfe to help Picker “**to get a read on the investment community view of California regulation.**” Peevey asked Wolfe to set up “a luncheon or other meeting with him and several of your colleagues, not only from BofA, but other investment houses.”

Bank of America’s Wolfe accommodated Peevey’s request, and by 12 May 2014, directed Brian Chin (also at Bank of America) to offer investor meetings for Commissioner Picker: “Based on our prior conversation, for Monday June 23

and/or Tuesday June 24, I recommend the following options for meetings with investors.” The options offered included “One Large Venue” or “Half day of 1x1 - 12 - meetings + Venue” or “Full day of 1x1 meetings + intimate group meeting.” Wolfe reminded Picker “President Peevey thought it might make more sense to have Mike (Picker) meet with the broader research and investor community.” Wolfe suggested that Bank of America Investment “organize a Wall Street Research and Investor Luncheon” for Picker in New York.

On 23 May 2014, Bank of America’s Brian Chin was told Picker had “chosen the last option, the ‘full day of 1x1 meetings + intimate group meeting.’” Picker set his Wall Street insider meetings for the 23rd and 24th of June 2014. On those two days in June 2014, Picker went on the Bank of America roadshow with more than 20 Wall Street kingpins:



Roadshow Schedule
 CMR Picker
 Monday, June 23, 2014

SCE, PG&E AND SDG&E RATES ARE HIGH

Customers of electric utilities “regulated” by the CPUC pay amongst the highest rates in the nation and more than their fellow citizens who buy their electricity from publicly owned utilities:



STORM WARNINGS: THE CPUC CANNOT BE TRUSTED TO PROTECT THE PEOPLE OF CALIFORNIA

CPUC Protects Utilities' Unsafe Conduct

After the San Diego fires of 2007, the San Bruno explosion in 2010, and the San Onofre radiation leak in 2012, the CPUC safety record was considered abysmal. When Picker took over as CPUC President in December 2014, he announced safety would be his top priority.¹¹ In March 2015, Picker named Elizaveta Malashenko to head the CPUC's Safety and Enforcement Division.¹²

Ms. Malashenko had been one of the Safety and Enforcement Division's deputy directors since March 2013. Ms. Malashenko was included in an August 2014 press report about the CPUC allowing PG&E to ghost write invitations to a CPUC safety conference. The conference was held in the wake of the San Bruno explosion investigation. PG&E was later convicted of eight felonies for its failures in maintaining safety.

PG&E management was “deeply involved in orchestrating the event,” according to the article.¹³ The conference was to be held under the banner of the CPUC, but PG&E worked for eight months organizing it. PG&E drew up the agenda, screened panelists, and even fussed over the size of Commission logos on conference documents—all facts shown by e-mails between the company and the CPUC. When it came time to invite the head of the National Transportation Safety Board to the San Francisco symposium, the letter from Commission President Peevey was virtually word-for-word identical to a draft written by a PG&E public relations staffer, according to the August news article.

¹¹ <http://www.latimes.com/business/la-fi-puc-safety-20141226-story.html>

¹² <https://www.bizjournals.com/sanfrancisco/blog/2015/03/cpuc-pge-aguilar-general-counsel-picker-peevey.html>

¹³ The San Francisco Chronicle August 18, 2014

San Bruno City officials obtained the emails showing the cozy relationship between PG&E and the CPUC. The September 2010 PG&E gas-pipeline explosion killed eight people in San Bruno. The National Transportation Safety Board blamed PG&E for the blast, but in 2011, the Safety Board said the CPUC was too close to the utility and had failed to ensure the company operated a safe gas system. Indeed, Ms. Malashenko explained in an email to a PG&E executive how to keep the safety meeting out of public view.¹⁴

After PG&E was fined for illegal ex parte communications in connection with PG&E's scheme to fix the judge hearing its San Bruno case, Ms. Malashenko joined in the party-line that ex parte restrictions were making it more difficult to obtain information from PG&E. She told a reporter: "We are indeed finding it harder to get information from PG&E."¹⁵

In November 2015, Ms. Malashenko defended PG&E before a California Senate panel. She rebutted State Senator Jerry Hill's suggestion PG&E had placed any wildfire-prevention efforts on hold. Ms. Malashenko told the committee: "This isn't an absolute ... it's more of a continuous learning from every fire" [referring to the CPUC's regulating wildfire prevention by utilities].¹⁶

Ms. Malashenko does not have a background in safety enforcement. Before joining the CPUC safety unit, she led a team of policy and engineering experts in regulatory activities pertaining to grid planning and reliability. Her primary focus was working on policy issues related to Smart Grid, Advanced Metering Infrastructure (AMI) and Distributed Energy Resources (DER). Ms. Malashenko holds a B.A. in Economics and Political Science from the University of Pennsylvania.

¹⁴ The San Francisco Chronicle, August 18, 2014

¹⁵ Power Daily with Market Report, November 21, 2014

¹⁶ Associated Press State & Local, November 18, 2015

On Ms. Malashenko’s watch, the CPUC failed to investigate who at Sempra’s SoCalGas was responsible for the Aliso Canyon Methane gas leak—the worst methane gas leak in American history. Nonetheless, the CPUC allowed the Aliso Canyon gas field to reopen and postponed indefinitely the release of a promised root cause report.

Ms. Malashenko failed to implement reforms and improvements in wildfire prevention at PG&E. Ms. Malashenko did not use the massive 2007 San Diego fires as part of the “continuous learning from every fire” she spoke about before the Senate Committee.¹⁷

2007 San Diego Fires

During late October 2007, Predictive Services at the Southern California Geographic Area Coordination Center (OSCC) continued to forecast an extreme fire weather event of strong, hot, dry, winds. The OSCC, established in 1972, provides Coordination and logistical support for the Southern California forests for wildland fire and all risk incidents. On Thursday, 18 October 2007, “High Risk Days” were added to the 7-day forecast for Sunday, October 21, and Monday, October 22, highlighting the prediction that this anticipated offshore event would be strong and widespread, and accompanied by very warm and very dry conditions. On Friday 19 October 2007, Predictive Services forecasters added Tuesday, October 23, as a High-Risk Day in the 7-day report.

On Sunday 21 October 2007, SDG&E equipment ignited the **Witch Fire** at approximately 12:35 p.m. in the rural area of Witch Creek, east of Ramona in San Diego County. On Monday 22 October 2017, SDG&E’s equipment (along with Cox Cable’s) ignited the **Guejito Fire** in Pasqual Valley first reported by Cal Fire

¹⁷ Associated Press State & Local November 18, 2015

at 1:00 am on 22 October 2007. That's same day, SDG&E's equipment ignited the Rice Fire, reported at 4:16 a.m. in Rice Canyon, north San Diego County.

The SDG&E facility involved in the ignition of the Witch Fire was Tie Line (TL) 637. TL 637 is a 69 kilovolt (kV) transmission line that connects the Santa Ysabel and Creelman substations. TL 637 is approximately 14 miles long and runs along a remote backcountry section of San Diego County. Cal Fire investigator determined that a fault on TL 637 between poles Z416675 and Z416676 on October 21, 2007 led to arcing of the lines, which dispersed hot particles to land in the grassy field below the powerlines. These particles were determined to have ignited the Witch Fire which was then spread by wind.

The **Guejito Fire** was first reported by Cal Fire at 01:00 on October 22, 2007 near the City of Escondido, in San Diego County. The SDG&E facility involved in the ignition of the Guejito Fire was a 12 kV overhead conductor. CPSD and Cal Fire attributed the ignition of the Guejito Fire to a Cox Communications (Cox) lashing wire coming into contact with an SDG&E 12 kV overhead conductor, between SDG&E poles P196387 and P196394.1 The **Rice Fire** ignited on 22 October 2007 in Fallbrook, California. The Cal Fire Investigation Report into the Rice Fire concluded that the cause of the fire was a downed powerline. Staff in the CPUC's Consumer Protection and Safety Division (CPSD) determined that a limb from sycamore Tree FF1090 (FF1090) broke and fell onto SDG&E 12 kV overhead conductors on 22 October 2007, which in turn caused the conductors to break and fall to the ground.

Under Peevey, the CPUC derailed its investigation into the SDG&E equipment that started two of the 2007 fires.¹⁸ CPUC safety staff determined SDG&E had operated the equipment that ignited the 2007 fires in violation of

¹⁸ CPUC Decision D1004047

GO95, Rules 31.1 and 38. Over 500,000 were evacuated; 300,000 acres charred; 1,300 building destroyed.



As in the case of San Bruno, the CPUC under Peevey imposed a fine, but then bestowed a rate increase large enough to absorb that penalty.¹⁹ Fortunately, angry ratepayers were able to delay the CPUC plan to allow SDG&E to recover \$463,000,000 in costs from the fire SDG&E equipment.

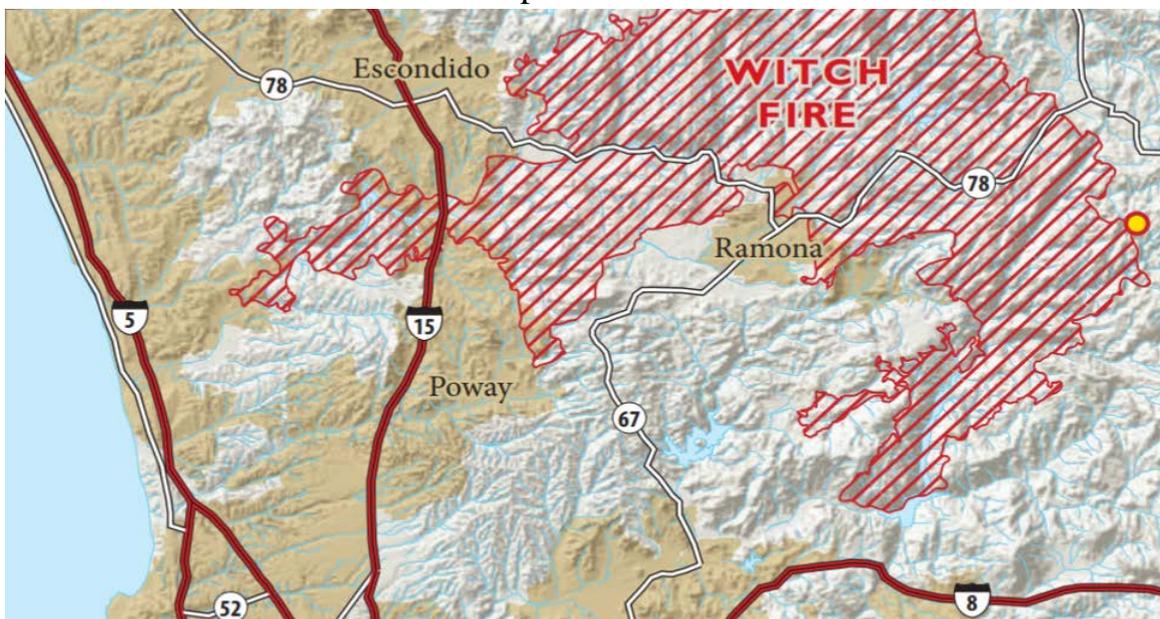


On 22 August 2017, the CPUC Administrative Law Judges (ALJs) determined that “SDG&E fails to prove by a preponderance of the evidence that it

¹⁹ D1112023; Petition 07-11-007

acted prudently in its operation and management of its facilities linked to the ignition of the **Witch Fire.**” On 22 August 2017, the ALJs determined that “SDG&E fails to prove by a preponderance of the evidence that it acted prudently in its operation and management of its facilities prior to the ignition of the **Rice Fire.** “ On 22 August 2017, the ALJs determined that “SDG&E fails to prove by a preponderance of the evidence that it acted prudently in its operation and management of its facilities prior to the ignition of the **Guejito Fire.**”

The Witch Fire led to the destruction of 1,141 homes, 509 outbuildings, and 239 vehicles. Once combined with the Guejito Fire, the Witch Fire burned a total of 197,990 acres. The Rice Fire burned 9,472 acres, destroyed 206 homes, two commercial properties, and 40 other buildings before being contained. The three fires threatened the safety and security of the people of San Diego. These fires came perilously close to cutting off all three of San Diego’s freeways to the North and East as shown in this CalFire Map:



In September 2015, SDG&E initiated a reasonableness review of its uninsured 2007 fire losses in proceeding A.15-09-010. In the proceeding, Ms. Henricks filed and served a Motion for Party Status on 2 October 2015; the motion

was granted in February 2016. On 11 April 2016, the assigned CPUC Administrative Law Judge issued a Scoping Ruling that implemented a two-phase approach for the proceeding. In Phase 1, the parties were to address “[W]hether SDG&E’s operation, engineering and management of the facilities alleged to have been involved in the ignition of the fires was reasonable.”

The April 2016 scoping ruling provided that “[E]ach of the three San Diego 2007 fires (Witch, Guejito and Rice Wildfires) should be addressed separately.” The Scoping Ruling noted that prior CPUC “decisions indicate that a reasonableness standard should entail a review of the prudence of SDG&E’s actions leading up to the fire.” The Scoping Ruling specifically referenced D.14-06-007, in which the CPUC held that for costs to be found reasonable, the utility must prove that they were prudently incurred by competent management exercising the best practices of the era, and using well-trained, well-informed and conscientious employees who are performing their jobs properly.

In October 2016, the proceeding (A.15-09-010) was reassigned to ALJ Pat Tsen and ALJ Pro Tem Sasha Goldberg. Evidentiary Hearings for Phase 1 were held at the CPUC’s San Francisco hearing rooms the week of 23 January 2017. The record for Phase 1 was submitted for CPUC consideration on 6 July 2017.

On 22 August 2017, ALJs Tsen and Goldberg issued a decision finding that SDG&E “did not reasonably manage and operate its facilities prior to the 2007 Southern California Wildfires and therefore denies the utility’s request to recover costs” On 28 September 2017, the CPUC was scheduled to approve the ALJs’ proposed decision denying SDG&E any further 2007 fire cost recovery at the CPUC’s meeting in Chula Vista. The item was “held” and not decided on 28 September 2017. The item was continued to the CPUC’s meeting on 12 October 2017. The item was again held and continued to the CPUC’s 26 October 2017 meeting. It was again held and continued to the 9 November 2017 hearing, and

again held prior to that date. A modified proposed decision set the date for Commission action out for as late as April 2018.

The CPUC created the delay so as to provide an opportunity for SDG&E and its utilities monopoly kin—PG&E and SCE, neither of whom had been a party in the proceeding’s evidentiary hearings—to meet privately with the Commissioners and lobby against the ALJs’ proposed decision denying SDG&E its request to lay the burden of its \$379,000,000 fire costs on ratepayers, instead of on the management found to have acted imprudently and unreasonably by the ALJs.

These and other pre- and post-proceeding antics by the CPUC—a regulatory agency that has been “captured” by the utilities it is supposed to regulate—was done as a pretext for the CPUC’s goal of not adopting the ALJs’ decision. A violation of ratepayers’ due process resulted. On 28 September 2017, *after* the record was closed and the case decided by the ALJs, CPUC President Picker improperly allowed SDG&E to make additional arguments outside the evidentiary hearing record at the CPUC meeting in Chula Vista. Picker improperly allowed SDG&E to make such arguments at an “All Party Meeting;” the meeting was improperly authorized by Picker be held at the CPUC’s meeting in Chula Vista.

PG&E is a second monopoly that provides electricity to customers in Northern California. Two months after the SDG&E fire case was submitted, and one month after the ALJs had decided the case, PG&E filed for party status in this proceeding (A.15-09-010) on 11 September 2017. On 26 September 2017, the CPUC improperly granted party status to PG&E under Picker’s direction. PG&E was granted party status to argue the issue of “inverse condemnation” in support of SDG&E – an issue outside the scope of the evidentiary hearing in the SDG&E fire proceeding A.15-09-10. The CPUC so acted in furtherance of the dominance and control SDG&E exercises over the CPUC.

SCE is a third monopoly that provides electricity to customers in Central and Southern California. Two months after the SDG&E fire case was submitted, and one month after the ALJs had decided the case, SCE filed for party status in this proceeding (A.15-09-010) on 11 September 2017. On 26 September 2017, the CPUC improperly granted party status to SCE under Picker's direction. SCE was granted party status to argue the issue of "inverse condemnation" in support of SDG&E – an issue outside the scope of the evidentiary hearing in the SDG&E fire proceeding A.15-09-10. The CPUC so acted in furtherance of the dominance and control SDG&E exercises over the CPUC.

A San Diego Union Tribune editorial published 27 October 2017 captured the failure of the CPUC to follow its own rules and rulings of its Administrative Law Judge in connection with the San Diego 2007 fires:

If PUC decision on wildfire utility costs endangers Californians, abolish the commission

Years of fears about unhealthy ties between the California Public Utilities Commission and the three giant investor-owned utilities it regulates now seem like they'll come to a head in the near future. Thursday, the CPUC postponed a hearing for a third time on whether to ratify a proposed decision by two of its administrative law judges to require San Diego Gas & Electric shareholders — and not ratepayers — to cover \$379 million in costs from San Diego County's fatal October 2007 wildfires. Those fires killed 10 people and destroyed 1,738 homes

The administrative law judges' proposal seems eminently reasonable after sparks from power lines ignited brush, leading to the Witch, Rice and Guejito fires. Their Aug. 22 proposed decision built on two state investigations that showed the utility failed to adequately trim tree branches and other vegetation near its power lines. SDG&E's claim that extraordinary conditions, such as strong winds, led to the wildfires was not borne out by investigators.

Since August, the importance of the CPUC's ultimate decision has grown immensely because of the wine country fires that devastated Northern California. Those began Oct. 8 and went on to kill 42 people with others still missing, destroy some 8,700 structures and scorch nearly 250,000 acres. An Oct. 10 Bay Area News Group report detailed how Sonoma County dispatchers received numerous reports of fallen Pacific Gas & Electric power lines and exploding electrical transformers the night of Oct. 8.

Cal Fire and the CPUC are now investigating what role PG&E's infrastructure played in the massive inferno. Amid reports it has only \$800 million in insurance, the giant utility could eventually face billions of dollars in claims. But even before the disaster, there were reasons for ratepayers to worry. PG&E and Southern California Edison jointly urged the CPUC on Oct. 4 to overturn the proposed decision against SDG&E on the grounds that climate change had increased wildfire risks and that the decision went against some past precedents. On Thursday, the Bay Area News Group reported that PG&E is also aggressively lobbying the CPUC to be able to pass unrecovered costs from this month's fires to its ratepayers. Given the sharply increased frequency of massive wildfires in the West this century, climate change should be a factor in how utilities are regulated.

But if the CPUC decides that the giant utilities should no longer be held accountable for keeping their power lines safe in risky wilderness areas, they are less likely to do so — especially PG&E. In January, it was socked with the maximum possible \$3 million fine by a federal judge after being convicted of six felonies related to the 2010 gas pipeline explosion in San Bruno that killed eight people and destroyed 38 homes. Five of the felonies were for pipeline safety violations; one was for obstructing a federal investigation into the tragedy.

This only scratches the surface of PG&E's ugly history. For nearly a decade, PG&E has worked to stall the state's push to make utilities map where power lines were a fire threat. Newly released CPUC audits showed that in recent years PG&E violated power-grid safety rules 11 times and was overdue in finishing work orders more than 3,500 times in the counties ravaged by this month's inferno.

It's hard to imagine that a powerful government agency would put people's lives at risk. But that's what the CPUC would be doing if it insulates utilities from the consequences of unsafe practices. If the CPUC decides to do that, it should be **abolished**.

2010 San Bruno Explosion

A bit of background is illuminating here. Governor Schwarzenegger appointed Peevey to the CPUC in 2002, along with Susan P. Kennedy. Peevey was kept off the CPUC after he was caught in judge-fixing for PG&E in the San Bruno explosion case in 2014. Peevey put a PG&E-favored judge in charge of a CPUC case that was to decide whether PG&E would receive a \$6 billion rate increase. The CPUC staff had recommended a \$2.5 billion fine against PG&E for ignoring an impaired section of the ruptured San Bruno pipeline, even though the CPUC had granted \$5 million to PG&E to fix it. PG&E failed to maintain the San Bruno natural gas main resulting in a gas explosion killing eight people. The judge would decide whether ratepayers would pay the safety violation fine for the horrific explosion:

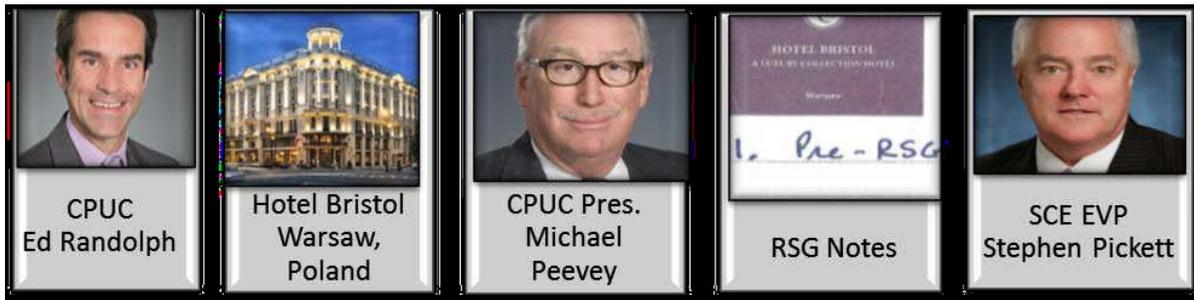


The CPUC investigation into the San Bruno explosion dragged on for four years until April 2015, when the Commission finally levied a much reduced \$1.6 billion fine against PG&E.²⁰

2012 San Onofre’s 1,800 Tons of Nuclear Spent Fuel

On 31 January 2012 at 4:30 p.m., SCE operators at the San Onofre nuclear power plant discovered a “Steam Generator Tube Rupture” and “commenced [a] rapid power reduction” of Unit 3. When reactor power was lowered to 35%, the Unit was manually tripped. Replacement steam generators (RSG) at the plant experienced “significant and unexpected steam generator tube wear and the loss of tube integrity” after 11 months of operation.

On 26 March 2013, CPUC officials met with an SCE Executive Vice President at the Bristol Hotel in Warsaw, Poland. There, they negotiated an agreement (recorded on the hotel’s stationery) to make utility customers pay over \$3 billion as expected revenue from the plant had it not closed:



Upon his return from Poland (31 March 2013), one of the CPUC executives at the Hotel Bristol meeting had the following “red category” email exchange with the CPUC Commissioner in charge of the SO proceeding (Florio) to determine who should pay for the closed San Onofre plant:

²⁰ <http://www.latimes.com/business/la-fi-puc-fine-20150409-story.html>

From: Randolph, Edward F.
Sent: Sunday, March 31, 2013 2:59 PM
To: Florio, Michel Peter
Cc: Gonzalez, Nuria
Subject: Meeting with Peevey Thursday

Commissioner Florio,

Commissioner Peevey asked me to set up a meeting with him for you and me next Thursday after the Commission meeting. (We were both having email problems in Poland so he asked me to set it up when I got back). He suggest lunch or dinner (but I need to be in Sacto late in the day). For now Commisisoner Peevey would like to keep this meeting to just the three of us. I am happy to come by and explain the topic in person (or on the phone).

Can we make something work for Thursday?

On 1 April 2013, the SCE official who participated in the Poland meeting (Stephen Pickett) reported to and provided the “Elements of a SONGS Deal” to SCE Chief Executive Officer Ted Craver. (Exhibit 7, Severson Decl.) Three days later, Randolph, Florio and Peevey met on 4 April 2013 at Max's Opera Café in San Francisco, California:



On 4 April 2013, SCE’s Pickett wrote two other SCE officials about his Poland meeting, telling them “we should take my notes and turn it into a simple term sheet.” On 29 May 2013, SCE executives exchanged emails reporting on their discussions with then-CPUC President Peevey and his Chief of Staff, Carol Brown: “Carol indicated that Pickett was well prepared in Poland with specifics.” In another, an SCE official warned: “We have a small window of opportunity to

work with parties to implement a shutdown in exchange for getting our money back. That -window will close soon and we will lose a very good opportunity.”

On 6 June 2013, SCE Chief Executive Officer, Ted Craver, sent the following email to his Board of Directors, reporting his conversation with Governor Jerry Brown:

Governor Brown-about 10 minutes (was in Rancho Mirage with Pres. Obama, Chinese). Appreciated call. Asked some questions about decommissioning and number of employees. He said what we were doing seem right under the circumstances, good to reduce uncertainty, and took a little swipe at NRC bungling the process which was going to cause harm to CA. Fished for whether we were going to blast NRC or Boxer, I said "no, I didn't see any mileage in that. We were taking the high road and focusing on the future and insuring system reliability for our customers." He said he agreed that was best approach. I indicated that I imagined his office would get media calls tomorrow about this and would be looking for his reaction; I indicated that if he was so moved, it would help if he could indicate we had talked and he thought the company was acting responsibly and focused on the right things. He indicated a willingness to do that.

Effective 7 June 2013, SCE certified it had “permanently ceased power operation of the San Onofre Nuclear Generating Station, Units 2 and 3.”

On 7 June 2013, an SCE official reported to Stephen Pickett the word from Florio’s office was to “do everything we can to keep this out of the Commission's hands. They've learned much from the San Bruno effort (i.e. claims that the commission is **in the "pockets" of the utilities**) and want to avoid a repeat as much as they can.”

On 27 March 2014, SCE announced it had entered into a settlement agreement with TURN, and the Office of Ratepayer Advocates (“ORA”) Under the settlement, utility customers will pay for the projected future revenue, recovery of

investment with interest for the San Onofre plant, even though the plant will produce no electricity.

With the CPUC’s blessing, SCE proposed to entomb on the San Diego beach 2,668 assemblies containing radioactive spent nuclear fuel pellets (spent fuel)1 in 75 casks. In the nuclear fuel storage industry, the burial site is referred as an “Independent Spent Fuel Storage Installation” (ISFSI). The radioactive waste will be located in the coastal zone permit area 100 feet from the sea in San Diego:



The spent fuel is highly radioactive and **requires secure storage for thousands of years to prevent harm to humans and the environment.** There are “assemblies” containing spent fuel pellets in **wet** storage pools and fuel storage modules filled with spent fuel located in **dry** storage above ground.

There is substantial evidence that SCE knew about the design flaws that caused the four steam generators to fail and the plant to close. SCE attempted to

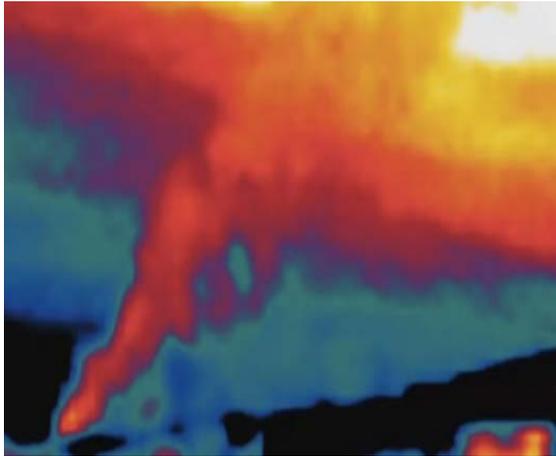
blame its subcontractor Mitsubishi Heavy Industries (MHI) for the defective generators. In an arbitration, SCE claimed MHI defrauded SCE into deploying the defective steam generators. However, the arbitrators ruled MHI “did not procure the RSG [Replacement Steam Generator] Contract through false misrepresentations.” In other words, the utility attempted to avoid personal responsibility by making the preposterous claims that the utility was a victim of an MHI fraud. It failed, and SCE had to pay MHI’s legal fees in excess of \$50 million.

2015 Aliso Canyon Methane Leak

In October 2015, Sempra subsidiary Southern California Gas Company’s Aliso Canyon natural gas storage facility sprung a leak, causing the worst methane gas leak in U.S. History. As is detailed below the CPUC has blocked any investigation into who and what was responsible for the leak, again shielding utility executives from accountability. The Aliso Canyon disaster is the single worst methane leak in United States history. The following pictures tell the story of the 23 October 2015 blowout at SS-25.



The well blowout caused the nation's largest natural gas (mostly methane) leak and spewed 109,000 metric tons²¹ of methane into the skies above Los Angeles, as shown below.



In November 2015, the press reported SoCalGas claimed it did not know what caused the leak.²² SoCalGas promised it would conduct an investigation into the cause of the SS-25 blowout after it stopped the leak. On 22 January 2016, the CPUC intervened and relieved SoCal Gas from determining what and who at the company was responsible. The CPUC shifted control of the investigation from the CPUC (where the public would have been involved) to Blade Energy Partners, a private Texas company under contract with SoCalGas.

After spewing methane continuously for 112 days, the leak was intercepted and later sealed on 17 February 2016. SoCalGas has reduced its investigator role to “support[ing] the CPUC Safety and Enforcement Division and DOGGR in their ongoing investigation of the root cause of the leak at Aliso Canyon.”²³ The root

²¹ <http://www.latimes.com/local/lanow/la-me-gas-leak-settlement-20170208-story.html>

²² <http://www.dailynews.com/environment-and-nature/20151104/leaking-natural-gas-well-concerns-porter-ranch-residents>

²³ https://www.socalgas.com/1443740056433/Progress_Report_SMC-en-11042016.pdf

cause report was to be completed during the first half of 2017, under CPUC control. More than a year has passed since the investigation was turned over to the Texas contractor and there is still no determination about who and what caused one of the worst environmental disasters in history.

Instead of determining how the SS-25 leak occurred, the CPUC has prioritized getting Aliso Canyon reopened. The CPUC's actions, similar to its actions with the San Onofre failure, deny utility customers their day in court and insulate SoCalGas from responsibility. Earlier this year, State Senator Henry Stern introduced legislation to block regulators from deciding the future of Aliso Canyon before the root cause analysis was completed. However, SoCalGas used its political muscle to reopen the gas field before completion of the root cause report.²⁴

Although the CPUC and SoCalGas have not identified how and why SS-25 breached, the Well Integrity Working Group²⁵ (WIWG) has done preliminary work analyzing the Aliso Canyon disaster. The source of the leak at the 61-year-old SS-25 well was a metal pipe in the breached 7-inch casing at a depth of 400–500 feet. From that point, the gas leaked down and around the shoe of the surface casing at an approximate depth of 1,000 feet. Compounding the disaster was the removal of the well's emergency shutoff safety valve in 1979.²⁶ A safety valve was not reinstalled because SS-25, about a mile from residences, was not considered a critical well.

SS-25 operated by injecting and withdrawing gas through both the tubing and the casing surrounding the tubing, leaving only a single barrier to the

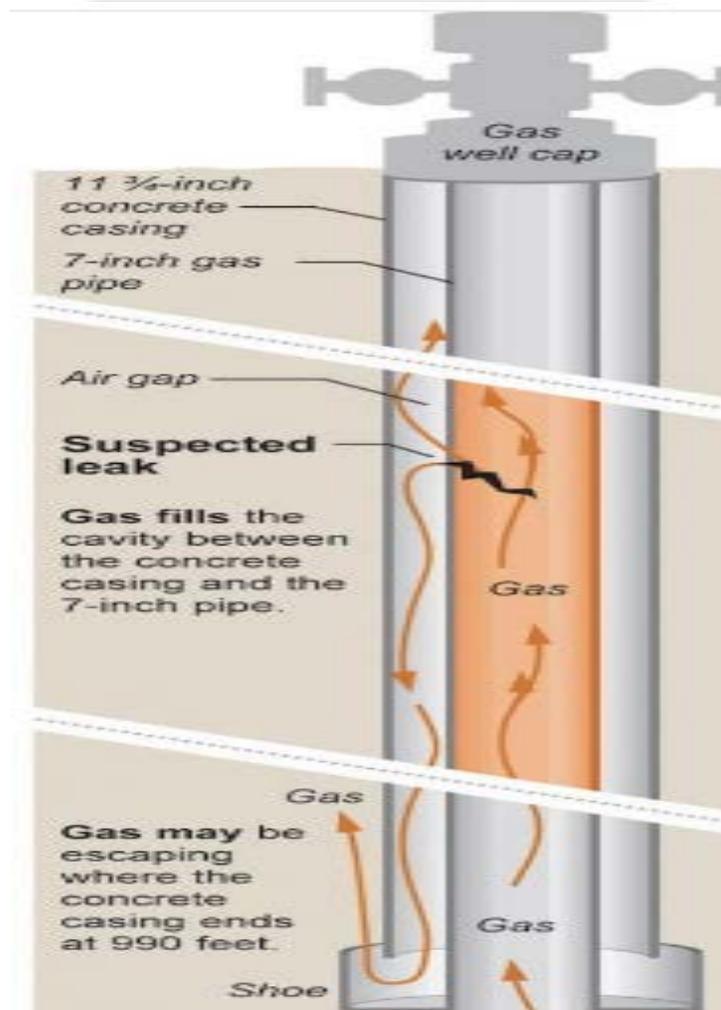
²⁴ <https://ww2.kqed.org/news/2017/02/10/regulators-may-reopen-aliso-canyon-gas-field-over-residents-objections/>

²⁵ <https://energy.gov/sites/prod/files/2016/12/f34/Appendix%20I%20-%20Well%20Integrity%20Working%20Group%20Report.pdf>

²⁶ <http://www.laweekly.com/news/what-went-wrong-at-porter-ranch-6405804>

environment. The safer way to inject gas is only through the well's 2-7/8-inch well pipe, leaving the casing clear. Additionally, the top-of-cement (TOC) for the production casing was at a recorded depth of approximately 6,500 feet. This meant a failure in the casing above the TOC at operating pressures created a high likelihood of a breached well. Since 1979 (the last presumed time the tubing was pulled), there are no records of logs performed for the purpose of evaluating the condition of the casing that could be used to assess *a priori* risk of a leak.

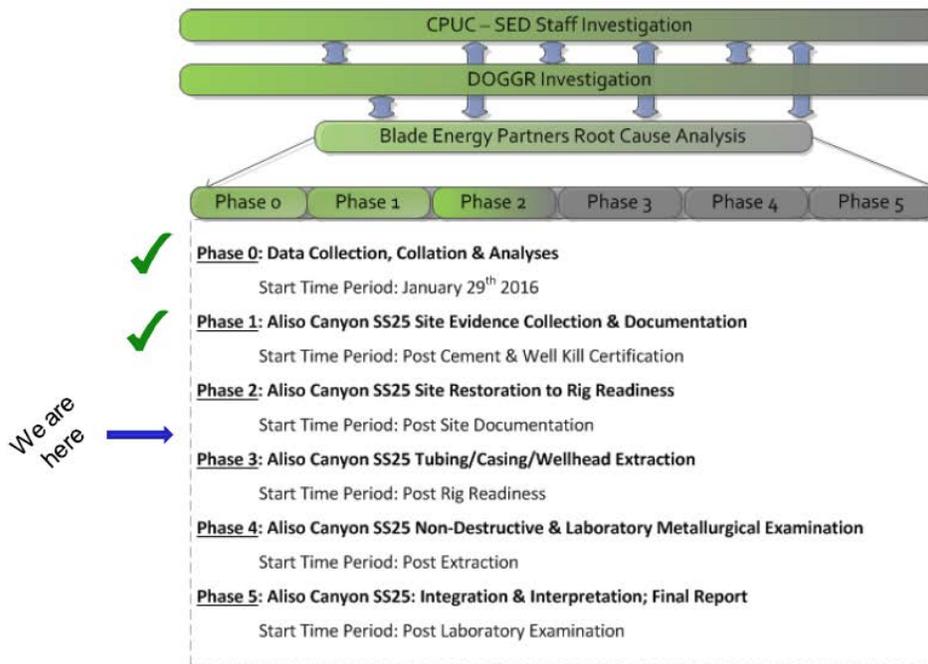
The following diagram shows the likely source of the SS-25 blowout that caused the four-month leak:



It has been two years since the Aliso Canyon disaster and there are still no hard answers as to what happened and who was responsible. SoCalGas hired Texas-based Blade Energy Partners in early 2016 to provide a root-cause analysis. Blade Energy Partners was to have unrestricted access to the SS-25 gas well. As of March 2017, Blade Energy Partners has only completed Phase 0 and Phase 1 of its investigation with Phases 2 through 5 still remaining.



Phases of Root Cause Analysis



3

A basic principle of investigation is to not allow the trail to grow cold. The CPUC’s feet-dragging has turned the investigative ice cold. SoCalGas promised root cause report by the first half of 2017 was not realized. As of now, the root

cause report will not be complete until 2018 at the earliest. Consolidation, with a refocus on finding out what happened first, would ensure that the root cause report is prioritized, with common issues of Aliso Canyon's status that depend on the root cause report decided in a consistent and logically sound manner. However, in another blocking move, the CPUC denied the request for consolidation in November 2017.

Unfortunately, Aliso Canyon is only one in a long list of recent utility disasters. Consolidation and prioritization of Aliso Canyon issues before the CPUC and important to the public would restore public confidence in the CPUC. Recent utilities disasters under the CPUC's watch include but are not limited to the following:

- In October 2007, San Diego Gas & Electric Company's (SDG&E) electric transmission equipment in San Diego caused fires that took two lives and destroyed or damaged hundreds of homes in San Diego. The damage claims totaled \$4 billion.
- On 9 September 2010, a 30-inch diameter natural gas transmission pipeline owned and operated by Pacific Gas & Electric Company (PG&E) ruptured and caught fire in the City of San Bruno, California. The explosion caused eight deaths and damaged more than 35 homes. The San Bruno explosion was part of a pattern of safety lapses of CPUC-regulated utilities. In response, the CPUC issued Rulemaking (R.) 11-02-019 on 24 February 2011, "a forward-looking effort to establish a new model of natural gas pipeline safety regulation applicable to all California pipelines." PG&E executives were prosecuted and convicted. PG&E executives asked the CPUC in private communications to pick PG&E's judge of choice.
- In January 2012, Southern California Edison's (SCE) nuclear generators failed, causing the San Onofre nuclear power plant to

close permanently. As a result of this closure, the CPUC required ratepayers to pay an additional \$3.3 billion.

In the aftermath of this dismal record, CPUC President Michael Picker on 14 January 2015 admitted that the CPUC's "safety oversight was severely lacking." The CPUC claims it is "committed to transparency in its work to serve the people of California."²⁷ Aliso Canyon released the equivalent in greenhouse gases of more than half-million cars driven over a year, displaced thousands of residents, caused numerous health issues, and exposed the community to carcinogens.²⁸ As State Senator Stern said, "If we don't know what went wrong, how can we prevent it from happening again? ... We need to get to the bottom of this before we even think about re-opening this facility."²⁹

This is an opportunity for the CPUC to help the victims of the Aliso Canyon disaster and make sure the investigation is done right. Whether the question is how long has Aliso Canyon been closed or should it be reopened, the fundamental issue is how the SS-25 breach happened and who was responsible. All other issues will fall into place once a proper investigation is completed. Yet, the CPUC ruled in favor of the utilities and did not consolidate.

The Napa and Sanoma Fires

The "Napa" wildfires in Northern California have claimed at least 41 lives and are responsible for the loss of more than 5,700 structures in several counties, including Sonoma and Napa. Reports of power equipment failures began to turn

²⁷ Introductory Remarks, California Public Utilities Commission President Michael Picker, January 15, 2015, Voting Meeting.

²⁸ <http://www.latimes.com/science/sciencenow/la-sci-sn-porter-ranch-methane-20160225-story.html>

²⁹

http://www.enr.com/external_headlines/story?region=california&story_id=5VtHSuLI2A6qkcOMDShVBv-kOvCdbprtmJLsD245X_ExHf4Rqbw5ZRhkyILu2DP6B5eCKIO5Y7NCJHuV6lmWAhptDwH9pooO5TPBoRfvNRdP5EivOlAA97qVWmYAKHVe&images_premium=1&define_caption=1

the spotlight on PG&E, the giant San Francisco-based utility, raising questions about how well it maintained its equipment in the area and whether it adequately cut back trees from power lines to reduce fire risk — as required by state law.³⁰

As was the case with the SDG&E fires and the Aliso Canyon methane leak, the CPUC has announced it has started an “investigation” into whether PG&E equipment was responsible for the Napa and Sanoma fires. The so called “investigation” consisted of a letter from Elizaveta Malashenko to PG&E: “The regulatory agency sent a letter to the utility ordering that it preserve all equipment possibly related to the string of fires, as well as internal communications discussing the disaster.”³¹ However, Picker lost no time covering up for PG&E with the Wall Street Press. Picker told Bloomberg that we may never know if PG&E equipment ignited the Northern California fires: “The PUC president announced that his California’s chief utility regulator said the state may never determine whether PG&E Corp.’s electrical equipment played a role in igniting the deadly blazes near San Francisco earlier this month.”³² Picker told the Wall Street press:

The wildfires, which have killed at least 42 people and destroyed thousands of structures across California’s iconic wine country, **may have also burned the evidence necessary to find out what caused them**, Michael Picker, chairman of the state’s Public Utilities Commission, said in an interview Wednesday. Utility owner PG&E has meanwhile lost more than \$6 billion of its market value amid speculation that downed power lines may have contributed to igniting the fires.

³⁰ <http://www.mercurynews.com/2017/10/10/pge-power-lines-linked-to-wine-country-fires/>

³¹ <http://www.mercurynews.com/2017/10/14/cpuc-launches-investigation-into-california-wildfires-probes-pge-activities-in-fire-zones/>

³² <https://www.bloomberg.com/news/articles/2017-10-19/chief-regulator-california-may-never-know-if-pg-e-caused-fires>

“We still don’t know whether the fires caused pole or line damage or the poles caused the fires,” Picker said while attending a symposium organized by grid manager California Independent System Operator Corp. in Sacramento. “They may never sort it out.”

Picker’s effort to muddy the waters is nothing more than a blatant effort to create doubt about the ability to determine whether PG&E imprudence caused the horrible deadly fires this October in Northern California. If PG&E was doing what the director of safety told the Senate Committee in November 2015 PG&E should be doing, then PG&E would have learned from SDG&E experience with the 2007 San Diego fires. The SDG&E 2007 fires were caused in part by automatic reclosers that re-energized SDG&E power into a fault that ignited vegetation and a sycamore tree. Picker is very familiar with the causes of the San Diego fires because he has actively postponed the adoption of two Administrative Law Judges decision finding SDG&E imprudence caused the San Diego fires. Picker so acted in late September and October 2017.

PG&E was also on notice of the risk that reclosers could start forest fires based on the Butte Fire of 2015. The Butte wildfire killed two people and destroyed more than 200 homes in the Sierra foothills. PG&E was ultimately fined by the CPUC in connection with the fire.³³ A PG&E company executive admitted the fire (known as the Butte Fire) “may have been started by [PG&E] power lines coming into contact with a tree.”³⁴ Elizaveta Malashenko head of the CPUC safety unit told the press that the CPUC had narrowed the investigation to a single tree. The CPUC called on PG&E to step up its vegetation management efforts in 2014.

³³ San Francisco Chronicle (California) September 17, 2015

³⁴ San Francisco Chronicle (California) September 17, 2015

SDG&E in October 2014 published its “Fire Prevention Plan” noting that as part of SDG&E’s Community Fire Safety Program, the company has undertaken one of the nation’s largest deployments of state-of-the-art pulse reclosers. The equipment allows SDG&E to operate its system with significantly reduced energy flows during reclosing operations and be able to sectionalize various elements of its distribution system to better manage system operations and reliability.³⁵ Did PG&E learn from SDG&E’s experience?

CONCLUSION

Storm warnings require the People of California to act. They must demand fundamental reforms at the CPUC. President Picker had a choice: he could have ended the stranglehold the utilities exercise over the CPUC. Instead, he opted for keeping the CPUC subservient to the utilities it is supposed to regulate. The utilities have placed the CPUC into a severe and advanced case of regulatory capture. Radiation leaks, fatal explosions, deadly fires, and debilitating methane leaks have become common place for the People of California. Excuse-making, cover-up, delayed investigation, and secret disruption of reasoned ALJ decisions following hearings is the CPUC corporate culture under the Peevey-Picker era.

The San Diego Union Tribune is right; the CPUC must make radical changes to restore it to its fundamental mission of protecting the safety of the people it is supposed to be serving. How many more lives can we lose?

³⁵ <https://www.sdge.com/sites/default/files/regulatory/2014-FPP-Report.pdf>