

AGUIRRE & SEVERSON, LLP  
ATTORNEYS AT LAW

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

Maria C. Severson, Esq.  
[mseverson@amslawyers.com](mailto:mseverson@amslawyers.com)

Honorable Mike Gatto, Chairperson  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249

Re: Picker False Statements

**I. INTRODUCTION**

We are writing to request the Committee on Utilities and Commerce (Committee) complete the work it started to: (1) determine why the California Public Utilities Commission (CPUC) is making utility customers pay over \$3.3 billion for the closed San Onofre power plant; and (2) address the other issues raised below.

**II. BACKGROUND**

**A. San Onofre**

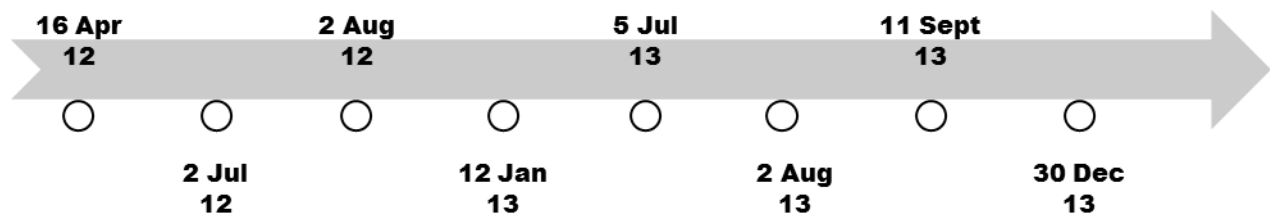
CPUC President Michael Picker continues to support the CPUC Order (“Order”) requiring Southern California Edison (SCE) customers to pay for the shuttered San Onofre power plant, despite these facts:

- Two Superior Court judges have found probable cause to believe felony obstruction of justice violations occurred in connection with the Order;
- The Order was the product of collusion between CPUC and Southern California Edison (SCE) officials who plotted at a secret meeting at a Warsaw, Poland hotel;
- The two consumer representatives who signed off on the Order have renounced their approval based upon disclosures of the collusion;
- After discussing the idea with SCE’s San Onofre Vice President, the judge assigned to the investigation abruptly ended it the month after it was started;
- SCE did not seek or receive a determination from the CPUC that SCE acted reasonably in deploying the defective steam generators.

There is substantial evidence supporting a finding Mr. Picker was a party to the collusion. Mr. Picker had a motive, opportunity and rationalization to join in the collusion:

First, as a new member of the CPUC, Mr. Picker was motivated to go along with the collusion to show he could be trusted to support the CPUC's long-time strongman Michael Peevey; Michael Peevey operated with the Governor's full support. This motivation grew stronger when Mr. Picker decided he wanted both SCE's and Peevey's support to be elevated to the CPUC Presidency, which occurred in December 2015.

Second, Mr. Picker had the opportunity to participate in the collusion. Mr. Picker was in regular contact about San Onofre with those suspected to have obstructed justice to make utility customers pay \$3.3 billion for the closed plant. For the two years after San Onofre's January 2012 failure, Mr. Picker was in continuous contact with SCE and CPUC officials (all of 2012 and 2013), including on these dates:




After Mr. Picker was appointed, he had 65 secret San Onofre communications on which he relied to make his San Onofre related decisions. He is refusing to produce those communications. On 1 April 2015, Mr. Picker told this Committee his decision to approve the Order was "based solely on the written record that has been available to all parties." There are another 65 secret communications with the Governor's Office Picker is also refusing to produce.

Third, Mr. Picker could rationalize his decision to tolerate the collusion as the price he had to pay to be elevated to the CPUC Presidency. He would not likely obtain then-President Peevey's and SCE's support if he were to call them out for collusion.

### III. THE ALISO CONNECTION TO SAN ONOFRE

Mr. Picker was part of a group of State officials and utility executives from SCE and SDG&E who decided to replace the 2200MW lost from San Onofre with natural gas largely from in-state plants. Bringing these additional natural gas plants online cost an average of \$63,000 per hour, according to a report from the UC Berkeley's Haas School. Moreover, carbon dioxide emissions increased by 9 million tons during the twelve months following San Onofre's closure, equivalent to putting 2 million additional cars on California's roads. These State officials held a series of secret meetings, including one in July 2013 at the private California Club in Los Angeles that Mr. Peevey arranged, and that Mr. Picker attended:

					
CALISO President Stephen Berberich	CPUC President Michael Peevey	Chair California Air Resources Board Mary Nichols	Gov Brown Energy Adviser Michael Picker	Chair Cal Energy Commission Robert Weisenmiller	Gov Brown Adviser Jobs, Business Michael E. Rossi



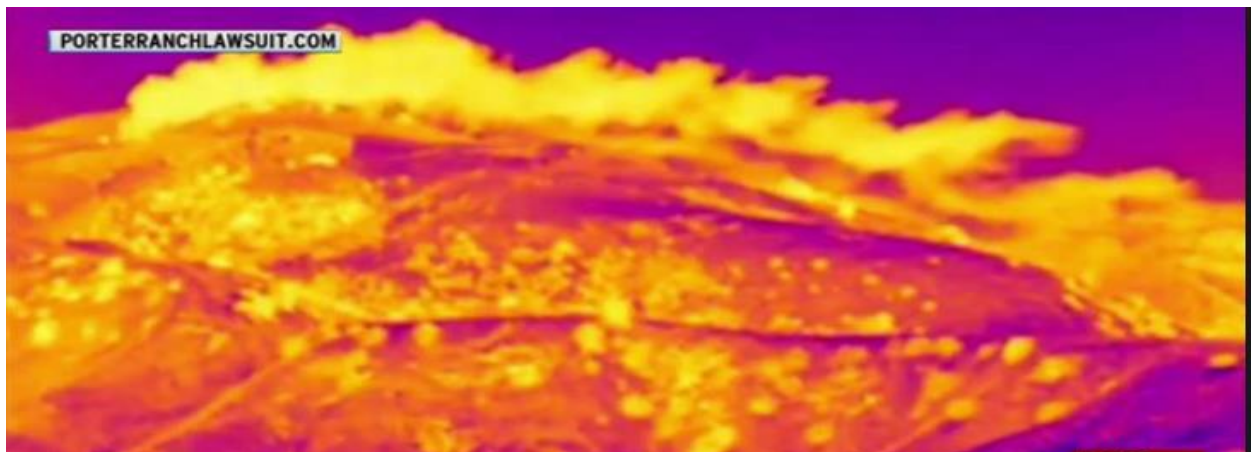
**Monday 8 July 13  
California Club 538 S. Flower**



**California Club, Third Floor  
Private Dining Room**

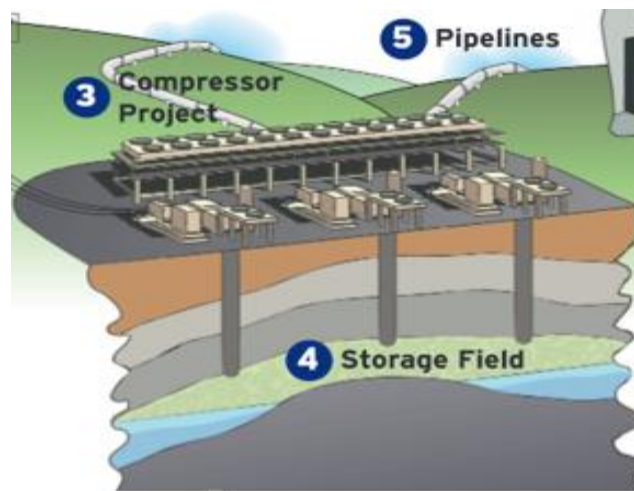
At his first CPUC meeting as President, Mr. Picker admitted the CPUC’s “safety oversight was severely lacking.” According to Mr. Picker, there had been a “slow erosion of [CPUC] safety programs over the years.” Mr. Picker acknowledged the CPUC does not have “consistent practices for safety enforcement record keeping; \*\* comprehensive training in investigation and case management; and \*\* “a written enforcement policy.”

Instead of concentrating on how to make the existing natural gas system of lines and gas fields safe, Mr. Picker focused on expanding natural gas production. This failure led to the gas filed blowout at the Aliso natural gas field:



When the Aliso gas field blowout struck Porter Ranch on 23 October 2015, Southern California Gas Company (SCG) was constructing an expansion of the Aliso gas field. The goal of the project was to “expand the storage field’s natural-gas injection capacity from approximately 300 million cubic feet (scf) per day to approximately 450 million scf per day.”

The project called for (1) a Central Compressor Station with three new electric-driven, variable-speed compressors and pipelines to connect the station to existing facilities; (2) a 12-kilovolt (kV) Plant Power Line to supply the Central Compressor Station with power; and (3) widened segment of the existing entry road into the storage field.



As the CPUC safety-oversight weakened, its devolution to the electric utility companies’ profiteering strengthened. Michael Peevey diverted the CPUC’s mission from ensuring just and reasonable rates, to protecting utilities from the financial consequences of their imprudence. A reign of terror ensued with the SDG&E equipment -caused fire in San Diego, the PG&E-caused explosion in San Bruno, the Southern California Edison (SCE) radiation leak and nuclear waste dumping at San Onofre, and the natural gas field blowout at Porter Ranch.

#### **IV. CRIMES OMMITTED IN THE NAME OF RELIABILITY**

By April 2012, CPUC officials were working on finding replacement power to cover what had been lost when San Onofre closed. As of 18 April 2012, California Independent Systems Operator (“ISO”) head Steve Berberich had formulated a replacement power plan to maintain system reliability. The San Onofre replacement power problem had stabilized by June 2013.

SCE did not allow the success of the San Onofre replacement power plan to stand in the way of using the threat electric of system “reliability” to panic the public and distract from the critical questions and demands that SCE officials be held accountable for their San Onofre failure.

February 8, 2016

Page 5

SCE enlisted Picker, Peevey and the Governor in its plan. SCE Chief Executive Officer Ted Craver told his Board of Directors the Governor had agreed to focus on the reliability issue, with no mention of accountability. On 6 June 2013, SCE's Craver wrote to his Board:

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 indicted 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...

The Governor obliged. The next day, the Governor issued an accommodating press release that stressed the "reliability issues:"

6-7-2013

SACRAMENTO – Governor Edmund G. Brown Jr. today issued the following statement regarding Southern California Edison's decision to permanently shut down the San Onofre Nuclear Generating Station.

"Since San Onofre nuclear power plant went offline last year, energy utilities and the state have worked to provide Southern California with reliable electric power year round. At my direction, California's top energy experts will continue developing a long-term plan that ensures there is reliability for decades to come. As we move into the hot summer months, we can all do our part by continuing to conserve." ###

On 1 February 2016, Mr. Picker took a page from the public relations book on reliability and wrote the Governor:

We are bringing the same urgency and attention to this as we did when faced with the unexpected closure of the San Onofre Nuclear Generating Station. Our organizations worked together effectively then, and we will again.

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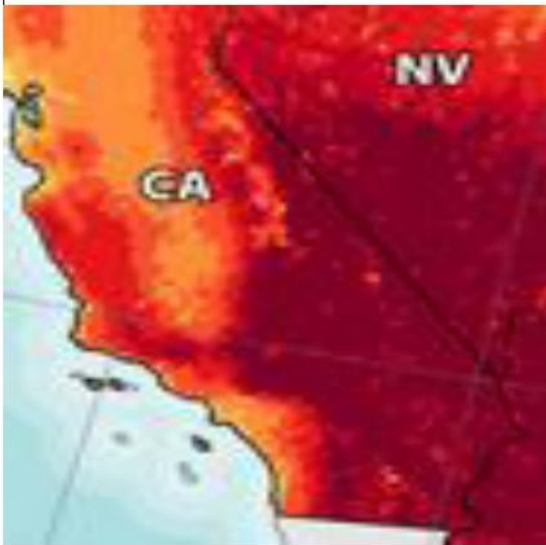
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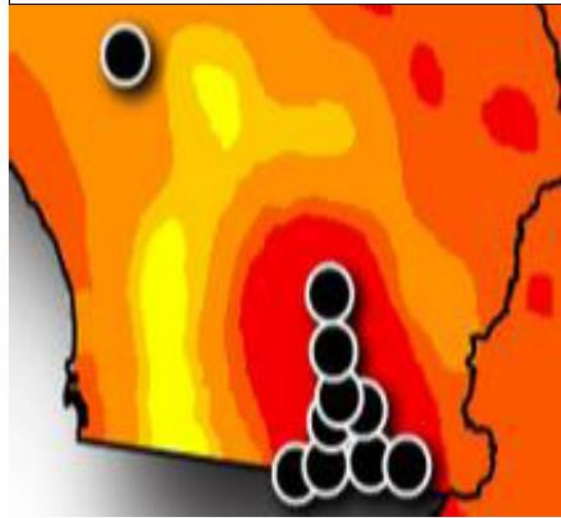
## V. IMPERIAL IRRIGATION DISTRICT

Over 8,480 megawatts (MW) of renewable energy has been identified as available for development in Imperial County, according to California's lead energy agencies. Further, the United States government's primary laboratory for renewable energy, energy efficiency research, and development -- the National Renewable Energy Laboratory (NREL) -- has identified Imperial County as some of the most favorable regions for solar and geothermal energy in the nation, as shown here on two NREL energy potential maps:

**NREL Map Solar Resources Concentrated in Imperial County**



**NREL Gives Imperial County Most Favorable Geothermal Rating**



The CPUC, California Energy Commission ("CEC") and ISO, through its "Renewable Energy Transmission Initiative" (RETI), determined Imperial County could produce an additional 1440MW of geothermal derived electricity or 65% of 2200 lost went San Onofre closed. Imperial County geothermal plants are shown here:



Under Mr. Picker, the CPUC and ISO (under its lead officials) are blocking the development of Imperial County's geothermal in favor of expanding natural gas produced electricity. In so acting, the CPUC and CAISO officials are acting in contravention of Public Utilities Code § 345.5. CAISO requires efficient use of available energy resources.

On 8 August 2014, Picker mocked the Imperial Irrigation District's (IID) effort to expand geothermal power to replace what was lost when San Onofre closed:

He (IID GM Kelley) still believes that you guys (the ISO) told him that there was adequate transmission capacity to move 500 MW of geothermal to the coast; and that (not clear that he actually asked the question) geothermal from Imperial is just what is needed to replace San Onofre. I said that Kevin Kelley was wrong about how to reach the Imperial County deliverability and that the physics of the system made it unlikely that additional remove resources help with reliability on the coast without another set of transmission improvements that provide delivery (or V ARS) at someplace near San Onofre. He said that he didn't understand what a V AR was, and then went on to complain about the CPUC leg staffs testimony about economic impacts.

## **VI. DUMPING NUCLEAR WASTE IN THE OCEAN IN SAN DIEGO**

The other utilities catastrophes – massive fire in San Diego; gas explosion in San Bruno; and gas blowout at Porter Ranch -- may pale in comparison to a disaster that may be caused by the 3,600,000 pounds of nuclear waste SCE is dumping near the ocean in San Diego. Under Picker, the CPUC used none of its authority to cause SCE to look for alternative sites. The burial site for the nuclear waste at San Onofre is yards away from the shoreline; it is expected to be under water before it can be removed. The burial site is illustrated here:



To generate electricity, SCE used uranium oxide fuel in the form of small ceramic pellets that were placed inside metal fuel rods. These rods were grouped into bundles called assemblies:

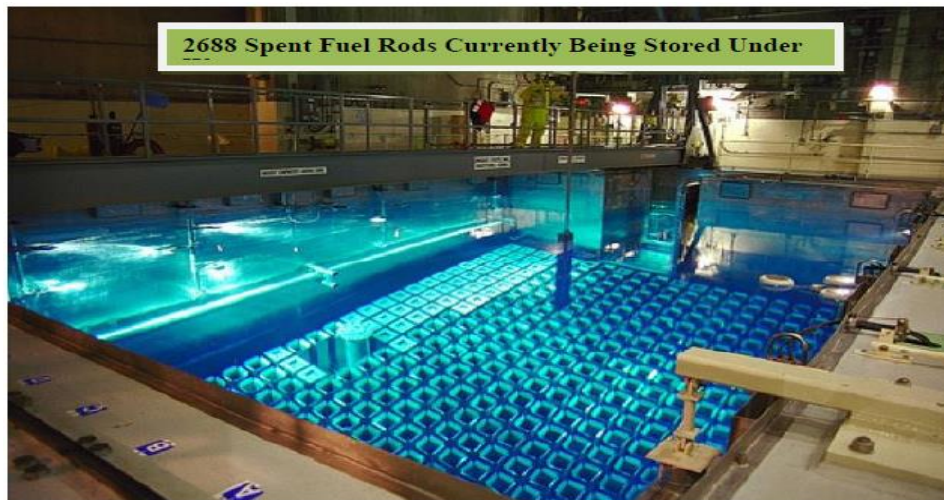


An 1100 MWe PWR core, like the ones used at San Onofre, may contain 193 fuel assemblies composed of over 50,000 fuel rods and some 18 million fuel pellets. Once loaded, fuel stayed in the core for several years. During refueling (every 12 to 18 months), some of the fuel -- usually one-third or one-quarter of the core -- was removed to storage. The remainder was rearranged to a location in the core better suited to its remaining level of enrichment.



Every 18-24 months, SCE shut down the plant to remove and replace about one-third of the fuel, consisting of the oldest assemblies. While the plant was generating electricity, its three (then two) reactors were also producing nuclear spent-fuel waste. The longer the nuclear fuel remained in the reactors, the higher the burnup.<sup>1</sup> Burnup is a way to measure how much uranium is burned in the reactor. It is the amount of energy produced by the uranium.

Following the 18-24 month cycle, SCE installed the newer assemblies and removed some of the spent ones to underwater storage pools:



San Onofre was in the midst of its sixteenth refueling cycle when on 31 January 2012, generator tubes in Unit 3 sprung a radioactive leak, causing the plant to close. When the plant closed, SCE had over 2,668 fuel assemblies in the spent fuel pools for Units 2 and 3. These assemblies must be cooled in the spent fuel pools for five-to-seven years or more. SCE has removed some of the assemblies from the pools and stored them in dry cask storage. About 400 Unit 1 and 800 Unit 2 and 3 fuel assemblies are stored in above-ground dry cask storage at the plant.

The CPUC deferred the decision to bury close to 3,600,000 pounds of nuclear waste on a San Diego beach to SCE, calling the project an “Independent Spent Fuel Storage Installation,” or an “ISFSI.”

The CPUC, despite Mr. Picker’s claimed concern for safety, did not request SCE obtain a Nuclear Regulatory Commission license to relocate the San Onofre nuclear fuel to a safer location, such as SCE’s Mojave Desert Palo Verde nuclear plant and storage facility, as shown here:

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<sup>1</sup> <http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/bg-high-burnup-spent-fuel.html>



The Germans and French have shown there are safe ways to transport nuclear fuel to more secure sites, as shown here:



As with any other business, SCE should be required to dispose of its waste at a safe location. The CPUC should use its full authority to require SCE to obtain a license from the Nuclear Regulatory Commission to relocate the 3,600,000 pounds of nuclear waste at San Onofre to a safer more secure site than the ocean shore line.

## VII. CPUC PUBLIC RECORD ORDER INSTITUTING RULEMAKING (“OIR”)

The CPUC was severely criticized for withholding records that should have been produced to the City of San Bruno following the explosion PG&E’s gas lines caused in San Bruno and the radiation leak that closed the San Onofre plant. For example, the CPUC failed to produce the handwritten notes on the Warsaw, Poland Hotel Bristol stationery detailing the terms of the agreement to make utility customers pay for closed plant at San Onofre, even though such documents were requested within weeks of that not yet disclosed clandestine meeting.

California Government Code § 6259 (the Public Records Act) provides: “Whenever it is made to appear \*\* to the **superior court** \*\* that certain public records are being improperly withheld \*\* the court shall order the \*\* records disclose[d] or [to] show cause why he or she should not do so. \*\* The court shall decide the case after examining the record in camera.”

The legislature made the CPUC subject to the Public Records Act. Enacted in 1968, Section 6253(a) provides: “Public records are open to inspection at all times during the office hours of the **state** \*\* **agency**. Section 6252(f) makes clear “State agency” means every **state** \*\* **commission** \*\*. (Emphasis added)

Govt. Code § 6253.4 (a) states: The following state and local bodies **shall** establish written guidelines for accessibility of records \*\* **Public Utilities Commission**. (Emphasis added)

The CPUC admits the procedures for complying with the Public Records Act are outdated. CPUC General Order 66-C, adopted in 1974, identifies all CPUC records as public unless exempted. The general order identifies several exemptions from public disclosure that are inconsistent with the Public Records act, and it does not articulate the process and procedure for obtaining Commission records.

The CPUC announced it intended to reform its production of records of documents under the Public Records Act in a Rulemaking proceeding (R 14-11-001) in November 2014. However, the proposed rule includes a time-delay procedure, pushing production of records months beyond the 10-day limit in the Public Records Act. The CPUC proposal is inconsistent with present law that allows for a Superior Court to make an in camera inspection of records sought to be withheld.

The CPUC’s proposed rule would establish a cumbersome process for producing records the CPUC received from third parties. Looking at other public agency procedures to which the utilities provide records can guide the process. For instance, the United States Securities & Exchange Commission (SEC) had adopted guidelines for producing records to the public that have been received from third parties. All the stock exchange traded companies (e.g. SCE, SDG&E, PG&E) are already required to live under those rules that require public disclosure of records they submit to regulators.

In order to keep documents confidential under the SEC procedures, companies have to live by these rules:

1. Confidential treatment cannot be given if information publicly disclosed.
2. “Material” disclosure information to which the public has a right to know cannot be given confidential treatment.
3. The application for confidential treatment cannot be overly broad. The requester must explain why disclosure would be harmful and why its disclosure is not needed to protect ratepayers.
4. The confidential treatment is limited to the exact words sought to be withheld.
5. Agreements to keep documents confidential are not binding on the SEC.

There is a substantial need to review the CPUC's Public Record Act compliance.

### VIII. CONCLUSION

There is a demonstrated pattern of malfeasance, a culture of secrecy, and an over-emphasis of ensuring profits for utilities at the CPUC. The consequences of the failures at the CPUC are not just excessive rates — they are the safety and security of the people of California. We respectfully urge the Committee to investigate the facts, hold the CPUC Commissioners accountable, unearth the documents withheld, demand the CPUC give San Onofre utility customers their day in court, allow the full development of Imperial County renewables, demand the CPUC give San Onofre utility customers in court, and require a review of alternatives to dumping the nuclear waste.

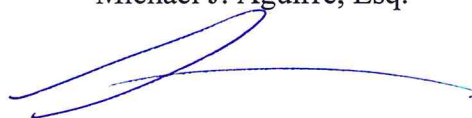
Thank you.

Very truly yours,

AGUIRRE & SEVERSON, LLP



Michael J. Aguirre, Esq.



Maria C. Severson, Esq.