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UCSD - GPS CASE 16 - 09

# **Establishing Stronger Monitoring Mechanism of the CPUC's Ex Parte Contacts**

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Course on Corporate Social Responsibility  
Winter 2016

## **Establishing Stronger Monitoring Mechanism of the CPUC's Ex Parte Contacts**

- A Case Study of Ratesetting Proceeding Over San Onofre Nuclear Station Shutdown -

### **Overview**

This paper is a proposal to an NGO, The Utilities Reform Network (TURN), serving for the interest of ratepayers on their behalf, so that it could establish stronger monitoring mechanism over ex parte contacts<sup>1</sup> of the California Public Utility Commission (CPUC) in electricity rate setting proceedings. In what follows, brief background is introduced at the beginning and key issues will be subsequently detailed. Those key issues fall in every player at stake, which cover incomprehensive rulemaking, conflict of interest in appointing commissioners, and incompetent monitoring system. Thereafter, I will set criteria to examine which options, in any combination thereof, to take among them. Every possible option will be unfolded to address these enumerated issues and evaluated. Lastly, the proposal will reach to recommend a set of action plan matching such criteria.

### **Background**

In June 2013, SCE announced plans to prematurely retire San Onofre Nuclear Generating Station (SONGS, which SCE and SDG&E own 80% and 20%, respectively) due to a course of troubles with its steam generators (SCE 2013). The CPUC opened an investigation over the influence to the electricity rates incurred by SONGS permanent closure in response to the company's filing, which eventually resulted in a joint settlement among SCE, SDG&E, TURN, the CPUC, and the Office of Ratepayer Advocates (ORA)<sup>2</sup> in March 2014 (SDG&E 2014). The settlement determined how to allocate the additional costs of \$4.7 billion in total, generated by the premature shutdown, to each stakeholder: \$1.4 billion

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<sup>1</sup> Ex parte contact means one-sided communication between a decision-maker and interested groups, privately held behind the scene.

<sup>2</sup> A division of CPUC, which advocates ratepayers on behalf of the public. Detail will follow in the next section.

(accounting for approximately 30%) to the shareholders and \$3.3 billion (accounting for 70%) to the ratepayers (See, Appendix 1&2).

However, soon after the settlement obtained an approval from the CPUC, the San Diego Union-Tribune, a local newspaper, reported the fact that then-CPUC President Michael Peevey had a private communication with then-SCE vice president Steven Pickett over the issue concerning San Onofre shutdown at Hotel Bristol in Warsaw, Poland, which called into question the integrity of the settlement process (McDonald 2015). In California, the Public Utilities Code and the CPUC rules set certain restrictions on such behind-the-scene communication over pending ratesetting cases, requiring advance notices to other parties and filing reports that cover what the interested group addressed in the meeting, among others (Behles and Weissman 2015). Nevertheless, SCE did not file a necessary report of the meeting in a timely manner (SCE 2015).

After the scandal had revealed, the ORA withdrew their support for the settlement, arguing that the transparency of the settlement process was deteriorated and they could have reached more advantageous settlement for ratepayers unless such one-sided private communication did not occur (McDonald 2015). The article also reported that the ORA requested to the commission to order the utilities to return \$648 million, as a floor, to better balance the tainted settlement. Moreover, the state and federal attorneys opened criminal investigation after this case. Amid such charges against utilities, several comments also indicated that TURN, which participated the settlement on behalf of ratepayers, was disqualified to participate ratesetting process hereafter since it did not timely respond to such ex parte contact, while knowing the fact that it happened (McDonald 2015).

The California State Assembly started vigorous discussion toward CPUC reform. In October 2015, while Assembly passed six bills concerning the CPUC reforms that include stronger regulations over ex parte contacts, Gov. Brown vetoed them stating the reasons as

follows: “[he supports] the intent of these bills and many of their proposed reforms, however some additional work is needed to ensure that they achieve their intended purposes and can be effectively implemented” (KQED 2015). Assembly again passed bills for CPUC reform unanimously in January 2016, and is waiting for the governor’s signature (McDonald 2016).

As illustrated above, ex parte contact over ratesetting proceedings like this case is such a serious problem that allows interested groups to manipulate and deteriorate the supposedly fair and transparent process before the CPUC, which could possibly result in disproportionate allocation of electricity costs over extensive ratepayers. Nevertheless, all the stakeholders responsible for the process failed to play expected roles and to comply with the rules: the CPUC had lax rules and even failed to follow it by initiating such private communication with a utility executive behind the scene, the ORA failed to detect such a contact while closely working with the CPUC, SCE failed to timely file the report allegedly by executive’s self-judging, and TURN, in charge of monitoring on behalf of ratepayers, missed an opportunity to properly respond. Furthermore, even Assembly lawmakers sponsoring the package of the CPUC reform bills are struggling with the governor’s resistance.

Over such deadlock, what this paper is aiming at is how to effectively manage the grass-roots activities to charge interested players with social responsibility and help re-establishing transparent ratesetting process within the limitation of NGO’s resources and capability.

### **Key Issues**

In California, the electricity market is designed as a combination of regulated and deregulated layers, where the power utilities sell electricity to end-users at the regulatory rate approved by the CPUC at the retail level, whereas utilities purchase electricity at the

deregulated wholesale market (Cook 2013). A large majority of consumers in California receive electricity from one of the three major investor owned utilities: Pacific Gas & Electric (PG&E), SCE, and SDG&E. The CPUC has authority to conduct a rate case in response to a utility's filing, and approve a utility to pass the costs of providing electricity plus a fair rate of return on investments on ratepayers. The regulations relevant to this procedure, Public Utilities Code Section 451 and 454 (a) read as follows:

451. All charges demanded or received by any public utility [...] for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be *just and reasonable*.

454. (a) [...] a public utility *shall not change any rate [...], except upon a showing before the commission and a finding by the commission that the new rate is justified.* [...]

To ensure a rate case is thoroughly and impartially investigated, the ratesetting process is designed as an adjudicatory hearing before administrative laws judges (ALJs) who the CPUC assigns to a case.

However, in this scandal, ratepayers are skeptical about the settlement of which framework was decided under the influence of the ex parte contact between the CPUC President and the SCE executive. No matter how the consequent rate is just and reasonable, what is critical here is such deception could manipulate and distort the process and deteriorate the integrity. This problem would be broken down to the following four issues.

#### (1) Opaque and incomprehensive regulations

According to Behles and Weissman, regulations on ex parte contacts are aimed at preventing an interested party from obtaining an unfair advantage in a contested case (2015). They also point out that ex parte contacts generally tend to be disproportionately weighed in the decision-making process since the decision maker does not have access to rebuttal, which is usually expected in a fair adversarial hearing. Ex parte contact restrictions are implemented over judicial and adjudicatory process in multiple states and federal level in varied fields.

In California, the CPUC is subject to Public Utilities Code and rules it endorsed the Code on this issue. According to these regulations, the CPUC's activity is divided into three types of proceedings: adjudicatory, quasi-legislative, and ratesetting that is at stake in this case. Each proceeding follows different regulations at varied level of strictness. The Code and CPUC Rules technically allow limited ex parte contacts under a certain set of conditions: interested group engages in such a contact is required to notice the other party that it would have such private communication with the CPUC in advance, and disclose what it claimed. Besides, the CPUC needs to provide the other party with substantially the same opportunity of private communication to rebut. This case violated such regulations in respect of SCE, an interested group, having failed to file a timely report.

However, Strumwasser&Woocher LLP, a law firm hired by the commission to conduct independent investigation, reported that the existing regulations are rather lax compared to respondent rules in other states and opaque in interpreting. To address such problems, it developed a set of proposals based on the result of the investigation as follows.

Firstly, it recommended that the commission prohibit ex parte contacts in principle. According to the investigation, a pernicious case was found, in which a commissioner implied to favor a utility by assigning a tractable ALJ to a case, soliciting donation to a particular project (e.g. UCLA Institute where then-Commissioner President Peevey was an advisor). Besides, the research findings showed that a utility usually files an overwhelming number of reports for ex parte contacts in each case than those of either the ORA or NGOs, while legitimate as long as timely reported according to the current rules. Those facts suggest that such privately held communication could become the main forum to form commissioner's opinion, which looks unfair for the other party not to be entitled to rebut.

Secondly, the outside investigator proposed that the commission and its aides bear the obligation to file a report and disclose when they are involved in permissible ex parte

communication, which only an interested group is now imposed such obligation thus far. Third, the law firm suggested that the commission should avoid industry-sponsored trips and conferences. This is because the case in interest was committed under such a circumstance when the former CPUC president Peevey and the SCE executive were together at conference in Warsaw, Poland. The report showed concerns about trips and conferences could provide them with a breeding ground for private communication escaping away from prying eyes. To address these issues above, Public Utility Code and the commission's rules should be revised through legislative approach.

## (2) Conflict of interest of the CPUC commissioners

The CPUC is an executive branch of the California State Government, which regulates privately owned utilities such as electric, natural gas, telecommunications, and water etc. According to the commission's mission, it serves public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy (2016). Its mission includes setting electricity retail rates and inspecting and auditing power plants and utility infrastructure.

The Governor appoints five commissioners, who are subject to confirmation by Assembly Senate. The Governor also designates the Commission President among them. Each commissioner has long experience in the regulated industries, including utility executive, legal practitioner serving for NGO of the field, and academic. The following list enumerates then and former Commission President Michael R. Peevey, who did not seek to get reappointed after the case had revealed, as well as incumbent commissioners. As shown below, Mr. Peevey worked for SCE as the President from 1984 to 1995, which makes it apparent there were conflict of interests in San Onofre ratesetting proceeding.

- Michael Picker (12/2014 -Commission President): Senior Advisor for Renewable Energy in the Office of the Governor (2009-2014), a principal at Lincoln Crow Strategic Communications (2000-2009), Deputy Treasurer in the Office of the California State Treasurer (1998-1999), Chief of Staff to Sacramento Mayor Joe Serna Jr. (1992-1999), Deputy Assistant for toxic substance control in the Office of the Governor (1981-1982), a member of the Sacramento Municipal Utility District Board of Directors (2012-2014).
- Mike Florio (01/2011-): a senior attorney at The Utility Reform Network (1978-2011), a member of California Conference of Public Utility Counsel, a member of the board of governors of the California Independent System Operator (1997-2005).
- Catherine J.K. Sandoval (01/2011-): Co-Vice-Chair of the National Association of Regulatory Utility Commissioners (NARUC) Telecommunications Committee, on the NARUC Federalism and Telecommunications Committee, and on the NARUC Utility Market Access Committee. Policy Chair of the Federal Communications Commission (FCC) Federal-State Joint Conference on Advanced Telecommunications Services. California Emerging Technology Fund Board of Expert Advisors (2007-).
- Carla J. Peterman (12/2012-): Board member of the National Association of Regulatory Utility Commissioners (NARUC) and as a Steering Committee member of the California Plug-in Electric Vehicle Collaborative. Lead Commissioner of the California Energy Commission. Environmental business analyst at community redevelopment non-profit Isles Inc.
- Liane M. Randolph (01/2015-): Deputy Secretary and General Counsel at the California Natural Resources Agency (2011-). An attorney at the law firm of Pillsbury Winthrop Shaw Pittman. Chair of the California Fair Political Practices Commission (FPPC) (2003-2007). City Attorney for the Cities of San Leandro and Suisun City on a contract basis.

*Then and Former Commission President*

- Michael R. Peevey (2002-2014): President of NewEnergy Inc. (1995-2000), **President of Edison International and Southern California Edison Company**, and a senior executive there (1984-1995). Board member of numerous corporations and non-profit organizations.

[\(http://www.cpuc.ca.gov/commissioners/\)](http://www.cpuc.ca.gov/commissioners/)

The reason why the CPUC consists of such controversial selection of members is because its service such as ratesetting requires profound expertise about extremely complicated regulations and unique industry practices. Although appointment of



commissioners from the short list in the regulated industries would help improving information asymmetry between the regulators and licensees who have primary information collected from their fields, it is true that commissioners who have long experience in the industry feel sort of sympathy to the regulated community, according to the regulatory capture theory. Actually, this is a typical circumstance for regulatory capture.

According to Public Utilities Code and Conflict of Interest Rules, when the governor appoints a commissioner, an appointee is required to file a certain form that reports financial relationship with particular individuals and companies. This is a mechanism designed to avoid distortions in decision-making process and deterioration of public interests due to conflict of financial interest.

*Public Utilities Code*

303. (a) A public utilities commissioner ***may not hold an official relation to, nor have a financial interest in, a person or corporation subject to regulation by the commission.*** If any commissioner acquires a financial interest in a corporation or person subject to regulation by the commission other than voluntarily, his or her office shall become vacant unless within a reasonable time he or she divests himself or herself of the interest.
- (b) ***The commission shall adopt an updated Conflict of Interest Code and Statement of Incompatible Activities,*** by February 28, 1998, in a manner consistent with applicable law.

However, there is a reason that Mr. Peevey was allowed to serve for the commission for 12-year long even though the close tie to SCE was publicly known before his appointment. Allegedly, according to Derbeken and Baker, the appointment of Mr. Peevey was a result of California electricity crisis happened in 2000 and 2001. His predecessor, Loretta Lynch, a favorite of consumer advocates, in charge of the Commission President during the crisis, failed to solve the flawed market, though she even considered to takeover generators to resolve the troubled situation, which was totally considered a layman's idea. As a reaction to such devastation brought by mismanagement, the governor came an opportunity to appoint an insider, the former SCE President Peevey, who had already supported drafting a financial

rescue plan of PG&E utilizing his expertise in the industry (2014). He answered to the interview by the Chronicle as follows (2011):

“Good regulation is not just beating someone over the head [.] I’m quite willing to use the stick, but I also use the carrot. Ultimately, you have to have the cooperation of the utilities in order to meet the energy goals the state sets.”

One of the remaining issues is that the Code narrowly focuses on the disclosure of only financial ties with regulated industries but for personnel or institutional relationships. Furthermore, the Code does not basically prohibit from appointing such figures tied closely to the industry as long as financial relationships are disclosed, like Peevey was successfully appointed to the Commission President regardless of his apparent conflict of interest.

### (3) Lack of governance over incompliance to ex parte contact rules in SCE

SCE filed a report of the ex parte communication almost two years later from the meeting, just after the San Diego Union-Tribune revealed it as a scandal (McDonald 2015). SCE at first excused that then-vice president Pickett who had the meeting with Peevey self-judged the meeting was not subject to the regulation based on his general understanding of the CPUC ex parte contact rules, since Peevey allegedly initiated one-sided conversation (SCE 2015). Thereafter, Pickett consulted with the corporate counsel on this case, but SCE did not file an ex parte report at that time (SCE 2015).

In that regard, SCE appeared to have had inconsistent internal governance over this issue. After the case, in February 2015, SCE implemented stricter rules on private communication with decision-makers than that of the CPUC, and noticed to its employees (SCE 2015). In particular, according to the SCE’s internal note, it developed a double-check system that requires employees consult with the corporate general counsel in advance when they need communication to the CPUC out of the formal forum over a pending ratesetting proceeding. Besides, SCE disseminated that violation would result in serious disciplinary actions up to termination of employment. It might be the maximum of what SCE could do for

counter measures, however, we should keep watching if it works considering the fact that SCE failed to follow the rule even though Pickett consulted to the corporate counsel last time.

(4) Defects in monitoring system by third parties

Repeatedly, the problem of ex parte contacts is the distortion of impartial quasi-judicial process, in which people expect transparent adverse hearing without asymmetry back-channel communication. By nature, without following restrictions of such private communication, the other party in the proceeding cannot tell even the existence of such ex parte contacts between the decision-maker and the counter party and on what basis the decision-maker reached the conclusion. Actually, this case happened to start revealing by notes from the Warsaw discussion, seized during a search of Peevey's house for another investigation concerning the San Bruno PG&E gas pipeline explosion in 2010 (McDonald 2015). Otherwise, the backdoor communication, while violation of the rules, did not have chance to attract such a huge public attention.

Although the legislative approach to revise the regulations stronger is necessary, the further critical part is who and how could effectively carry out such rules in a practical manner, learning lessons from the experiences which the ORA and TURN failed to monitor the wrong conducts.

*(a) Malfunction of the ORA*

The Office of Ratepayers Advocates (ORA) is one of the divisions of the CPUC, of which mission is defined in statues that it obtains the lowest possible rate for service consistent with reliable and safe service levels, as well as advocates for customer and environmental protection. The incumbent senior staffers of the ORA are five experienced governmental officials, of which majority worked with CPUC for long years.

*ORA members as of March 2016*

- Elizabeth Echols (02/2016-Appointed, needs to be confirmed by Assembly Senate):

Director of ORA. Ran as a 2014 Democratic candidate for District 15 of the California State Assembly and lost. directed the Small Business Administration for the Western region, appointed by President Barack Obama (2010-2013). Also directed the U.S. Green Building Council, was a member of the Obama-Biden transition team and was a director of policy at Google. (KQED 2016)

- Linda Serizawa (05/2012-): Deputy Director over ORA Energy matters. Served CPUC (1989-) as a financial auditor and shortly thereafter, became a regulatory analyst. A Commissioner's Chief of Staff (1999- 2002). Director of the CPUC's Consumer Service and Information Division (2002-2008). Joined ORA as a Program Manager for its newly established Electricity Pricing and Customer Programs Branch (2008-2012).
- Matthew Marcus (06/2011-): ORA's Deputy Director for Water, Communications and Governmental Affairs. ORA's Legislative Director for 5 years. Served for the CPUC's Office of Governmental Affairs for 4 years. Before that, he worked for a member of Congress for 3 years and two separate lobbying firms that specialized in representing clients before Congress.
- Cheryl Cox (2005-): DRA's Policy Advisor. Served for the CPUC, first working for Commissioner Loretta Lynch as her deputy chief of staff and a policy advisor on energy and telecommunications issues (2001-2005). Before that, she worked in the high tech industry as a director of marketing communications for a dot com start-up and a project manager in corporate branding for high tech media giant Ziff-Davis.
- Mary McKenzie (11/2014-): ORA's Interim Chief Counsel. Served for CPUC for 30 years. ([http://www.ora.ca.gov/About\\_ORA.aspx](http://www.ora.ca.gov/About_ORA.aspx))

The ORA withdrew its support for the settlement after the ex parte contact revealed. However, setting aside if the ORA timely knew the Warsaw meeting in specific or not, it is unlikely that the ORA staffers were not aware that permissible ex parte contacts were pervasive in the CPUC over pending proceedings, since they long worked together as a division of it and shared the same office. Besides, as stipulated in Public Utilities Code Article 309.5 (See, Appendix 3), the ORA was established within the CPUC as a division, while technically claiming its independence, and has been subject to the influence of the commission and the governor. The organizational chart issued by the state government illustrates the relationship as if the ORA were independent from the commission's chain of command (See, Appendix 4), however, it is misleading and inconsistent with the articles of

the Code. In this regard, the ORA is put in structural conflict of interest, which deteriorates its competence to monitor the CPUC's questioned conducts in advance to protect ratepayers interests.

Looking at particular cases, KQED news reported that the ORA program manager, Michael Campbell, had frequently exchanged emails with PG&E executives, which included inappropriate personal information of the ORA staffers (2015). The official said, answering to the interview by KQED, it is devastating to have utilities staffs know their personal lives especially in confronting utilities on adversarial position through proceedings. Moreover, it should be noted that the ORA director has been kept long vacant since Gov. Brown, having authority to fulfill the seat, neglected to appoint it for five years<sup>3</sup>. In addition, the ORA does not have its own chief counsel for now, which forces the ORA to ask the CPUC attorney to work with, who might have mismatched interest with the ORA missions (KQED 2015).

*(b) Malfunction of TURN*

TURN is a non-government organization acting in California, which seeks to watch utilities to be accountable by demanding fair rates, clean energy and consumer protections through legal advocacy at CPUC, state and federal policy development, and community organizing throughout California. However, information disclosed on TURN's website and annual reports are limited and seemingly not sufficient to evaluate its competence to serve for public interest. For example, it has not yet revised annual reports since last renewal in 2012, which put questions on their governance. According to its website, the board seems to maintain balanced members with a variety of backgrounds though including a former CPUC commissioner and experienced practitioners in the regulated fields. Besides, the financial disclosure is at poor status just showing simple composition of its assets four years ago (TURN 2016). As to the case of San Onofre ratesetting proceeding, TURN's attorney lagged

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<sup>3</sup> In February 2016, Gov. Brown finally appointed Elizabeth Echols to the ORA director, waiting for the Assembly Senate confirmation.

behind and failed to properly respond to the scandal, acknowledging the existence of ex parte contact in Warsaw. TURN's conduct is open to criticism that it is disqualified to monitor the CPUC and utilities on behalf of ratepayers.

## 5. Criteria

Before unfolding options, this section provides you with several criteria that should be applied to help you examine which options, in any combination, to take. There are four criteria this paper would suggest as follows.

- (1) Effectiveness: an option should effectively address the problem at critical checkpoint.
- (2) Feasibility: an option should meet the limitation of resources including human and financial, and clears cost benefit analysis.
- (3) Timeliness: an option should contribute to solve the problem in a timely manner, before substantial damages become serious.
- (4) Sustainability: an option should be sustainable as long as the problem remains.

## 6. Potential Options

In this case, every stakeholder failed to play expected role following the regulations, including the CPUC, the ORA, SCE, and TURN, which means the reform package should address all the aspects comprehensively. This section introduces and evaluates possible options in terms of legislative, lawsuit, shareholder, media, and ratepayers approaches.

### **Legislative Approach**

One of the major problems of the private discussion in Warsaw is the lax and opaque regulations stipulated by Public Utilities Code and the CPUC rules. The most fundamental and direct action to address such issue is the legislative approach. Thus far, Assembly again passed a package of the CPUC reform bills in this February, waiting for Gov. Brown's signature. At this moment, it is too late for us to input our opinions on behalf of ratepayers to

enhance the package more effectively serving for ratepayers' interests.

However, Gov. Brown has a history that he vetoed the reform bills last time, arguing that those legislations are contradictory and unworkable. In case that the governor maintains reluctant to the CPUC reform and is likely to veto the package again, we could play an aggressive role in mobilizing public opinions against such governor's negative attitudes.

The goal of our action here is not to allow the governor to underestimate ratepayers voice for the reform by mobilizing critical mass opinion. What is happening now in California is silent majority of which constituents feel uncomfortable with such backdoor negotiation but has little incentive to act at their own costs. This is a typical collective action problem letting people be free riders. Utilities impose electricity costs widely and shallowly on broad ratepayers basis, in which price hike to each individual is gradual and invisible in the short run, insufficient to boost them into action. In such circumstance, people rationally choose to do nothing when they believe the costs of action are exceeding the benefits.

However, we can reach to such discontent people by decreasing hurdle to express their opinion in public. For instance, providing opinion leaders whom they can just follow, brief opinion forms that they can easily fulfill their thoughts, and multiple-choice survey questionnaires, among others, could help us involve them. Although the consequence of this scandal is not intuitive for ratepayers in terms of how much money they are directly losing, the problem is further deeply rooted since it is distorting the ratesetting process. Considering a great number of ratepayers who potentially have influence of this scandal, successful mobilization of mass ratepayers backed by potential recall threat could pressure the governor to move forward to the commission reform, while he has no expectation for reelection due to his fourth term.

In addition, with preparing for the new rules, you should pursue an opportunity to show your devoted contribution to the reform and establish solid trust with ratepayers, to recover

TURN's disqualified reputation because of the negligence over the ex parte contact in Warsaw. For that purpose, you should get prepared to adapt to the new ex parte communication rules by adjusting the internal disciplines. Furthermore, you should resume PR campaign to make the new rules and the commissioners' images pervasive, evoking public attention to let private contacts open in public like a goldfish in a bowl.

### **Lawsuit Approach**

In lawsuit approach, there seems little you could do in addition to what is now going on, since state and federal attorneys already opened criminal investigations against the CPUC, and the shareholders of SCE filed a class action against the company claiming damages caused by SCE's misstatement over the ex parte contact scandal. These lawsuits are effective in respect that helps the parties concerned understand the significant damages once such violation reveals, which would restrain themselves from excessive or impermissible usage of ex parte contacts.

From the standpoint of disperse ratepayers, whether you could prove damage and causation is a key if you successfully file a class action against SCE. However, it is extremely difficult, at least in the short run, to demonstrate the damage, hypothetically calculated as a difference between the rates agreed on the previous settlement and that without, if any, the influence of the ex parte contact in Warsaw. Whether the ex parte communication in Warsaw had any influence to developing the framework of the settlement is still under investigation in the criminal procedure.

Instead, in order to obtain more advantageous terms for ratepayers utilizing the scandal as leverage, it would be rather feasible for us to negotiate with and gain concessions from SCE through the reopened investigation before the CPUC, under the limitation of transaction costs. Thereafter, if we cannot achieve the expected level in that process, there still remains



an option to file a lawsuit when criminal procedure proves our argument plausible.

### **Shareholder Approach**

The parent company of SCE, Edison International, is a publicly traded company listing its stocks on NYSE, of which shareholders are highly dispersed. Hence, it would not be feasible to pressure SCE to substantially boost internal reforms of the governance over ex parte contacts with the regulators, even though you could find shareholders in your constituents of ratepayers. Besides, the majority of the SCE board members are seemingly outside/independent directors. In that sense, SCE's corporate governance is already transparent enough in general, which leaves little room for improvement from shareholders point of view. Above all, as mentioned before, SCE has already introduced stricter internal rules to restrain employees from ex parte contacts with the CPUC unless they obtain authorization from the corporate counsel. How effectively the revised rules actually function is a daily operational matter, which falls not in the shareholders monitoring but within the management's discretion.

### **Media Approach**

This scandal has won broad news coverage by each stage such as the disciplinary actions taken by the parties concerned, legislative actions in the Assembly, and Gov. Brown's veto, among others, since San Diego Union-Tribune firstly scooped the seized note that implied ex parte contact in Warsaw. Such exposure to the media has driven public awareness of challenges concerning ex parte contacts in the CPUC as well as the background of the case. It is true that increased public attention to the case brought by mass media boosted Assembly members to aggressively support the reform package in a timely manner.

Turning eyes to the future, it is important for us to maintain media' attention to

continuous monitoring over the utility ratesetting not to allow setback of the reforms, if implemented, over time. In particular, you should establish an alternative mechanism, replacing disqualified TURN, which keep engaging opinion leaders in this issue and absorbing grass root opinions from dispersed ratepayers, which would help feeding news and opinions to the media.

### **Boycott/Nonpayment Approach**

In California, there is no substantial alternative power utility at retail level except for SCE and SDG&E due to the regulated regional monopoly. Besides, electricity is daily necessity. Therefore, it is difficult to demonstrate ratepayers' anger to SCE through boycott.

Instead of that, it might be an alternative option to engage ratepayers in not paying the difference between the rates actually implemented based on the previous settlement and that without, if any, the influence of the ex parte contact in Warsaw. To avoid legal charge for the nonpayment, you could educate participating ratepayers to escrow the difference to be disbursed on condition that SCE agrees to hold arm's length negotiation before the CPUC. This nonpayment protest is modeled after the ratepayers action in Japan, in which electricity users complaint of TEPCO's absurd raised bills, after the Fukushima Nuclear Power Plants Accidents in 2011.

However, when and whom to fight is important in deploying the nonpayment protest, of which target is SCE. Now that SCE announced the internal reforms to overcome the scandal, it is time to watch whether it works. On the other hand, the CPUC is still remaining troubled and what you should aim at in action is rather the CPUC than SCE at this moment. If you fail to set your sights on the correct target, here the CPUC and reluctant Gov. Brown blocking the reforms, you would never meet with general approbation and supports but be deemed miserliness just taking advantage of the scandal.

## Recommendation

Applying those criteria illustrated before, the options you should take are as follows. TURN would be capable of deploying such actions since those are just adjustments of message TURN has transmitted on existing channels before, although its resources are not clear enough for detail assessment from the published information. Last but not least, TURN should recognize the necessity of reforming itself to recover the trust from ratepayers.

### *Actions Plan:*

- Mobilize ratepayers to pressure Gov. Brown to sign the CPUC reform bills.
  - Utilize opinion leaders, brief opinion forms, and multiple-choice questionnaires.
- Prepare to adjust the NGO's internal discipline to follow the new rules.
- Resume PR campaign to make the new rules and the commissioners images pervasive.
- Stay away from a lawsuit claiming ratepayers' damage for now.
- File a petition to reopen the investigation and pursue concessions from SCE.
- Continue engaging opinion leaders and absorb grass root opinions from ratepayers.
- Keep feeding news and opinions to the mass media.

### Appendix 1: Chronology of The Case (<http://www.ora.ca.gov/general.aspx?id=2632>)

1/9/2012 Unit 2 shut down for scheduled maintenance  
1/31/2012 Unit 3 shut down for a steam generator tube leak  
8/13/2012 ORA's letter to CPUC commissioners:  
    Urging them to remove SONGS from rate base until it comes back online.  
8/13/2012 Joint stakeholder letter to CPUC commissioners:  
    Urging them to open an investigation into the SONGS outage.  
10/25/2012 CPUC opened an investigation  
4/3/2014 ORA, SCE, SDG&E, and TURN, filed a settlement agreement with CPUC  
5/1/2014 ORA's Joint Testimony responding to questions in the CPUC's Ruling  
11/19/2014 CPUC adopted the final decision approving parties' Amended and Restated Settlement Agreement  
2/9/2015 SCE filed a two year overdue Late Ex Parte Notice with CPUC  
4/10/2015 The notes of the Warsaw, Poland meeting (memorialized on hotel stationery and commonly referred to as the Hotel Bristol Notes) became publicly available  
4/14/2015 CPUC ruling directing SCE to provide additional information in light of its Late Ex Parte Notice. (6/26/2015 CPUC issued a subsequent ruling)  
8/5/2015 CPUC ruling ordering SCE to show why it should not be fined \$34 million for violations

Appendix 2: Overview of Proposed Settlement by ORA

Major Settlement Elements	Reductions in Costs that Customers	
	Edison	SDG&E
Defective Replacement of Steam Generators, Retroactive to February 1, 2012	\$597 million	\$160 million
2012 Incremental Replacement Steam Generator Inspection and Repair Costs	\$99 million	\$5 million
Capital and Operation & Maintenance Revenue Refund, Feb 2012 – May 2014	\$480 million	\$121 million
SONGS Net Investment Rate of Return	2012: 2.95% 2013-2014: 2.62%	2012: 2.75% 2013-2014: 2.35%

(<http://www.ora.ca.gov/general.aspx?id=2632>)

Appendix 3: Public Utilities Code (stipulations relevant to the ORA delegation)

309.5. (a) There is *within* the commission an independent Office of Ratepayer Advocates to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the office shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the office shall primarily consider the interests of residential and small commercial customers.

(b) The director of the office shall be *appointed by* [...] *the Governor*, subject to confirmation by the Senate. [...]

(c) The director shall develop a budget for the office that shall be *subject to final approval of the Department of Finance*. As authorized in the approved budget, the office shall employ personnel and resources, *including attorneys* and other legal support staff, at a level sufficient to ensure that customer and subscriber interests are effectively represented in all significant proceedings. *The office may employ experts necessary to carry out its functions*. The director may appoint a *lead attorney* who shall represent the office [...]. The lead attorney for the office shall *obtain adequate legal personnel for the work to be conducted by the office from the commission's attorney appointed pursuant to Section 307*. The commission's attorney shall timely and appropriately fulfill all requests for legal personnel made by the lead attorney for the office, *provided the office has sufficient moneys and positions in its budget for the services requested*.

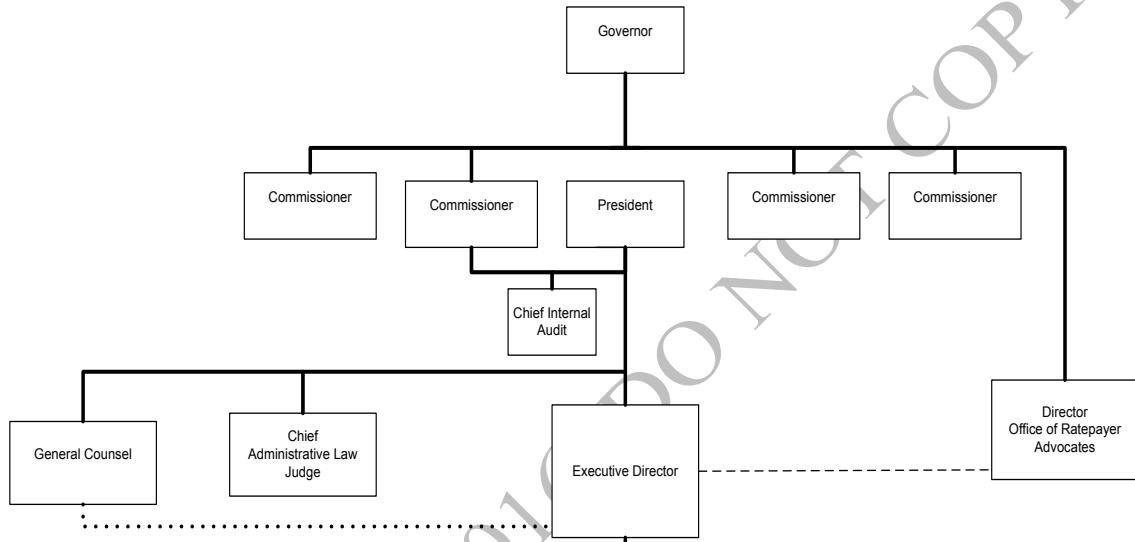
(d) The commission shall develop appropriate procedures to ensure that *the existence of the office does not create a conflict of roles for any employee*. The procedures shall include, but shall not be limited to, the development of a code of conduct and procedures for ensuring that *advocates and their representatives on a particular case or proceeding are not advising decisionmakers on the same case or proceeding*.

(e) The office may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission, *provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner*.

(f) There is hereby created the Public Utilities Commission Ratepayer Advocate Account in the General Fund. *Moneys from the Public Utilities Commission Utilities Reimbursement Account in the General Fund shall be transferred in the annual Budget Act to the Public Utilities Commission Ratepayer Advocate Account.* The funds in the Public Utilities Commission Ratepayer Advocate Account shall be a budgetary program fund administered and utilized exclusively by the office in the performance of its duties as determined by the director. The director shall annually submit a staffing report containing a comparison of the staffing levels for each five-year period.

\*Paragraph (g) and (h) are omitted by the author.

Appendix 4. Organizational Chart of the CPUC and the ORA



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