



January 10, 2018

The Honorable Alex G. Tse
Acting U.S. Attorney, Northern District of California
Federal Courthouse, 11th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Mr. Tse:

I am writing as president of Environmental Progress, a not-for-profit (501c3) research and policy organization, to respectfully request the expediting of the U.S. Department of Justice's investigation of a possible criminal conspiracy at California Public Utilities Commission (CPUC), and its separation from the investigation underway by the California Department of Justice.

In November 2014, agents with the U.S. DOJ and California DOJ raided the offices of the CPUC in a joint investigation of potential criminal activities relating to the permanent closure of, and settlement proceedings for, the San Onofre Nuclear Generating Station (SONGS).

More than 18 months have passed since California's Attorney General assured a reporter that the investigation had not stalled; it is now abundantly clear that it has.¹

Since the announcement, a new Attorney General, Xavier Becerra, was appointed by Gov. Jerry Brown. Mr. Becerra has never stood for election, but instead owes his position to a possible person-of-interest in DOJ's investigation, has not recused himself due to conflict-of-interest, and has, as best we can tell, stopped investigating.

Additional urgency to separate DOJ's investigation comes from the fact that CPUC will likely vote this week to approve another settlement for the closure of yet another nuclear plant, Diablo Canyon, after years of private negotiations involving Pacific Gas & Electric, top advisors to Gov. Brown, including the former head of the California Energy Commission, and Brown appointee, John Geesman, and Lt. Gov. Newsom.²

We still have no resolution with respect to the CPUC's refusal to turn over 60 or more emails from Governor Brown's office to the CPUC relating to the closure of SONGS. During the timeframe of the SONGS settlement, CPUC's then-president communicated regularly with current CPUC President Michael Picker.

Mr. Picker, at the time of the privately-negotiated SONGS settlement, was working as an advisor to Governor Brown.³ According to the *San Diego Union Tribune*, in July 2013, both former President Peevey and current President Picker attended a three-hour post-San Onofre "strategy dinner," and Commissioner Picker was on Gov. Brown's "loss of SONGS task force."⁴

The Associated Press and *San Diego Union Tribune* reported that CPUC "opposed providing records to investigators as required by three different search warrants approved in 2015 and 2016":

Commission lawyers argued that prosecutors failed to properly serve the warrants — even though they agreed to the process in advance. "Here, the CPUC has engaged in inequitable conduct, by insisting upon a method of execution of a search warrant and now claiming that execution was improper," Judge William C. Ryan wrote in a ruling last year that was unsealed this week. "The Attorney General relied upon CPUC's promise that it would comply with the warrant if served in the manner agreed upon."⁵

California's institutions have proved themselves unwilling to root out possible criminal activity.

- a. In 2014, a group of CPUC attorneys publicly warned that their colleagues may have been destroying evidence relating to another criminal investigation of

CPUC relating to a Pacific Gas & Electric natural gas explosion in San Bruno that killed eight people.⁶

- b. The California legislature passed legislation to reform the CPUC in August 2016, but it was killed at the last minute by CPUC President Picker, according to reports by the *Los Angeles Times* and *San Diego Union Tribune*. The legislation would have allowed for the Superior Court to review decisions when regulators refuse California Public Records Act requests, as the CPUC did regarding email exchanges with President Picker while he was working on behalf of the Governor.⁷
- c. A state Superior Court highlighted the public interest in the email correspondence when it ruled the CPUC should have to justify why it would not release emails. Judge Ernest Goldsmith made a strongly worded call for CPUC to disclose Picker's SONGS correspondence first in November 2015 and again in January 2016. In November, 2015, Judge Goldsmith wrote:
 - i. This is a big deal. This is not a trivial issue to the taxpayers of California. And just like the San Bruno events [natural gas explosion that killed eight people] were not a trivial deal, and when something is big enough, it's just got to come out. It's going to come out, and it's either going to be horribly painful, or you can just do the right thing.⁸
- d. In January 2016, Judge Goldsmith wrote:
 - i. Withholding records of allegedly ex parte secret deals resulting in shifting \$3.3 billion of utility losses to ratepayers cannot possibly be a regulatory function of the PUC. It is not realistic that the Legislature intended that [Public Utilities Code] Sec. 1759 should be invoked to insulate PUC officials accused of corruption from public scrutiny. (...) The core value of a democracy is

the right of citizens to know the actions of public officials.⁹

In such circumstances, when a state's political establishment refuses to act in the public interest, it is incumbent upon the U.S. Department of Justice to do so.

We strongly encourage you to take swift and strong action to investigate, independent of the California Attorney General, and bring charges, if criminal activity is found, against all culpable parties.

Sincerely,

Michael Shellenberger
President

cc:

The Honorable Jeff Sessions
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

¹ Jeff McDonald, "AG Says CPUC Probe Hasn't Stalled," *San Diego Union Tribune*, May 14, 2016.

² Office of Gavin Newsom, "Lt. Governor Newsom orders review of California's nuclear and energy future," http://www.ltg.ca.gov/news.2015.12.18_DiabloCanyon.html

³ Jeff McDonald, "Aguirre Pushing for Brown's Emails," *San Diego Union-Tribune*, November 13, 2015.

⁴ Jeff McDonald, "San Onofre Plan Details Under Scrutiny," *San Diego Union-Tribune*, March 14, 2015.

⁵ Associated Press, Utility Regulators Used Private Lawyers to Challenge Probe

⁶ Tony Kovalski, Liz Wagner and Felipe Escamilla, "Attorneys Suggest Evidence Isn't Safe at CPUC Amid Federal Investigation," NBC News, Bay Area, Oct 16, 2014. <https://www.nbcbayarea.com/news/local/Attorneys-Suggest-Evidence-Isnt-Safe-at-CPUC-Amid-Federal-Investigation-279510462.html>

⁷ Jeff McDonald, "2 PUC Reform Proposals Die, Emails Will Stay Secret," *San Diego Union-Tribune*, September 1, 2016. Melanie Mason, "Brown vetoes transparency bills for troubled commission," *Los Angeles Times*, October 9, 2015.

⁸ Jaxon Van Derbeken, "Judge: Regulator should release Brown emails on nuclear plant shutdown," *San Francisco Chronicle*, November 28, 2015.

⁹ Jeff McDonald, "Judge Calls for Review of Emails," *San Diego Union Tribune*, January 15, 2016.