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GENERAL DIVISION

2013 MAR 11 A 10:30

SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL BRANCH

37-2013-00038448-CU-MC-CTL

MASADA DISENHOUSE,

Plaintiff,

v.

MICHAEL R. PEEVEY, MICHEL PETER
FLORIO, CATHERINE J.K. SANDOVAL,
MARK J. FERRON AND CARLA J.
PETERMAN, inclusive,

Defendants.

Case No.

COMPLAINT FOR INJUNCTION TO
STOP CALIFORNIA PUBLIC UTILITIES
COMMISSIONERS' 20 MARCH 2013
THREATENED INVITATION-ONLY
MEETING AT THE SEASIDE FORUM
IN SAN DIEGO IN VIOLATION OF
CAL. GOVT. CODE § 11123

3 **EVENT SOLD OUT!**

4 The California Public Utilities Commission (CPUC) is holding meetings in San Diego in order to provide access to the CPUC Commissioners and staff. There will be a full commission business meeting on March 21. This is a noticed meeting open to all members of the public.

5 As a member of San Diego's cleantech community, you are invited to a series of stakeholder meetings the day before, on **March 20**, at the Scripps Seaside Forum. These meetings are less formal working meetings that allow you to bring your policy suggestions or concerns directly to all five Commissioners. This is a chance to discuss State policy—and how it affects our region—directly with the decision makers at the CPUC. To date, the Commissioners have participated in four of these regional stakeholders meetings throughout the state.

6 Participants will be grouped according to three specific topics: energy efficiency/renewable energy, infrastructure and safety (subject to change). Attendees will be split into three groups of 20. Each group will have a chance to meet with every Commissioner and the directors, advisors and staff of various CPUC divisions. Commissioners will start meetings at 10:00am and will meet with each group for 90 minutes. The commissioners and their staff will then move to the next group, repeating this until each group of Commissioners has met with each group of stakeholders. This is an all-day event and lunch will be provided. Please note all ex parte rules apply and must be observed.

7 **What:** Stakeholder meeting with CPUC Commissioners and staff

8 **When:** Wednesday, March 20th; pre-meetings start at 9:00am, Commissioners arrive at 10:00am

9 **Where:** Scripps Seaside Forum, 8610 Kennel Way La Jolla, CA 92037

10 **Parking:** About a 3-5 minute walk to the Scripps Forum - Kellogg Park, Free Parking Area. Map - <http://goo.gl/maps/Vy1l1>

11 Location : Scripps Seaside Forum: 8610 Kennel Way, La Jolla, CA 92037

12 Back

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15 6. Govt. Code § 11120 declares it is the “public policy of this state that public agencies
16 exist to aid in the conduct of the people’s business and the proceedings of public agencies be
17 conducted openly so that the public may remain informed. In enacting this article the Legislature finds
18 and declares that it is the intent of the law that actions of state agencies be taken openly and that their
19 deliberation be conducted openly. The people of this state do not yield their sovereignty to the
20 agencies which serve them. The people, in delegating authority, do not give their public servants the
21 right to decide what is good for the people to know and what is not good for them to know. The
22 people insist on remaining informed so that they may retain control over the instruments they have
23 created. This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.”

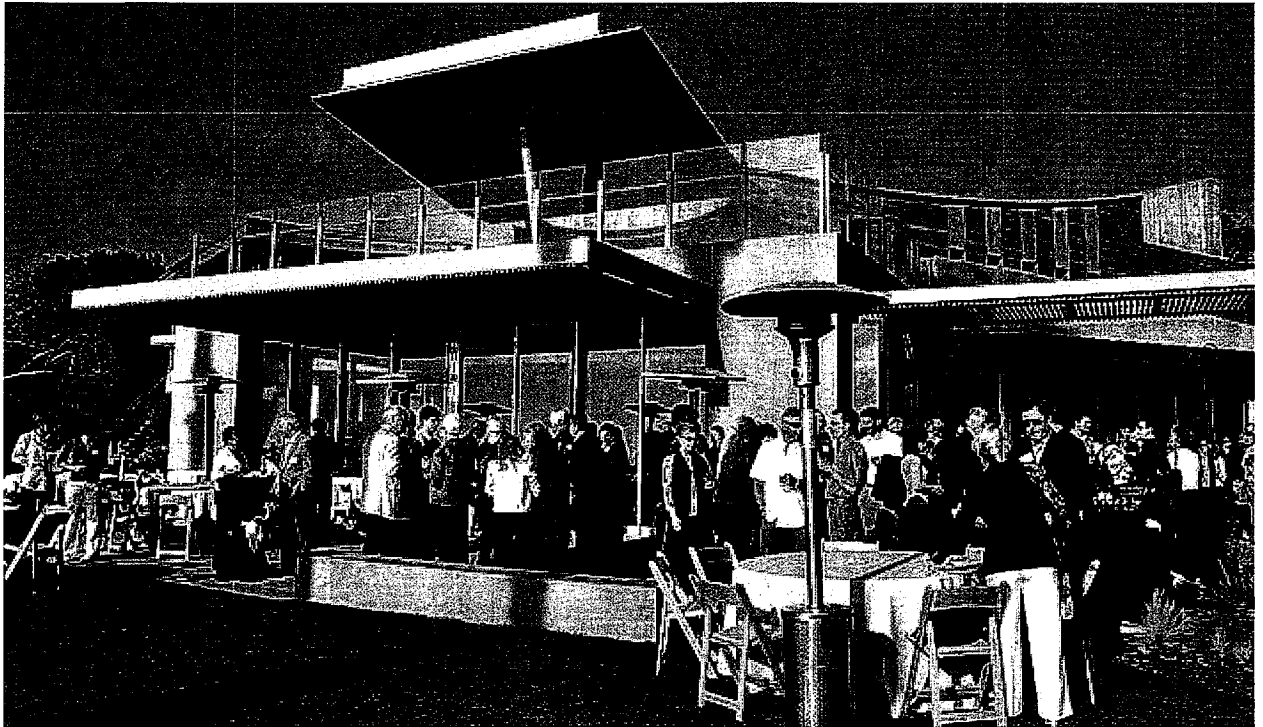
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25 7. The requirement of Govt. Code § 11120 that the meetings of state bodies be open
26 to the public is uniquely required in the case of the California Public Utilities Commission. Our
27 State Supreme Court explained in *Independent Energy Producers Assn. v. McPherson* (2006) 38
28 Cal. 4th 1020, 1038-1040, that the origins of the California Public Utilities Commission began

1 with a movement amongst the people of California. The legislature derived its authority to
2 empower the Public Utilities Commission as part of the reform program of the progressive
3 movement that had gained control of the California Legislature and the governorship in the
4 preceding election (see Key & Crouch, *The Initiative and Referendum in Cal.* (1938) pp. 433-
5 436). The first inaugural address of Governor Hiram Johnson, the leader of the progressive
6 movement, was delivered on 3 January 1911. In a portion of the address discussing the so-called
7 railroad question, Governor Johnson stated in part:
8

9 “For many years in the past shippers, and those generally dealing with the Southern
10 Pacific Company, have been demanding protection against the rates fixed by that
11 corporation. The demand has been answered by the corporation by the simple expedient of
12 taking over the government of the State; and instead of regulation of the railroads, as the
13 framers of the new Constitution [that is, the Constitution of 1879] fondly hoped, the
14 railroad has regulated the State. To Californians it is quite unnecessary to recall the motive
15 that actuated the framers of the new Constitution when Article XII was adopted. It was
16 thought that the Railroad Commission thereby created would be the bulwark between the
17 people and the exactions and extortions and discriminations of the transportation
18 companies. That the scheme then adopted has not proved effective has become only too
19 plain.” (Gov. Hiram Johnson, Inaugural Address (Jan. 3, 1911) *Assem. J.* (1911 Sess.) pp.
20 48–49, italics added.)

21 8. The amendment of former section 22 of article XII, embodied in ACA No. 6,
22 apparently was a direct response to Governor Johnson's suggestion.

23 9. The proposed “invitation only” meeting of the Commissioners of the California
24 Public Utilities on 20 March 2013 at the Scripps Seaside Forum in San Diego is a meeting of the
25 Public Utilities Commission and it is required to be open to the public not closed and only open to
26 those the Commission deems worthy of an invitation. The Scripps Seaside Forum is depicted
27 here:
28



10. The California Attorney General explicitly identifies the forum to be held at the Scripps Seaside Forum as a meeting that must be open to the public under the Bagley-Keene Open Meeting Act. The Attorney General’s “A Handy Guide to The Bagley-Keene Open Meeting Act 2004” (http://ag.ca.gov/publications/bagleykeene2004_ada.pdf) states:

WHAT IS A MEETING?

The issue of what constitutes a meeting is one of the more troublesome and controversial issues under the Act. A meeting occurs when a quorum of a body convenes, either serially or all together, in one place, to address issues under the body’s jurisdiction. (§ 11122.5.) Obviously, a meeting would include a gathering where members were debating issues or voting on them. But a meeting also includes situations in which the body is merely receiving information. To the extent that a body receives information under circumstances where the public is deprived of the opportunity to monitor the information provided, and either agree with it or challenge it, the open-meeting process is deficient.

Typically, issues concerning the definition of a meeting arise in the context of informal gatherings such as study sessions or pre-meeting get-togethers. The study session historically arises from the body’s desire to study a subject prior to its placement on the body’s agenda. However, if a quorum is involved, the study session should be treated as a meeting under the Act.

PUBLIC PARTICIPATION

Since one of the purposes of the Act is to protect and serve the interests of the general public to monitor and participate in meetings of state bodies, bodies covered by the Act are prohibited from imposing any conditions on attendance at a meeting. (§ 11124.)

1 11. Plaintiff Masada Disenhouse is a resident of the State of California, San Diego
2 County. Ms. Disenhouse requested to attend the 20 March 2013 meeting, but the Public Utilities
3 Commission refused to allow her to attend as attested in an email quoted here verbatim:

4 From: **Cheney, Drew** <drew.cheney@cpuc.ca.gov>

5 Date: Mon, Mar 4, 2013 at 9:04 AM

6 Subject: RE: RSVP for CPUC stakeholder meeting March 20

7 To: "mdisenhouse@cox.net" <mdisenhouse@cox.net>

8 Ms. Disenhouse,

9 With the groups being full, I shared the final attendee list with others at the
10 Commission.

11 Citing ex parte communication concerns, I've been asked to remove you from the
12 attendee list.

13 These meetings are designed to increase communication between the Commissioners
14 and local government entities and partners. The appropriate venue for issues falling
15 within the ex parte communication realm is a publicly noticed meeting.

16 I personally welcome interaction with all concerned stakeholders, but all stakeholders
17 deserve equal time to define their position.

18 Thank you for understanding.

19 Take care.

20 Drew Cheney

21 Outreach Officer, Northern California

22 California Public Utilities Commission

23 Business and Community Outreach

24 180 Promenade Circle, Suite 115

25 Sacramento, CA 95834

26 DWC@CPUC.CA.GOV

27 916-956-8103

28 "Abeunt Studia In Mores"

12. Under Govt. Code § 11130(a), Ms. Disenhouse is an interested person and under the
authority granted to her by Govt. Code § 11130(a) She has commenced an action by mandamus,
injunction, and declaratory relief for the purpose of stopping or preventing violations or threatened
violations of the California State Open Meeting Law posed by the scheduled 20 March 2013 meeting
of the Public Utilities Commission at the Scripps Seaside Forum.

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FIRST CAUSE OF ACTION

**INJUNCTION UNDER CALIFORNIA GOVERNMENT CODE § 11130
TO STOP VIOLATIONS OF THE CALIFORNIA STATE OPEN MEETING LAW**

13. Plaintiff incorporated by reference each and every preceding allegation of this operative complaint seeking an injunctive relief.

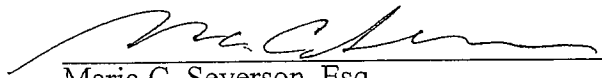
14. Unless the Commissioners of the California Public Utilities Commission are enjoined, they will conduct the “invitation only” meeting of the Public Utilities Commission in a manner not open to the public at the Scripps Seaside Forum in San Diego on 20 March 2013 in violation of their obligation to meet in public, violation of the rights of Ms. Disenhouse and other members of the public, as set forth in Cal. Govt. Code § 11123. Plaintiff has pursued this judicial remedy with all deliberate speed and desires a judgment at the earliest possible date.

WHEREFORE, plaintiff prays judgment as follows:

1. For a final injunction enjoining the Commissioners of the California Public Utilities Commission from holding the “invitation only” meeting at the Scripps Seaside Forum in San Diego on 20 March 2013;
2. For reasonable attorney's fees;
3. For costs of suit herein incurred;
4. For such other and further relief as the court may deem proper.

AGUIRRE, MORRIS & SEVERSON LLP

Dated: 11 March 2013



Maria C. Severson, Esq.
Attorneys for Plaintiffs