

## **August 31, 2020 Opening Remarks by President Marybel Batjer**

The Public Utilities Code authorizes the Commission to choose an Executive Director who holds office at the pleasure of the Commission. This means the Executive Director is an at-will position. In that position, you, Ms. Stebbins are responsible for the Commission's executive and administrative duties, specifically coordinating, supervising, and directing the operations of the commission.

We are here today to consider your dismissal as Executive Director based on two things: your conduct described in a State Personnel Board investigation report, and your conduct after the CPUC received that investigation report. I will discuss the State Personnel Board report first.

The State Personnel Board is an independent state department created by the California Constitution. I will be referring to it as the SPB. The California Constitution requires that under the state civil service system, all permanent hires and promotions must be based on merit, and that merit must be determined by a competitive examination process. Your job, and our job, is to uphold those principles in hiring.

The State Personnel Board investigation report is a public document that can be found on the SPB website. The report addresses the hiring process regarding

five people who were to work closely with you. You were directly involved in these processes.

The first position is the Administrative Services Division Director position. The Administrative Services Division of the CPUC is responsible for managing the CPUC's finances, facilities and contracts, including important budgeting functions. In January 2019, the CPUC posted a job opening for this Director position, which would be reporting directly to you. The investigation report concluded that you preselected the candidate who was ultimately hired into this position.

“Preselected” means that you had already made up your mind to hire this person before the recruitment process occurred. The report cited the following facts in support of that conclusion:

- **FIRST:** The candidate was less qualified than several other applicants. One of the key duties of the position is to represent the CPUC during the budget process before the legislature. The work experience of the candidate you hired consisted solely of Accounting positions; he had no college degree, and his resume and application did not list any experience with budgets. In contrast, several of the other applicants had significant fiscal and budget management experience at an executive level, as well as post-graduate degrees and professional certifications.

- SECOND: You and the candidate had worked together previously at two state agencies for a total of 15 years. You worked together at the Water Resources Control Board for 8 years and you worked together at the Air Resources Board for 7 years. The report noted that your prior knowledge of this candidate's work, in and of itself, was not problematic as long as the hiring process was objectively administered, but the report found that you preselected him and did not fairly consider the other candidates.
- THIRD: You personally participated on the exam scoring panel for this hiring process, along with two other people, to rate the 12 applicants by scoring their written applications. After the other raters had completed their scores independently, you met with them to discuss the ratings they had given. After that discussion, they lowered their scores of the candidates to mirror your scoring, in order to rank your preferred, pre-selected candidate with the highest scores in the exam, despite the fact that the candidate had less relevant experience and education than several of the other candidates. One of the raters told the SPB during the investigation that he felt pressured by you to lower the other candidates' ratings because you had made it clear who you preferred. Specifically, he stated that when your staff members

handed him the application materials of your preferred candidate, they told him, “This is the one.”

- FOURTH: The SPB report concluded that you influenced the scoring of the interview portion of the process in the same manner as the scoring of the written application materials and unfairly diminished the rights of other well-qualified candidates, in violation of the merit principles.

The SPB Report also found that you made “misleading and deceptive” representations about the duties that this candidate was performing in the position in order to increase the candidate’s salary. First, you attempted to offer the candidate a higher salary than was allowed under state rules. When that didn’t work, just four months after the candidate was in the position, you added additional functions to his position, and increased his salary by 49%. After that salary increase was in place, some of those duties were removed, thereby eliminating the justification for the higher salary. When Cal-HR, the state department that oversees salary-setting rules for state jobs, asked for justification for the salary increase, you falsely claimed that the candidate was still performing some of the duties that had actually been removed from the position.

Regarding this one appointment, the SPB report said that your conduct quote “paint[s] a picture of a deliberate effort” on your part to circumvent civil service rules. It is appalling and disgraceful to engineer the hiring of a marginally qualified former colleague over more qualified candidates, spike the person’s pay and then make false statements attempting to justify the compensation.

The SPB report findings regarding the other four appointments are similar, and I am not going to take the time to go into detail regarding those, except to note that the report concluded they were all of “highly questionable legitimacy” and that you were “at the center of” the conduct that rendered the appointments problematic.

I am now going to address your conduct after the CPUC first received a draft of the SPB report, on June 12 of this year. As you know, the SPB requested a response from the CPUC regarding the findings in the report. I informed you that while that process was pending, Human Resources, which was tasked with responding to the SPB report and ordinarily reports to you, would instead temporarily report to me. As President of the Commission, I have the authority to direct you and all the other staff of the commission (with certain exceptions). Despite receiving that direction from me, you proceeded to approve several pending decisions regarding hiring.

You also failed to take any responsibility for your conduct that is mentioned in the SPB report. You did not apologize for violating civil service rules. You did not acknowledge the discredit your actions have brought to the CPUC. You expressed no concern for the affected candidates who participated in the hiring processes at issue, or for the morale of current CPUC employees. Instead, you repeatedly suggested that the Commissioners should use our political influence to—in your words—make the SPB report go away. The Commissioners took an oath to uphold the California Constitution, including the merit system rules, and your suggestion was abhorrent. The civil service is a merit-based system designed to protect government processes from undue political influence. It is also designed to ensure that we hire and promote a qualified workforce, and not friends or favorites who have inferior qualifications than other candidates. It is our expectation that you, the person responsible for the administrative duties of the Commission, would take that requirement seriously. You took the same oath to uphold the California Constitution as we did.

I now want to very briefly address some accusations you have made regarding our motives for considering your dismissal.

You have said that you believe the utilities have asked us to end your employment. That is absolutely not true. No Commissioner has had any

communication of any kind with anyone employed by a utility regarding your employment.

You also have asserted that the CPUC had \$200 million in uncollected fees and fines, and that you are a whistleblower. Neither of those things is true. First, the CPUC did not have \$200 million in uncollected fees. The report that you have cited, which was prepared by an outside consultant, does not say that. What that report says, and I am quoting, is “the total amount of outstanding collections was approximately \$49.9 million as of December 31, 2019.” The report also states that approximately \$21 million of that amount was due from activity in 2017 or earlier. But the report does not state that the CPUC was lax in attempting to collect that \$21 million. In fact, \$19.7 million of that amount consists of one fine to a single telecommunications company that was bankrupt and defunct at the time the fine was levied. The CPUC has been pursuing collection on that fine for years, including filing superior court actions. Likewise, other large portions of the \$49.9 million in outstanding funds are fines that utilities have appealed and which cannot be collected until the appeal is resolved. More importantly, as the Executive Director, it is *your job* to inform the Commission if you believe that fee collection needed to be improved, and your responsibility to implement improvements in the accounting processes and procedures. I note that this same report regarding uncollected funds states, “The CPUC has actively monitored and addressed issues

brought up during our review and has already started to implement our suggested recommendations.” We relied on you and encouraged you to take all necessary steps to address and correct any deficiencies there. None of us ever ignored or attempted to slow down or interfere with your work in any way.

Finally, I want to make a point about the timing of the SPB investigation. It was in mid-August of 2019, that the SPB notified the CPUC that it had opened this Investigation. None of the Commissioners were interviewed during that investigation. You were interviewed, though. The Commissioners had no control over the content of the SPB report, and first received a copy of it in June 2020.

Our consideration of your employment status today is based on the findings in the report. You took a series of actions over the course of several years that calls into question your integrity. Those actions, along with your conduct in reaction to and in response to the report’s findings, cause us to have to consider whether you can continue to serve as the leader of this agency.