

Marin DA seeking answers in grand jury whodunit

Richard Halstead, 01/05/2010 Marin IJ

Marin Supervisor Charles McGlashan has asked the district attorney to investigate how a civil grand jury report that criticized the Marin Energy Authority's plan to compete with Pacific Gas and Electric Co. was released to PG&E and other critics of the plan. (IJ photo/Robert Tong)

The Marin County district attorney is investigating how a copy of a civil grand jury report that slammed the Marin Energy Authority's plan to compete with Pacific Gas and Electric Co. got into the hands of PG&E and other critics before its official release last month.

The investigation was launched due to a formal complaint by Marin Supervisor Charles McGlashan, director of the authority's board.

McGlashan said he acted after Chuck Utzman of Mill Valley, a critic of the Marin Clean Energy initiative, informed him that David Rubin, PG&E's director of service analysis, had e-mailed him a copy of the report on Dec. 5.

The grand jury did not officially release its report until Dec. 7.

"I was surprised this was already happening when we're all admonished very severely by the grand jury that no one is allowed to release this report before they do," McGlashan said.

District Attorney Edward Berberian said there are statutes in the state's penal code that govern how information from the civil grand jury may be released.

"There can be potentially violations of criminal statutes if you don't follow proper procedures," Berberian said.

He said it was too early in the preliminary inquiry to say if any law has been broken. Grand jury members and people who are interviewed by the grand jury are prohibited from releasing information discussed in their investigations before a final report is issued to the public, Berberian said.

If the report, titled "Marin Clean Energy: Pull the Plug," was leaked early, grand jury members aren't the only individuals who might have been the source. The grand jury regularly issues advance copies of its reports to parties who will be affected by their work. In this case, copies were provided to members of the Marin County Board of Supervisors and all the council members of the eight municipalities that belong to the Marin Energy Authority.

Judy Chapman, forewoman of the civil grand jury that prepared the Marin Clean Energy report, said these "affected parties" are bound by the same law that prevents grand jurors from discussing reports in advance.

"They're advised when they get the copy," Chapman said. "They're given a copy of the penal code."

Chapman said a law that prohibits civil grand jurors from advocating for their reports prevents her from commenting in any way on McGlashan's complaint or the district attorney's investigation.

Katie Romans, a spokeswoman for PG&E, said a "concerned citizen," whom she declined to identify, sent a copy of the report to PG&E on Dec. 4.

"So we disseminated it as a public document," Romans said. "The document was already circulating when we received it."

Romans said the report was dated Dec. 2 and included nothing to indicate that its release was

embargoed until Dec. 7.

Juliette Anthony, whom McGlashan also mentioned in his complaint to the district attorney, said she received a copy of the report on Dec. 4 from a member of the Marin Water Coalition. Anthony declined to identify the person. She said the coalition opposes Marin Clean Energy because it might make it easier for the Marin Municipal Water District to get the electricity it needs for a desalination plant.

"I sent it around to most of my solar compadres among whom are people that I have worked with for eight years at PG&E," said Anthony, who served as a consultant to SPG Solar from 2000 to 2007 and now advises Californians for Renewable Energy.

David Rubin was one of those people, Anthony said. "PG&E got it from me," she said.

McGlashan has also asked the district attorney to look into whether PG&E exercised any undue influence over the writing of the report.

"The report looked like it was written by PG&E," McGlashan said. "It is hauntingly similar to the usual talking points that PG&E is feeding the opponents to Marin Clean Energy, almost verbatim."

Dawn Weisz, Marin Energy Authority's interim director, said the decision to release the report on Dec. 7 "seemed to be strategic," because four of the municipalities participating in the clean energy initiative were scheduled to review their commitment that week.

Romans said, "This is nothing more than the Marin Energy Authority trying to deflect attention about the serious concerns included in the grand jury report. PG&E had nothing to do with this report that wasn't part of the normal process."

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