

**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate and
Refine Procurement Policies and
Consider Long-Term Procurement Plans.

Rulemaking 12-03-014
(Filed March 22, 2012)

**MOTION OF FRIENDS OF THE EARTH TO LATE-FILE A
NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION**

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August 31, 2012

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Friends of the Earth (FOE) respectfully moves to late-file a Notice of Intent to Claim Intervenor Compensation (NOI) in the above-captioned proceeding under Rules 1.2, 11.1, and 11.6 of the Commission's Rules of Practice and Procedure.¹ FOE is a U.S. Internal Revenue Code §501(c)(3) non-profit organization that has worked for over forty years to reduce economic drivers that encourage environmental degradation from nuclear energy and address the threats to human health and the environment that nuclear power poses. The Order Instituting Rulemaking (OIR) in this proceeding sets forth a May 18, 2012 date for the filing of NOIs.² For the reasons set forth below, FOE was unable to file its NOI by this date, but should nevertheless be granted leave to late-file its NOI.

I. FOE'S MOTION FOR LEAVE TO LATE-FILE ITS NOI SHOULD BE GRANTED.

Both the Commission's Rules of Practice and Procedure and the Commission's Intervenor Compensation Program Guide allow for a late-filed NOI when a party is unable to comply with an established filing deadline.³ FOE was unable to timely file its NOI in this

¹ FOE filed the NOI concurrently with this motion.

² *Order Instituting Rulemaking 12-03-014*, page 18 (March 22, 2012).

³ Specifically, Rules 11.1 and 11.6 and page 8 of the CPUC's Intervenor Compensation Program Guide allow a party to ask permission to late-file an NOI and explain why "the NOI could not be timely filed." Although FOE is not currently a party to R.12-03-014, it concurrently filed with the instant motion a Motion for Party Status.

proceeding because of the lack of public information surrounding the outages at the San Onofre Nuclear Generating Station (SONGS) and the Commission's unexpected delay in instituting an investigation into those outages.

FOE has been concerned about the environmental and reliability implications of continued operations at SONGS since its Unit 3 Reactor leaked coolant on January 31, 2012 due to "substantial and unusual wear" in at least eight of the unit's steam-generator tubes.⁴ However, it has been difficult for FOE to obtain reliable public information on the causes of these outages and the likelihood of continued operations at SONGS. The U.S. Nuclear Regulatory Commission (NRC) did not issue a public report detailing the technical equipment problems and the current status of SONGS until July 18, 2012.⁵ That July report was not issued until two months after the filing deadline for NOIs in this proceeding.

In addition, the roles of this Commission and the NRC in determining SONGS' future have been unclear. It was not until the August 2, 2012 CPUC Business Meeting that comments from President Peevey made clearer the role of each agency. Because of this lack of clarity, and due to the lack of public information, FOE only recently decided it should participate in proceedings at this Commission.

FOE originally planned to limit its participation in the CPUC's anticipated Order Instituting Investigation (OII) of SONGS. However, the delay in the Commission's issuance of an OII and the likely limited scope of that investigation, as revealed in a recent draft OII, make participation in this Long-Term Procurement Plan proceeding more important than originally anticipated. The Commission issued a draft OII as part of the Business Meeting agenda for

⁴ *San Onofre Nuclear Generating Station – NRC Augmented Inspection Team Report, Cover Letter, page 1 (July 18, 2012).*

⁵ *Id.*

August 2, 2012.⁶ The draft OII would have enabled the Commission to consider proposals from parties, including FOE, “regarding the rates, operations, practices, programs, services, and facilities of SCE and SDG&E as they may be affected by the outages at SONGS 2 and 3.”⁷ FOE continues to plan to participate in that OII. However, the Commission decided at the August 2 meeting to delay the OII until at least November 2012.⁸ Further, the draft OII includes a pre-hearing conference (PHC) timeline that indicates a PHC may not be scheduled until January 2013.⁹ Thus, it may be several months before the OII even *begins* to look into the implications of the issues surrounding the recent outages at SONGS.

The draft OII also indicates the investigation will be narrower in scope than FOE had anticipated. The draft OII limits the preliminary issues of the investigation to “the economic consequences of the outages, repairs, source of replacement electricity, cost of replacement electricity, and cost responsibility.”¹⁰ It does not appear that the OII will consider whether the utilities can continue to reliably meet load without SONGS in the long-term. In addition, it does not appear the OII will consider the types of generation that will be procured to replace SONGS’ capacity in the long term. These questions are important to FOE’s mission to protect people and the environment.

⁶ *Draft Order Instituting Investigation Regarding San Onofre Nuclear Generating Station Units 2 and 3*, listed as Item 5 on the Commission’s August 2, 2012, Business Meeting Agenda (Draft OII). The Draft OII can no longer be found on the CPUC’s website, but it can be found online at: http://kpbs.media.clients.ellingtoncms.com/news/documents/2012/07/06/San_Onofre_Investigation_OII_draft_168791.pdf.

⁷ *Id.* at 2.

⁸ The Hold List from the August 2, 2012 Business Meeting can be found here: http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/AGENDA/171906.PDF

⁹ Draft OII at 2.

¹⁰ *Id.* at 4.

The Scoping Ruling includes within the scope of this proceeding the impact on reliability of shutting down SONGS.¹¹ Commission Staff has crafted planning assumptions and sensitivities in the base case scenario that consider the impact on reliability and procurement of closing SONGS in 2015.¹² FOE will contend in this proceeding that the likelihood of plant closure is high and that California must plan to replace the generating capacity from SONGS. FOE will also demonstrate that California’s power needs can be reliably met without SONGS through continued investment in safe, clean and responsible technologies such as renewable energy and energy efficiency.

FOE is respectful of its obligations to California ratepayers and requests intervenor compensation only in proceedings where it has a threshold level of expertise that will allow it to contribute substantially to the outcome of a proceeding. FOE strongly believes it has the requisite level of expertise to contribute substantially to the outcome of this proceeding and the determination of an appropriate, safe and cost-effective procurement mix. FOE’s active participation in this proceeding will help achieve this result.

II. ALTERNATIVELY, GOOD CAUSE EXISTS FOR THE COMMISSION TO ALLOW FOE TO DEVIATE FROM THE FILING DEADLINE.

Rule 1.2 of the Commission’s Rules of Practice and Procedure allows the Commission to deviate from its rules “for good cause shown.”¹³ The timing of FOE’s NOI conforms with the Commission’s policy to sufficiently “inform parties to the proceeding” of its intent to claim

¹¹ Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, R.12-03-014, at page 8-9 (May 17, 2012).

¹² *Energy Division Proposed Scenarios for use in R. 12-03-014*, pages 14-15 (August 2, 2012); *Planning Assumptions for use in R. 12-03-014*, pages 22-23, Attachment to *Assigned Commissioner’s Ruling on Standardized Planning Assumptions* (June 27, 2012).

¹³ California Public Utilities Commission Rules of Practice and Procedure, Rule 1.2 (June 8, 2011).

compensation.¹⁴ The May 17, 2012 Scoping Memo in this Proceeding envisions consideration of the impact of nuclear power plant retirement in Track II of the proceeding.¹⁵ Only preliminary work on Track II work has begun. While Commission Staff has submitted proposed future scenarios for use in Track II, and held a workshop on August 24, 2012 on those scenarios, parties have not yet submitted comments on Staff's proposal.¹⁶ FOE intends to submit substantive comments addressing these proposed scenarios.

Testimony, hearings, and briefs on Track II issues, if required, are many months away.¹⁷ Accordingly, the NOI is being filed in sufficient time to inform parties to the proceeding of FOE's intent to be an active participant on the issues described above. Having met the Commission's intent to provide timely notice of its intent to participate in the proceeding, good cause exists to allow FOE to lend its expertise to the issues of nuclear retirement and safe and cost-effective long-term procurement in California.

III. CONCLUSION

For the reasons stated herein, the Commission should grant FOE's motion to late-file an NOI in this proceeding, or, in the alternative, its request to deviate from the OIR's filing deadline. FOE accepts the record in this proceeding as it stands, and its motion for leave to late-file an NOI is being filed in a timely manner that will not harm or prejudice any party to the proceeding. FOE will coordinate with other parties to ensure that its work is not duplicated and

¹⁴ Intervenor Compensation Program Guide at 3.

¹⁵ Scoping Memo at 9.

¹⁶ Comments on the Energy Division Proposed Scenarios for Use in R.12-03-014, dated August 2012, which were the subject of the August 24 workshop are due on September 7, 2012.

¹⁷ The May 17, 2012 Scoping Memo does not provide any schedule for hearings; rather, it states in the Schedule on page 10 that any further proceedings in Track 2 to identify system needs would be determined in a future ruling.

that it brings a unique voice and perspective to the rulemaking. For these reasons, FOE's motion for leave to late-file its NOI should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Laurence G. Chaset", written over a horizontal line.

Laurence G. Chaset

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August 31, 2012