

BEFORE THE  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the )  
Commission's Own Motion into the Rates, )  
Operations, Practices, Services and Facilities )  
of Southern California Edison Company )  
and San Diego Gas and Electric Company )  
Associated with the San Onofre Nuclear )  
Generating Station Units 2 and 3 )  
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I.12-10-013  
(Issued November 1, 2012)

**ALLIANCE FOR NUCLEAR RESPONSIBILITY'S**

**MOTION SEEKING PARTY STATUS**

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## **I. INTRODUCTION**

Pursuant to Rule 1.4(a) of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (“A4NR”) respectfully submits this motion for party status in the above-captioned proceeding. A4NR seeks party status in this proceeding in order to address each of the six issues identified in the preliminary Scoping Memo included in the Order Instituting Investigation (“OII”).<sup>1</sup>

## **II. BACKGROUND**

A4NR represents the interests of residential and small business customers on nuclear energy issues before California and Federal regulatory agencies, the Legislature, and Congress. A4NR has actively monitored the Nuclear Regulatory Commission’s investigation into the San Onofre Nuclear Generating Station (“SONGS”) outage and believes the proximate cause of the outage to be negligence by SCE and/or its contractors. Because the OII is a ratesetting matter, SCE has the burden of affirmatively establishing by a preponderance of the evidence that its actions have been reasonable and that it is entitled to recover its expenditures as just and reasonable costs necessary for safe and reliable service. No party has the legal burden of proving the unreasonableness of SCE’s actions, although A4NR expects to do so.

A4NR believes that the threshold issue for the Commission is the immediate removal of a long-term inoperative plant from rates while liability for the extended outage and its correction is determined. SCE’s December 3, 2012 Response to the OII exemplifies the moral

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<sup>1</sup> OII, pp. 14-15.

hazard<sup>2</sup> which has surrounded its response to the outage. At a time when its customers are exposed to cost responsibility for replacement energy, capacity, and other grid stabilization expenses to forestall blackouts in Southern California, SCE would have them continue to pay for a power plant made nonfunctional by its own negligence (and/or that of its contractors). With an apparently straight face, SCE recommends that the Commission not even take up the question of removing SONGS from rates until some unspecified time after mid-2014.<sup>3</sup>

SCE invites the Commission to effectively ignore the provisions of Cal. Pub. Util. Code §455.5<sup>4</sup> by conjuring four archeological relics it insists be considered persuasive precedents: two were the product of settlements, despite the proscriptions of Rule 12.5;<sup>5</sup> one had to do with a geothermal unit that PG&E retired less than nine months after taking it out of service; and one was the 1981 case<sup>6</sup> involving defective steam generators at SONGS Unit 1, which of course predates the 1986 enactment of §455.5. SCE acknowledges that each of its identified precedents predates the 2003 enactment of §1701.5, which compels a decision – as

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<sup>2</sup> In economic theory, a moral hazard is a situation where a party will have a tendency to take risks because the costs that could result will not be felt by the party taking the risk. It is a tendency to be more willing to take a risk, knowing that the potential costs and/or burdens of taking such risk will be borne, in whole or in part, by others.”

<sup>3</sup> SCE Response, p. 9. But even SCE finds it difficult to maintain composure in this parallel reality, offering vaguely in a footnote to “waive the provisions of Section 455.5 and consent to earlier hearings on some or all issues, depending on future developments.” SCE Response, p. 16, footnote 3. And ultimately, all that SCE really seems to insist upon is a hearing: “Therefore, while SCE’s primary position is that any consideration of a rate reduction should be consolidated with its test year 2015 GRC, if the Commission wishes to consider reducing rates sooner, it must hold an evidentiary hearing before implementing any such rate reduction.” SCE Response, pp. 20-21.

<sup>4</sup> All references to code sections are to the California Public Utilities Code unless identified otherwise.

<sup>5</sup> Rule 12.5 of the CPUC’s Rules of Practice and Procedure addresses the Commission’s adoption of settlements: “Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, **or precedent regarding, any principle or issue in the proceeding or in any future proceeding.**” (emphasis added) No such provision was made in either case relied upon by SCE.

<sup>6</sup> A4NR cautions the Commission against undue reliance on any SCE-related decisions from the years when the CPUC President was an individual who would shortly become the Chief Financial Officer – and later Chairman and CEO -- of SCE’s holding company. This widely known circumstance is the most notorious example of regulatory revolving door in American history and has cast a dark shadow over the Commission’s institutional reputation for nearly three decades.

contemplated in the OII – within 18 months of the Scoping Memo absent certain written findings or determinations.<sup>7</sup>

A4NR believes this same mañana philosophy has pervaded SCE’s response to the extended SONGS outage, due to a misplaced presumption that its own negligence (and/or that of its contractors) is a risk that should be absorbed by its customers. A prime example is SCE’s path-to-nowhere low power restart plan for Unit 2, completely devoid of any articulated linkage to eventual restoration of full operation or assembly of viable short- or mid-term alternatives to SONGS. A4NR considers SCE’s proposal to be more directed at evading §455.5 than providing safe and reliable electricity service. Similarly, SCE’s virtual abandonment of Unit 3 and its apparent unwillingness to insist upon r-e-p-l-a-c-e-m-e-n-t of the defective steam generators smacks of risk transfer. A4NR recognizes the likely unforgiving economics of major repairs to a crippled SONGS at this late point in its operating license, but fish-or-cut-bait decisions are core responsibilities of highly compensated corporate management.

In A4NR’s judgment, the only way to achieve proper accountability in SCE decisionmaking -- to align ratepayer and shareholder interests -- is to remove SONGS from rates, consistent with §455.5 and just and reasonable ratemaking. A4NR believes that doing so is likely to expedite appropriate resolution of claims against Mitsubishi Heavy Industries, NEIL,

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<sup>7</sup> Section 1701.5 states: “(a) Except as specified in subdivision (b), in a ratesetting or quasi-legislative case, the commission shall resolve the issues raised in the scoping memo within 18 months of the date the scoping memo is issued, unless the commission makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline. No single order may extend the deadline for more than 60 days. (b) Notwithstanding subdivision (a), the commission may specify in a scoping memo a resolution date later than 18 months from the date the scoping memo is issued, if that scoping memo includes specific reasons for the necessity of a later date and the commissioner assigned to the case approves the date.

and any other source of financial recompense, as well as lead to a realistic assessment of future prospects for SONGS.

Regarding SDG&E, as a 20% co-owner of SONGS, SDG&E has an obligation to oversee and monitor SCE's performance in order to protect its own ratepayers. SDG&E should be expected to ensure that funds authorized for SONGS capital projects, as well as operation and maintenance expenses, are appropriately used. A4NR observes that SDG&E's opinion of the desirability of the Mitsubishi Heavy Industries steam generators radically transformed over a couple of years prior to the project actually moving forward: from filing a formal protest to SCE's A.04-02-026 for breach of the co-owner consent provisions of the San Onofre Operating Agreement;<sup>8</sup> to filing a complaint in Superior Court seeking declaration of an Operating Impairment; to refusing to participate in the project and accepting a reduction in its SONGS ownership share as a consequence; to advising the Commission that "SCE historically has been unable to reliably forecast its SONGS capital budget;"<sup>9</sup> to offering to sell its entire ownership share in SONGS back to SCE;<sup>10</sup> to acceptance of participation in the project at its original 20% ownership share with ratemaking treatment consistent with what the Commission authorized for SCE in D.05-12-040.<sup>11</sup>

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<sup>8</sup> "SCE's cost-benefit calculations appear to be unjustifiably biased in favor of SGRP going forward to such an extent that the credibility of its entire showing is cast in doubt." SDG&E Protest to A.04-02-026, April 7, 2004, p.3.

<sup>9</sup> "For example, in January 2000, SCE forecasted its capital additions for 2004 at \$37 million, whereas actual additions were \$143 million. SDG&E states that, while SCE's first capital additions forecasts for 2005 and 2006 were \$50 million and \$80 million respectively, SCE's most recent forecasts are \$114 million for each of these two years. SDG&E does not allege that SCE is imprudent in its estimates. SDG&E represents that such forecasts of capital costs for nuclear projects, such as the SGRP, are inherently unreliable due to the exposure to events beyond the utility's control." D.05-12-040, p. 11.

<sup>10</sup> D.05-12-040, p. 36.

<sup>11</sup> D.11-07-049, Finding of Fact 3, p. 7.

Irrespective of its original reservations, SDG&E made whatever Faustian bargain it determined was appropriate and now must accept the consequences. A4NR believes, however, that exploring the basis for SDG&E's initial opposition may shed valuable light on the problems experienced with the SONGS steam generators.

If this Motion is granted, A4NR intends to be an active participant in the OII through testimony, cross-examination, and briefing. To the extent that its interests overlap with other parties, it will actively seek to collaborate. Its participation will not prejudice any party or cause any delay to the proceeding.

### **III. THOUGHTS REGARDING "SAME ESSENTIAL STARTING DATA"**

A4NR strongly endorses the suggestion in the Order Instituting Investigation that the Assigned Commissioner and/or the Administrative Law Judge may direct that the two respondent utilities provide certain background information before the Prehearing Conference. Doing so may result in fewer and more focused data requests, more illuminating testimony, more concise evidentiary hearings, and a quicker resolution. A4NR recommends that SCE be directed to provide copies of the data responses to the Commission it mentions in its December 3, 2012 Response to the OII;<sup>12</sup> the October 2012 initial proofs of loss and any other notifications filed by SCE under the NEIL insurance policies;<sup>13</sup> copies of SCE's root cause evaluations for the Unit 2 and Unit 3 tube wear;<sup>14</sup> a copy of the Second Amended San Onofre Operating Amendment and any amendments thereto; copies of minutes of all meetings of the San Onofre

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<sup>12</sup> SCE Response, p. 6.

<sup>13</sup> SCE Response, pp. 7-8.

<sup>14</sup> SCE Response, p. 5.

Board of Review since January 1, 2001 at which the subject of replacement steam generators was discussed; and copies of minutes of all meetings of Edison International's Board of Directors since January 1, 2012 at which the subject of the SONGS steam generators was discussed.

## **V. ADDITIONS TO SERVICE LIST**

If its Motion is granted, A4NR's primary contact in this proceeding will be its attorney, whose contact information is:

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A4NR also asks that the following two individuals be placed in the "information only" category of the Service List:

Rochelle Becker  
[rochelle@a4nr.org](mailto:rochelle@a4nr.org)

David Weisman  
[david@a4nr.org](mailto:david@a4nr.org)

## **VI. CONCLUSION**

For the reasons stated herein, A4NR respectfully requests that the Commission grant its Motion Seeking Party Status in the above-captioned proceeding.

Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN  
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Date: December 7, 2012

Attorney for  
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