

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, 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.

Investigation 12-10-013
(Filed October 25, 2012)

**REPLY OF THE DIVISION OF RATEPAYER ADVOCATES
RESPONSES TO THE ORDER INSTITUTING INVESTIGATION
REGARDING SAN ONOFRE NUCLEAR GENERATING STATION**

LAURA TUDISCO
MITCHELL SHAPSON

Attorneys for the
Division of Ratepayer Advocates
505 Van Ness Avenue
San Francisco, CA 94102
Phone: 415-703-2727
Fax: 415-703-2262
Email: Mitchell.Shapson@cpuc.ca.gov

TRUMAN BURNS
Project Coordinator

Division of Ratepayer Advocates
505 Van Ness Avenue
San Francisco, CA 94102
Phone: 415-703-2932
Email: Truman.Burns@cpuc.ca.gov

SCOTT LOGAN
Analyst

Division of Ratepayer Advocates
505 Van Ness Avenue
San Francisco, CA 94102
Phone: 415-703-2871
Email: Scott.Logan@cpuc.ca.gov

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I. INTRODUCTION

Pursuant to the schedule set forth in the Order Instituting Investigation (OII) Regarding San Onofre Nuclear Generating Station (SONGS) Units 2 and 3, the Division of Ratepayer Advocates (DRA) submits this Reply. Given the seven-day deadline for Replies to Responses to the OII, DRA is only addressing some of the arguments made by some of the parties, and may at a later date seek to address these or other issues in more detail. DRA's silence on any argument should not be interpreted as assent.

II. REPLY

A. Response of Southern California Edison Company

1. Schedule

a. The Ratemaking Issues Can Be and Should Be Addressed Immediately

In its Response, Southern California Edison (SCE) recommends that the Commission adopt a "phased approach to this proceeding."¹ DRA agrees that a phased approach would be useful, but disagrees with the SCE's proposed phases. The ratemaking issues that SCE would have as the Phase B, should be the first order of business in this OII.

¹ SCE Response, p. 14.

First, SCE acknowledges that the Nuclear Regulatory Commission (NRC) found that SCE and its agent caused the outage by installing a defectively designed component part (the replacement steam generators).² Since the cause of the outage, is largely known, there is no need to delay these proceedings to further investigate those causes.

Second, as to the availability of warranty coverage or insurance, it is important to keep in mind that SCE's duty to properly maintain utility owned generating facilities (UOG) is a non-delegable duty. SCE is always responsible to the State and the Ratepayers to prudently maintain UOG and for the costs associated with not doing so. It cannot hide behind any imprudence of its agents. DRA does appreciate, however, the Commission's desire not to take action that may prejudice SCE's ability to recover damages from one of its agents or insurers. Along those lines, SCE's description of the status of several insurance issues reveals some important facts regarding the timing of this proceeding. SCE indicates that the contract with its agent component parts manufacturer excludes liability for "replacement power."³ Thus there is no need to wait for a resolution of a potential contract dispute between SCE and the agent for the Commission to address the 'power replacement cost' issue that is normally part of the annual Energy Resource Recovery Account (ERRA) compliance proceeding.

SCE also discusses property and outage insurance. While SCE very briefly describes submitting 'proofs of loss,' there is little indication whether submittal of these proofs will result in payment on the policy to SCE by the insurance carrier. Given, however, SCE's indication that it "is seeking the weekly indemnity amounts" based on these proofs of loss, it would seem that recovery is readily available to SCE and that Commission action is not a prerequisite to obtaining that recovery.⁴ Thus, there is no need to delay consideration of the ratemaking issues based on the existence of the insurance policy or on any policy disputes.

b. The Future of SONGS

There does not seem to be much the Commission can resolve on the future of SONGS operations until the Nuclear Regulatory Commission takes action.⁵ DRA therefore recommends that a schedule for consideration of these issues be postponed to a date to be determined when

² SCE Response, p. 6.

³ SCE Response, p. 15. SCE includes this as "Phase B."

⁴ SCE Response, p. 8.

⁵ SCE Response, p. 15, "Phase C."

the Commission has more information. To that end, DRA recommends that another pre-hearing conference be scheduled in six months or within a month of when SCE has a definitive proposal on the future operation of SONGS or within a month of the NRC response to SCE's request to partially restart Unit 2.

2. Rate Adjustments

In its Response to the OII, SCE says that, in developing a schedule for this OII, "... the Commission may not order reductions in rates in respect of the revenue requirement for SONGS before SCE's test year (TY) 2015 general rate case (GRC)."⁶ SCE cites to Sections 362 and 455.5 of the Public Utilities Code.⁷ DRA disagrees with SCE's strained interpretation of these statutes, but if the Commission is in any doubt about its authority to stop ratepayer funding of the costs of this now unused and useless plant, the Commission should allow all interested parties to fully brief the issue at a later date.

In the meantime, however, DRA notes the following. Section 362 of the Public Utilities Code provides as follows:

- (a) In proceedings pursuant to Section 455.5, 851 or 854, the commission shall ensure that facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining open competition and avoiding an overconcentration of market power. In order to determine whether the facility needs to remain available and operational, the commission shall utilize standards that are no less stringent than the Western Electricity Coordinating Council and North American Electric Reliability Council standards for planning reserve criteria.
- (b) The commission shall require that generation facilities located in the state that have been disposed of in proceedings pursuant to Section 851 are operated by the persons or corporations who own or control them in a manner that ensures their availability to maintain the reliability of the electric supply system.

SCE apparently interprets this code section as "plain language" that says "...the Commission may not order reductions in rates in respect of the revenue requirement" before Edison's TY 2015 GRC. SCE's reasoning is that "... the Commission must not precipitously adopt any measures in this OII that would hamper SCE's efforts to ensure that SONGS remains

⁶ SCE Response, p. 16.

⁷ SCE Response, p. 16.

“available and operational.”⁸ According to SCE, “[a]n immediate rate reduction would be inconsistent with this directive.”²

As a factual matter, this argument fails. SONGS is not “available and operational;” there is no question of it “remaining” so.

As to Public Utilities Code Section 455.5, SCE says that statute “...prescribes the process the Commission must follow in considering ratemaking issues related to extended outages.”¹⁰ From this, SCE argues that “Section 455.5 precludes the removal from rates of the revenue requirement for SONGS prior to SCE’s 2015 GRC.”¹¹ SCE’s interpretation of this code section is strained. First, Section 455.5(a) refers to actions the Commission *may* consider. Section 455.5(c) refers to actions the Commission *must* take when a generation facility has been out of service for nine consecutive months. Section 455.5, is not, however, the sole authority on the Commission’s ratemaking power. For example, Section 454.8 of the Public Utilities Code requires the Commission to allow jurisdictional utilities to recover the cost of plant it deems “used and useful.” It would be an absurd outcome if the Commission did not also have the authority to remove costs for plant that is not “used and useful.” Clearly, a generating facility that is not generating anything is not used or useful, and charging ratepayers for this useless plant is neither “just” nor “reasonable.”¹²

3. Subject to Refund Conditions

In its Response, SCE argues that “...the Commission’s order to collect SONGS costs subject to refund retroactively from January 1, 2012 conflicts with Commission precedent, violates Section 455.5(c) and constitutes impermissible retroactive ratemaking.”¹³ DRA disagrees.

In its Decision resolving SCE’s TY 2012 GRC, the Commission adopted a memorandum account for SONGS.¹⁴ The SCE TY 2012 GRC decision was adopted in November 2012, for

⁸ SCE Response, p. 20.

² SCE Response, p. 20.

¹⁰ SCE Response, p. 17.

¹¹ SCE Response, p. 17.

¹² Public Utilities Code §451.

¹³ SCE Response, p. 25.

¹⁴ A.10-11-015. As of this writing, DRA does not have the decision number for this case.

rates effective January 1, 2012. Prior to that Decision, SCE was authorized a GRC memorandum account to recover the difference between existing rates and rates ultimately adopted. The GRC proceedings' adoption of the SONGS memorandum account preserves the Commission's discretion regarding the adjustment of rates associated with the SONGS facility effective January 1, 2012 through the 2012 GRC.

In other General Rate Case decisions, the Commission has ordered rates subject to refund to protect ratepayers pending later reasonableness reviews.¹⁵ Nothing in Public Utilities Code Section 455.5 prohibits the Commission from doing so in this case.

B. Response of Southern California Gas Company

In its Motion for Party Status, the Southern California Gas Company raises the question of whether the Commission intends to consider the effects of the SONGS outages on natural gas service and reliability.¹⁶ DRA recommends that the effects of SONGS outages on natural gas service and reliability *not* be made part of the SONGS OII; the focus of this OII should remain the appropriate ratemaking treatment of SONGS related costs for the ratepayers of SCE and San Diego Gas & Electric Company.

C. Response of California Coalition of Utility Employees

In its Response to the OII, the California Coalition of Utility Employees (CCUE) argues that, "... at the very time when the Commission and SCE need San Onofre's trained and experienced employees most, SCE is planning to eliminate the jobs of hundreds of highly-qualified nuclear plant employees."¹⁷ The issue of workforce reductions at SONGS was litigated and resolved in SCE's TY 2012 GRC. Unless there are workforce questions strictly related to the SONGS outage since January 2012, DRA opposes re-litigating this issue.

¹⁵ See, e. g., *Application of San Gabriel Water Company* (2009) D.09-06-027, 2009 Cal PUC LEXIS 299, Conclusion of Law 84.

¹⁶ SoCal Gas Motion for Party Status, p. 1.

¹⁷ CCUE Response, p. 2.

Respectfully submitted,

/s/ MITCHELL SHAPSON

MITCHELL SHAPSON

Attorney for the Division of Ratepayer
Advocates

505 Van Ness Avenue
San Francisco, CA 94102
Phone: 415-703-2727
Fax: 415-703-2262
Email: MITCHELL.Shapson@cpuc.ca.gov

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