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.	FILED PUBLIC UTILITIES COMMISSION OCTOBER 25, 2012 IRVINE, CA INVESTIGATION 12-10-013

CLEAN COALITION'S RESPONSE TO SCE AND SDG&E JOINT MOTION FOR PROTECTIVE ORDER

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The Clean Coalition respectfully submits this response to the JOINT MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) FOR PROTECTIVE ORDER ("Joint Motion").

The Clean Coalition is a California-based nonprofit organization whose mission is to accelerate the transition to local energy systems through innovative policies and programs that deliver cost-effective renewable energy, strengthen local economies, foster environmental sustainability, and enhance energy security. To achieve this mission, the Clean Coalition promotes proven best practices, including the vigorous expansion of Wholesale Distributed Generation (WDG) connected to the distribution grid and serving local load. The Clean Coalition drives policy innovation to remove major barriers to the procurement, interconnection, and financing of WDG projects and supports complementary Intelligent Grid (IG) market solutions such as demand response, energy storage, forecasting, and communications. The Clean Coalition is active in numerous proceedings before the California Public Utilities Commission and other state and federal agencies throughout the United States, in addition to work in the design and implementation of WDG and IG programs for local utilities and governments. The Clean Coalition has intervened before the Commission on many areas surrounding including Long Term Procurement Planning (LTPP), Resource Adequacy (RA), Energy Storage (ES) and various Smart Grid proceedings.

A summary of our response follows:

- The Clean Coalition strongly opposes the Joint Motion because: granting a protective order would contravene the Commission's rebuttable presumption of non-confidentiality; no such rebuttal has been presented by the IOUs; the draft Protective Order would circumvent the requirements of D.06-06-066 by providing overly broad discretion to the

IOUs to unilaterally deem data confidential; and because the Protective Order would impose a chilling effect on parties' seeking to use data from this proceeding outside of this proceeding

- This proceeding is particularly important to the public, due to concerns about safety, costs, pollution, and other issues related to SONGS. Accordingly, maximum transparency should be preserved in this proceeding, and in all cases claims for confidentiality should be considered solely pursuant to the requirements of D.06-06-066. The public interest is not presereved through the overly broad discretion that the draft Protective Order would provide
- Last, if the Commission is inclined to grant the Joint Motion, at the least a workshop should be held to discuss the IOUs' proposed changes to the model protective order because the IOUs make numerous substantive changes that warrant discussion

I. Discussion

The Joint Motion states (p. 3):

> SCE and SDG&E anticipate that parties may be required to produce or submit certain confidential and proprietary information in this proceeding. For example, the consideration of the causes of the SONGS extended outages, among other things, may require SCE to produce and submit confidential analyses relating to the steam generator design completed by Mitsubishi Heavy Industries (MHI). In certain instances, SCE, SDG&E, and other parties may be obligated to maintain the confidentiality of information obtained from third parties pursuant to nondisclosure and confidentiality agreements with those third parties. A Protective Order is warranted to facilitate the exchange of this and other confidential and proprietary information.

The Joint Motion provides no further argument or evidence for the Protective Order. Accordingly, the benefits of such an order are unknown. The harms from such an order,

however, are better known, as we describe below. Moreover, granting the Protective Order would circumvent the requirements of D.06-06-066.

a. The Clean Coalition opposes the protective order

1. Concerns for reasonable transparency weigh against the Protective Order

The Clean Coalition is concerned that reasonable transparency will be inhibited if the Joint Motion is granted. This proceeding is of utmost concern to the public, for valid reasons centered on safety, cost, pollution, etc. As such, granting the Joint Motion will surely inhibit transparency in areas that are of great concern to the public. The Clean Coalition agrees that there may be a need for confidentiality with respect to specific information and issues – but these should be dealt with under normal procedures, as discussed below, and not in a manner that will surely limit access to information that the public has every right to know.

2. D.06-06-066 codifies a rebuttable presumption of non-confidentiality

More specifically, D.06-06-066 codifies a rebuttable presumption of non-confidentiality. The Commission has made it clear, in other words, that it will default on the side of non-confidentiality and transparency, and will only deviate from this policy upon an affirmative showing – which the IOUs have not made.

3. A blanket Protective Order would provide too much discretion to the IOUs to claim confidentiality

The IOUs' draft Protective Order defines Protected Materials as follows (Joint Motion,

Attachment 1-1, Definitions (b)(i), emphasis added): "The term "Protected Material(s)" means: (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined in good faith by the Disclosing Party…" The Clean Coalition has strong concerns that this blanket authority to determine what is protected will be used overly aggressively by the IOUs, who have displayed a strong preference for confidentiality vs. non-confidentiality – contrary to the Commission's clearly stated presumption of non-confidentiality in D.06-06-066. More specifically, this blanket authority to declare what is confidential circumvents the requirements of D.06-06-066, as discussed in the next section.

4. D.06-06-066 requires an affirmative showing of the need for confidentiality

D.06-06-066 provides a procedure that must be followed for a finding of confidentiality, as described clearly by D.08-04-023 (p. 19):

> Motions filed or made under (A) or (B) above shall, at a minimum, meet the following five requirements in Ordering Paragraph 2 of D.06-06-066:
>
> 1. That the material constitutes a particular type of data listed in the Matrix;
> 2. The category or categories in the Matrix to which the data correspond;
> 3. That the submitting party is complying with the limitations on confidentiality specified in the Matrix for that type of data;
> 4. That the information is not already public; and
> 5. That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

SCE and SDG&E seek to avoid these requirements entirely through part (i) of their definition of Protected Materials in their draft Protective Order, as just discussed above.

Definition (b)(ii) of the draft Protective Order states an additional category for Protected Materials: "information determined to be confidential and/or proprietary in accordance with the provisions of D.06-06-066 and subsequent decisions, General Order 66-C, Public Utilities Code Sections 583 and 454.5(g)…"

Accordingly, granting the Joint Motion for Protective Order would circumvent D.06-06-066's requirements for specific showings prior to a Commission decision about the confidentiality of specific data. The IOU Matrix (Appendix C to D.08-04-023) for treatment of confidential data does not include any categories relevant to this proceeding, so the IOUs can't argue that the draft Protective Order respects the requirements of D.06-06-066 and D.08-04-023 with respect to the treatment of data that is asserted to be confidential.

For the above-stated reasons, the Clean Coalition strongly opposes the Joint Motion.

b. If the Commission decides to grant the Joint Motion, a workshop should be convened to allow party feedback on the many proposed substantive changes to the Protective Order

Moreover, as the Alliance for Nuclear Responsibility points out in its response to the Joint Motion, the IOUs have made numerous modifications to the model Protective Order that warrant discussion, preferably in a workshop. As an example, the IOUs seek to add a section on Derivative Materials, which expressly creates a rebuttable presumption that any materials that use Protected Material data are themselves Protected Materials (Joint Motion, Attachment 2-10). This is a very substantial change from the model protective order and this and other changes warrant substantial discussion because they will likely impose a strong chilling effect on the use of *any* data from this proceeding by parties in discussions outside of this proceeding. Entering into a Non-Disclosure Agreement, as proposed, would subject parties to ongoing risk of suit

if they ever attempt to cite related data in the future even when obtained outside of this proceeding. At the same time, this approach denies access to relevant data for a party preferring not to enter into a Non-Disclosure Agreement. Last, but most importantly, it would prevent any non-parties seeking information on SONGS issues from obtaining this information from this public proceeding.

II. Conclusion

For the reasons stated above, the Clean Coalition strongly opposes the Joint Motion and urges the Commission to deny it in full. If the Commission is inclined to grant the Joint Motion, it should, at the least, convene a workshop to discuss the IOUs' proposed changes to the model protective order.

Respectfully submitted,

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