BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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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	I.12-10-013 (Filed October 25, 2012)
And Related Matters.	A.13-01-016 A.13-03-005 A.13-03-014 A.13-03-013

OPENING BRIEF OF THE OFFICE OF RATEPAYER ADVOCATES ON PHASE 2 ISSUES

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OPENING BRIEF OF THE OFFICE OF RATEPAYER ADVOCATES
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I. INTRODUCTION

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure and the Assigned Commissioner's and Administrative Law Judges' July 31, 2013 Scoping Ruling ("Scoping Memo"), the Office of Ratepayer Advocates ("ORA")[1] hereby submits its Opening Brief on Phase 2 issues. According to the Scoping Memo, in Phase 2 the Commission will determine the values of SONGS assets, and related O&M expenses that should be removed from Southern California Edison Company ("SCE") and San Diego

[1] The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013

Gas and Electric Company ("SDG&E") rates as of November 1, 2012 (or later), and also the appropriate ratemaking treatment to these adjustments.[2] In its testimony, ORA made several recommendations on these issues:

1.) SCE and SDG&E ("the utilities") should receive no interim rate recovery for the Steam Generator Replacement Project ("SGRP") effective November 1, 2012;
2.) The remaining SONGS net plant (excluding SGRP) of approximately $610 million should be removed from rate base as of November 1, 2012. However, the utilities should be permitted to recover 75 percent of the net plant amount over five years, with no return on investment during the amortization period;
3.) The utilities should be permitted to recover 75 percent of their recorded O&M costs from June 1, 2013 through December 31, 2014;
4.) The utilities should be permitted to recover 75 percent of their severance costs from ratepayers;
5.) SCE and SDG&E should receive no cost recovery for outstanding Construction Work in Progress ("CWIP") effective November 1, 2012.
6.) Materials and Supplies ("M&S") should be removed from rate base as of November 1, 2012;
7.) SCE and SDG&E should receive a nuclear fuel carrying cost rate based on the utilities' commercial paper rate, and cost recovery for unsold nuclear fuel should be considered by the Commission after SCE has completed resale activities.[3]

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[2] See Scoping Memo, p. 3.

[3] Ex. DRA-03, pp. 1-2. Attachment A to this Brief includes, where possible, a numerical breakdown of

(continued on next page)

ORA's ratemaking adjustments are consistent with Public Utilities Code Section 455.5 and Commission precedent.

II. DISCUSSION

A. The Commission Should Adopt ORA's Proposed Adjustment to the SONGS Rate Base, Because SONGS Has Not Been "Used and Useful" Since Before November 1, 2012

ORA recommends the Commission adopt its proposed ratemaking proposal for SONGS as of November 1, 2012 based on Public Utilities Code Section 455.5, the longstanding "used and useful" doctrine, Commission precedent, and the unique facts of this case. These recommendations are that 1.) The non-Steam Generator Replacement Project ("SGRP") portion of SONGS be completely removed from rate base as of November 1, 2012, with seventy-five percent of this plant balance recovered in rates through a five-year amortization at zero rate of return; and 2) The "SGRP" portion of SONGS be completely be removed from rate base as of November 1, 2012, with no rate recovery of the remaining plant balance. The basis for these recommendations is discussed below.

1. SONGS Has Not Been Used and Useful Since Before November 1, 2012

Public Utilities Code Section 455.5(a) provides that the Commission "may eliminate consideration of the value of any portion of any electric …production facility which, after having been placed in service, remains out of service for nine or more consecutive months." The purpose of the statute "is to ensure that utilities not earn a rate of return on utility assets (or portions thereof) that are out of service for at least nine months. Allowing a rate of return on such property would overcompensate the utilities at ratepayers' expense."[4] Further, under cost of service electric utility ratemaking, customers only have to pay for assets that are "used and useful" in providing electric

(continued from previous page)
ORA's recommendations.

[4] D.07-09-021; 2007 Cal. PUC LEXIS 432, * 5.

utility service: "Over the years, the Commission has closely adhered to the 'used and useful' principle, which requires that utility property be actually in use and providing service in order to be included in the utility's ratebase."[5]

The Courts have upheld the longstanding public utility regulatory principal that only an asset providing service to ratepayers is used and useful. In *NEPCO Mun. Rate Commission v. FERC*, 668 F.2d 1327, 1333 (D.C. Cir 1981), the Court upheld FERC's disallowance of capital expenditures associated with a power plant: "The general rule recognized by this court is that expenditure for an item may be included in a public utility's rate base only when the item is "used and useful" in providing service; that is, current rate payers should bear only legitimate costs of providing service to them."

The Commission stated this policy succinctly in a proceeding involving another closed nuclear power plant, Humboldt Bay Power Plant ("HBPP") Unit 3: "We agree with staff that Unit 3 is no longer 'used and useful' and should be excluded from rate base. While Unit 3 did operate for 13 years, it will never operate again and can no longer be considered 'useful' utility plant."[6] There is no dispute that SONGS has not provided electric utility service since before November 1, 2012, and will never operate again. Therefore removal from rate base as of that date is consistent with longstanding Commission policy and is reasonable.[7]

SCE disagrees with ORA's position on when SONGS ceased to be "used and useful." First, SCE argues that it should be permitted "to recover its net investment in all SONGS assets that were permanently retired as of June 7, 2013."[8] Second, SCE argues that even when SONGS went out of service, individual capital items within SONGS continued to be "used and useful", and will continue to be useful in future

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[5] D.84-09-089; 1984 Cal. PUC LEXIS 1013, *72.

[6] D.85-08-046; 1985 Cal. PUC LEXIS 687, *21.

[7] Phase 3 may consider a retirement date earlier than November 1, 2012. See Ex. DRA-03, p. 5.

[8] Ex. SCE-41, p. 10.

years.[9] In support of the first position, SCE states that "the Commission should allow full cost recovery of these retired assets because they were used and useful prior to their permanent retirement."[10] SCE's recommendation confuses past used and usefulness with present and future used and usefulness, and also leaves to the company the determination of when a plant is retired, rather than the more sensible, objective determination based on when a plant is no longer commercially operating. As stated above, the concept of used and useful refers to plant that is providing service to customers. In *Humboldt Bay*, the Commission concluded as a matter of law that "a plant's prior service does not qualify the plant as 'used and useful'; the plant's current capability of providing service to customers is the important criterion."[11] SONGS has not generated electricity since January 2012. SONGS did not provide any service to customers between November 1, 2012 and June 7, 2013. SONGS did not have the capability to provide service during that time period. SCE's decision to retire the plant on June 7, 2013 does not mean that the plant was "used and useful" in the preceding months. The criteria for determining when a plant is no longer "used and useful" is the same criteria that is used for determining when a plant becomes "used and useful" and can begin rate recovery. Rate recovery begins when a plant goes into commercial operation and becomes used and useful, not when a company decides to build a plant, and not when construction commences.

SCE's test of used and usefulness and the appropriate rate recovery for SONGS is subjective, and beneficial only to the company. According to SCE (and SDG&E) the utility should unilaterally decide whether or not an asset is still used and useful. The proposed standard set forth by the utilities is clearly not tied to actual commercial operation. Such a test is arbitrary and gives a utility the incentive to wait as long as possible to declare that an asset is no longer is service (whether or not the asset has been

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[9] Ex. SCE-36, pp. 5-13.

[10] Ex. SCE-41, p. 10.

[11] D. 85-08-047; 1985 Cal. PUC LEXIS 687, *34 (Conclusion of Law # 3).

serving customers in any recent period) so that the utility can continue to earn a rate of return on the asset during the ensuing months between non-operation and the utility decision to determine the plant is no longer used and useful.

SCE's contention that SONGS was "used and useful" between November 1, 2012 and June 7, 2013 is inconsistent with the language and intent of Section 455.5. Section 455.5(a) provides that the Commission **"**may eliminate consideration of the value of any portion of any electric, gas, heat, or water generation or production facility which, after having been placed in service, remains out of service for nine or more consecutive months…" While the statute provides for discretion on the Commission's part, i.e., "may", there is no reason in this proceeding why the Commission should allow for rate recovery after November 1, 2012. As of November 1, 2012 ratepayers had already been paying for the non- operating power plant for nine months. Allowing for the utility to recover in rates for a longer period of time than the nine months would give the utilities the incentive to wait as long as possible to "announce" closure of a plant, even when the plant had not been in operation for a long time. The fact that SONGS has not been operational since January 2012 justifies the removal of the SONGS investment from rate base (and the associated rate recovery) prior to November 1, 2012.

SCE's second contention regarding application of the "used and useful" doctrine is that individual capital systems within the SONGS facility continue to be "used and useful" even if the plant itself is not providing any commercial service. SCE claims that 23 percent of its net plant, $281 million, is still "used and useful."[12] ORA is unaware of the CPUC ever categorizing assets as "used and useful" that are part of a non-functioning power plant, and SCE provides no supporting precedent for this rate treatment. When a plant is no longer operating, the plant is not "used and useful", and individual pieces do not continue to be used and useful.[13] Neither D.85-08-046 (Humboldt Bay) nor D.92-

[12] Ex. SCE-36, p. 36.

[13] The dry cask storage (ISFSI) is still used and useful after November 1, 2012, but is separate from the SONGS power plant. ISFSI was built to provide long term storage of spent nuclear fuel for years after the plant was intended to go out of service.

08-036 (SONGS 1) provide for parsing out of capital that continues to be "used and useful" when the plant itself is no longer "used and useful." During hearings, SCE's witness Mr. Worden confirmed that no such distinction was made during the retirement of the SONGS 1 nuclear power plant: "the spent fuel pool for Unit 1 was retired and amortized as retired plant with the rest of the SONGS 1 investment at the time."[14]

In proposing to parse out pieces of a non-operating power plant that should still go into rate base, the utilities are proposing a new and unprecedented ratemaking methodology. During hearings, ORA testified that the spent fuel pool could be considered used and useful after November 1, 2012, because the spent fuel pool was part of an NRC mandate.[15] However, while ORA's witness was correct that the company has ongoing expenses associated with the spent fuel pool after the plant closed, as well as other expenses required by "regulatory mandate", the witness incorrectly identified these expenses as "used and useful" which is a legal term of art.[16] ORA has reviewed Commission precedent, including the cases cited above, and there is no basis to continue to allow any individual portions of a closed power plant to be characterized as "used and useful" after the power plant is out of operation and not generating electricity for its customers. Accordingly, ORA's position is consistent with TURN's position, consistent with our written testimony, that the spent fuel pool is not "used and useful" after November 1, 2012. As TURN testified, "plant required for safe use of the discontinued facility is still not useful in the provision of electricity."[17] Some costs associated with the spent fuel pool after November 1, 2012 may be operations and maintenance expenses. There should not be any capital additions because there should not be any ratepayer money spent on investments used to keep SONGS in commercial operation. The

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[14] SCE/Worden, 13 RT 2486, lines 7-10.

[15] ORA/Burns, 14 RT 2578, lines 23-26.

[16] Similarly, SCE's witness Mr. Fisher used the term "used and useful" when describing CWIP, but then clarified that he was using the term in a colloquial manner, not in the legal, ratemaking manner. 11 RT 2068 (lines 9-28)-2069 (lines 1-2).

[17] Ex. TURN-15, p. 3.

Commission should not adopt SCE's spurious notion that it can parse the entrails of a defunct generating station, separating 'required' systems from useless ones. Ratemaking recovery of utility assets depends on the provision of service to ratepayers, not on some utility determined construct of importance. The obvious end result of SCE's second contention is that a significant portion of SONGS is "used and useful" and deserving of a return on investment.

2. SCE and SDG&E Should Be Allowed to Recover 75 Percent of the Net Plant Amounts of SONGS 2 & 3 (Excluding SGRP) Over Five Years, Without Any Return on Equity

Consistent with ORA's position that SONGS was not used and useful after November 1, 2012, ORA recommends that the utilities should recover seventy five percent of the remaining balance of the net plant (excluding SGRP) as of that date, amortized over five years, without any return on equity.[18] This recommendation is consistent with the Commission's prior ratemaking treatment of plant that has been retired before its anticipated retirement date. As stated above, SCE separates assets within the non-operating SONGS power plant between those that are still used and useful, and those that are no longer used and useful. For those assets that SCE claims are still used and useful, the company recommends that those assets still receive rate recovery including the full authorized rate of return, as if these assets were part of a functioning power plant.[19] For those assets that SCE agrees are no longer used and useful as of June 1, 2013, SCE recommends that those assets earn a rate of return of 5.54 percent, rather than the currently authorized rate of return of 7.90 percent.[20]

SDG&E agrees with SCE that a portion of SONGS remains used and useful as the company transitions to decommissioning. SDG&E proposes to recover these costs based on a revenue requirement established June 1, 2013, and to recover these costs over

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[18] Ex. DRA-03, pp. 8-9.

[19] Ex. SCE-40, p. 14.

[20] Ex. SCE-40, p. 6; Ex. SCE-41, p. 35 fn. 84.

a 9 ½ year period at its currently authorized rate of return of 7.79 percent. Beginning in January 1, 2018, SDG&E proposes to amortize the remaining net investment over a three year period at a reduced ROR of 5.07 percent. SDG&E argues that its assets "retired" on June 1, 2013 should earn a rate of return of 5.07 percent, compared to its currently authorized rate of return of 7.79 percent.[21]

In prior proceedings involving retirement of utility plant that is not yet fully depreciated or has been retired prior to the end of its useful life, the Commission has applied a variety of ratemaking methodologies depending on the facts and circumstances of each case. ORA's proposal here, including no rate of return, is consistent with prior Commission practice. For example, in Decision (D.) 85-08-046, the Commission considered the appropriate ratemaking treatment for Pacific Gas and Electric Company's ("PG&E") prematurely retired Humboldt Bay Power Plant ("HBPP") Unit 3. PG&E argued, like SCE and SDG&E do in this proceeding, that "customers should pay a full return on plants … which are prematurely retired and no longer are providing any service to customers."[22] The Commission disagreed:

> We agree with staff that Unit 3 is no longer "used and useful" and should be excluded from rate base. While Unit 3 did operate for 13 years, it will never operate again and can no longer be considered "useful" utility plant. Unit 3 was entered into rate base under the assumption that it would serve customers for 30 years.[23]

While the Commission allowed for recovery of net plant investment over a four-year amortization period, the Commission denied any rate of return on this plant because it was not used and useful, and therefore not a part of the utility's rate base.[24]

Similarly, in PG&E's 1993 General Rate Case ("GRC"), the Commission removed from rate base PG&E's unrecovered investment in the Geysers 15 power plant because it

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[21] Ex. SDG&E-16, pp. 6-7.

[22] D.85-08-046; 1985 Cal. PUC LEXIS 687, *19-*20.

[23] D.85-08-046; 1985 Cal. PUC LEXIS 687, *21-*22.

[24] Id. at *34 (FOFs 17, 18).

was not used and useful: "We once again endorse our longstanding regulatory principle that shareholders should earn a return only on used and useful plant."[25] While the Commission did authorize a recovery of the unamortized plant, the Commission prohibited a return on this plant. More recently, in SCE's 2012 GRC, the Commission considered the appropriate rate recovery for SCE's retired Mohave power plant. As in this proceeding, SCE argued that the retired Mohave power plant should continue to earn a rate of return during its amortization period and that "reduction of the rate of return is a denial of cost of service ratemaking principals."[26] The Commission disagreed and did not allow for any rate of return during the amortization of the plant balance.[27]

SDG&E argues that its proposed ratemaking methodology is supported by Commission precedent, including Commission Decision (D.) 13-10-010 involving SDG&E's recovery of retired legacy meters when the Commission ordered implementation of Advanced Metering Infrastructure ("AMI"). In D.13-10-010 the Commission authorized a 6.62 percent rate of return applied to a six year amortization of the undepreciated balance of SDG&E legacy meters.[28] D.13-10-010 followed precedent set by the Commission in Decision (D.) 11-05-018, which involved the appropriate ratemaking treatment for PG&E's recovery of *still functioning, but obsolete* legacy meters.[29] In D.11-05-018, the Commission explained that the allowance for a rate of return on plant that was no longer used and useful was limited to the very unique circumstances of the AMI upgrade:[30]

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[25] D. 92-12-057; 1992 Cal. PUC LEXIS 971, * 79.

[26] D.12-11-051; 2012 Cal. PUC LEXIS 555, * 984.

[27] Id., *986.

[28] Decision (D.) 13-05-070, Findings of Fact 55-60.

[29] The Commission reviewed rate recovery of SCE's legacy meters in SCE's 2012 General Rate Case. Decision (D.)12-11-051 authorized the same ratemaking treatment for SCE's legacy meters (six year amortization at a lower rate of return) as the Commission had authorized for PG&E. 2012 Cal. PUC LEXIS 555, *980.

[30] D.11-05-018; 2011 Cal. PUC LEXIS 275, *83.

> We will grant rate of return treatment for the retired meters, despite the fact that they are no longer used and useful, due to our consideration of two facts. The first fact is that AMI implementation was encouraged by the Commission, as a means for implementing Commission demand side management policies. The second fact is that AMI implementation for PG&E ...was found to be cost-effective.[31]

Here, the circumstances are not at all analogous to AMI. SONGS went out of service prematurely due to the complete failure of the SGRP. The failure of the SGRP and retirement of SONGS was not encouraged or required by the Commission; nor has it been cost effective for ratepayers. In D.11-05-018 the Commission recognized that the AMI deployment was "a unique set of circumstances compared to "Humboldt Bay and Geysers Unit 15 premature retirements.[32] Therefore, the appropriate ratemaking treatment in this case is for the retired plant to receive no rate of return.

SCE argues that a rate of return on the remaining plant is consistent with the Commission's decision involving the closure of SONGS 1.[33] In Decision (D.) 92-08-036, the Commission adopted a settlement agreement that provided for a rate of return equal to the cost of debt on the remaining plant balance of the retired SONGS 1 nuclear power plant.[34] Commission Rule of Practice 12.5 provides that "adoption [of a settlement agreement] does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or any future proceeding." Further, in authorizing the SGRP, the Commission has already stated, in Decision (D.)05-12-040, that the SONGS 1 rate recovery "did not set a precedent."[35] Therefore, the Commission should not rely on the SONGS 1 decision in this proceeding. Further, the facts of SONGS 1 are distinguishable than those here. In that proceeding, parties had disagreed about whether

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[31] Id.

[32] Id. at *93.

[33] Ex. SCE-40, p. 14.

[34] D.92-08-036; 1992 Cal. PUC LEXIS 561, *2.

[35] D.05-12-040, p.85 (Finding of Fact 65).

or not it was cost-effective to continue to operate SONGS 1. In D.92-08-036, the Commission found that the "compromise" rate of return was reasonable because "the utilities had argued that SONGS 1 could be operated cost-effectively for the duration of its [NRC] license and that they should be entitled to a rate of return."[36] Here, no party has argued that SONGS 2 and 3 could continue to be operated cost-effectively (or even be operated at all) given the premature failure of SGRP. Further, the Commission recognized the differences between the Humboldt Bay 3 and SONGS 1 closure in the SONGS 1 decision: "The circumstances of SONGS 1 differ materially from the only CPUC precedent for premature retirement of a nuclear power plant (PG&E's Humboldt Bay 3)."[37] Regarding SONGS 2 and 3, the facts are more comparable to the facts regarding Humboldt Bay 3, where the nuclear power plant is no longer operating or operable, and the Commission should follow that Decision's authorization of a zero rate of return. In this case, the facts further support the ORA proposal given the failure of SGRP after only one year of operation.

While the Commission has allowed for recovery of the undepreciated plant balance that is no longer used and useful, ORA's recommendation here that the utilities recover 75 percent of that plant balance is reasonable. SONGS only operated for 75 percent of its U.S. Nuclear Regulatory Commission (NRC) licensed life. Allowing the amortization of 100 percent of the remaining plant balance provides an unjust windfall to shareholders because they would be recovering investment (without return) as if the plant had operated for its full expected operating life, whereas the ratepayers only received the benefit of 75 percent of the expected operating life. Allowing for recovery of 75 percent of the plant balance more fairly balances shareholder and ratepayer risk and responsibility than requiring ratepayers to fund the full remaining plant balance because the plant did not operate nearly as long as it should have. Further, the plant balance is highest during the earliest years of its service life, and shareholders benefit disproportionally than

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[36] Id., *28-29.

[37] Id., *38 (Finding of Fact 7).

ratepayers for plant in the beginning years of an asset's service given the net plant balance is higher in the initial years, whereas in the later years, ratepayers would generally benefit more. In this case, ratepayers were deprived of SONGS service during the later years where the higher depreciation reserve would have benefitted them.

3. The Failed Steam Generator Replacement Project Should Be Completely Removed from Interim Rate Recovery No Later Than November 1, 2012

ORA recommends that the SONGS Steam Generator Replacement Project ("SGRP"), consisting of Replacement Steam Generators ("RSGs") for SONGS Units 2 and 3 should be completely removed from interim rate recovery as of November 1, 2012 with no ensuing rate recovery for the balance of unamortized plant.[38] As discussed above, SONGS, including the SGRP, has not been "used and useful" at any time since before November 1, 2012. The SGRP is the most expensive capital addition within SONGS and also lead to the plant's closure. While Commission precedent and fair ratemaking policies support ORA's proposal to amortize seventy-five percent of the plant balance of non-SONGS rate base as of November 1, 2012, with zero return, the SGRP warrants a different rate treatment. The Replacement RSGs cost $768.5 million, and went into service in 2010 and 2011. They were in commercial operation for less than two years of their expected life of up to forty years. The unexpected failure of the RSGs lead to a complete shutdown of SONGS, taking out of service an asset that still had years of useful life and could have provided electricity and generating capacity to customers. SONGS was the largest generating asset in the SCE and SDG&E portfolios, capable of providing approximately 2200 MW of power. Prematurely losing SONGS because of the failed RSG project has been extremely costly to ratepayers. While ratepayers funded these RSGs for that two year period, including a rate of return, it would be unreasonable to require any ratepayer funding beyond November 1, 2012.

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[38] Ex. DRA-03, p. 9.

SCE argues that ORA's proposed rate treatment of the RSGs "is subjective and impossible to apply consistently" and that SCE's proposal follows the Commission's "bright line approach."[39] Disallowance of the RSGs in rates after November 1, 2012 is consistent with the Commission's "used and useful" test discussed above in the context of the non-RSG plant. The difference with ORA's approach to RSG rate recovery is that ORA does not support amortization of remaining plant balance over five years. Amortization of the RSG plant balance is unfair to ratepayers who only received service for a fraction of the service life, and would be unjustly profitable to shareholders. SCE's proposal requires ratepayers to pay hundreds of millions of dollars for plant that did not provide service to them. SCE claims that it is reasonable because the plant did provide some service, even though such service was much shorter than expected. In the case of the Unit 3 RSG, SCE says that complete rate recovery of the balance of the plant is reasonable because the Units did operate for 12 months. Incredibly, SCE *claims the same ratemaking treatment would be appropriate even if the RSGs had only operated for one month*.[40] SCE is incorrect. The justification for the SGRP was based on various cost effectiveness scenarios submitted by SCE in A.04-02-026.[41] None of the scenarios presented by SCE assumed the operation of the facility for only one month, one year or two years. The studies presented, and relied on by the Commission, estimated a complete service life.[42]

Besides the inherent inequity of allowing shareholders to collect hundreds of millions of dollars in rates for plant that has stopped serving customers, the utilities proposal is also unprecedented because of the fact that this single capital project, the SGRP, caused the complete shutdown of an otherwise functioning power plant. As

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39 Ex. SCE-42, p. 11.

40 SCE/Worden, 12 RT 2268, lines 5-23.

41 Decision (D.)05-12-040

42 Id.

ORA testified, "there is no other comparable past precedent;"[43] and "this is a unique situation in which one major capital addition took out the rest of [the] plant."[44] Under cross-examination, SCE's witness stated that he too was unaware of any comparable situation, "where a single precipitous event" brought about the demise of an entire power plant.[45] In assessing the reasonableness of parties' ratemaking proposals, the Commission should keep in mind the "evidence unique to the circumstances of this case."[46]

B. ORA's Proposal to Allow the Utilities to Recover 75 Percent of Their Recorded O&M Costs from June 1, 2013 Through December 31, 2014 Should be Adopted

ORA recommends that the utilities should be permitted to recover 75% of their recorded O&M costs from June 1, 2013 through December 31, 2014. This proposal is designed to give the utilities an incentive to efficiently manage their labor and non-labor costs, and reflects a sharing of costs based on the time frame that the facility operated compared to its expected service life.

Neither utility has made any meaningful showing as to why this proposal should be rejected. SCE's Rebuttal Testimony argues that SCE has appropriate incentives to "prudently minimize ongoing O&M expenses"[47] SCE's bare assertion that it has appropriate incentives for prudent management should be rejected because it assumes that the shutdown of SONGS 2 and 3 is a normal outage. It is not, and the utilities should have "skin in the game" in order to ensure that costs will be prudently managed. SCE also attacks a strawman hypothetical scenario where it could have successfully sought a license renewal through 2042, which in its view would have apparently

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[43] Ex. DRA-3, p. 6.

[44] ORA/Burns, 14 RT 2587, lines 15-17.

[45] SCE/Worden, 12 RT 2269, lines 7-25.

[46] Ex. DRA-3, p. 6.

[47] Ex. SCE-42, p.29 at line 17.

impacted ORA's 75% figure.[48] Obviously, if the plant were still in operation, there would be a different analysis. However, ORA's 75% figure is based on fundamental fairness as to the facts on the ground, not hypotheticals. The Commission should afford no weight to SCE's arguments. Likewise, SDG&E simply argues that SCE separately bills SDG&E for SONGS O&M costs.[49] However, this is inapposite to ORA's argument. Regardless of how the utilities bill each other, the O&M costs should only be 75% ratepayer-funded.

Finally, the utilities should not be allowed to use O&M cost savings to offset the existing undercollection in their ERRA balancing accounts. The more appropriate ratemaking treatment is to reduce the utilities O&M rate recovery as O&M costs fall, and increase reasonable ERRA costs separately, if needed. With the permanent shutdown of SONGS units 2 & 3, the utilities' are no longer buying or generating "replacement" power for SONGS, they are now replacing the lost generation from SONGS.

C. ORA's Proposal to Allow the Utilities to Recover 75 Percent of Their Severance Costs from Ratepayers Should be Adopted

Regarding SONGS employee severance costs, ORA recommends that the utilities be permitted to recover only 75% of their severance costs from ratepayers. ORA's employee severance sharing proposal is designed to give the utilities an incentive to provide reasonable severance costs, and reflects the 75% of the time that the facility operated based on its expected service life.

ORA notes that SONGS employee severance costs from SCE's 2012 GRC are intertwined with the employee severance costs associated with the permanent shutdown of SONGS 2 & 3. In SCE's 2012 GRC, SCE proposed to keep for shareholders half of the net O&M savings from planned personnel reductions, while ORA and TURN argued that 100% of the net O&M cost savings, which would include severance cost savings,

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48 Ex. SCE-42, p.28 at lines 21-25.

49 Ex. SDG&E-20, p. KJD-8 at lines 23-31 through KJD-9 at lines 1-6.

should go to ratepayers.[50] The Commission conditionally adopted SCE's requested O&M forecast of $270.5 million, "subject to offset from recorded savings associated with implementation of the identified workforce reductions."[51]

In rebuttal, SCE argues that force reductions "were much deeper than expected."[52] It also argues that its former employees should be treated with dignity.[53] However, neither of these arguments weigh against ORA's cost sharing proposal. Former employees can still be treated fairly and all that ORA's cost sharing proposal adds to that equation is that ratepayers should also be treated fairly in light of the shutdown of SONGS units 2 and 3.

D. SCE and SDG&E Should Receive No Cost Recovery for Outstanding Construction Work in Progress ("CWIP") Effective November 1, 2012.

In its testimony, SCE argues that CWIP "necessary to support current operations or [that] will be necessary to support the transition to decommissioning" should "remain in CWIP until the project is placed into service, at which point it should be added to rate base where it is eligible to earn SCE's full authorized return."[54] SCE then proposes that capital in CWIP associated with projects that were cancelled as a result of SCE's decision to retire SONGS "should be amortized over a 5-year period and should earn a debt-like return of 5.54%."[55] SCE estimates that its total net investment in CWIP is $192 million as of October 21, 2012 and $230 million as of May 31, 2013.[56] SCE estimates that its *required* net investment in CWIP is $192 million as of October 31, 2012 and $71

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50 D.12-11-051, p. 32.

51 D.12-11-051, p. 33 (emphasis added).

52 Ex. SCE-42, p. 31 at ln. 12.

53 Ex. SCE-42, p. 31 at ln. 29.

54 Ex. SCE-40, pp. 9-10.

55 Ex. SCE-40, p. 10.

56 Ex. SCE-39, p. 14, Table IV-6.

million as of May 31, 2013.[57] SDG&E estimates that its total remaining CWIP as of October 31, 2012 was $41.4 million and was $54.4 million as of June 30, 2013.[58]

ORA recommends that SCE and SDG&E receive no cost recovery for outstanding CWIP, effective November 1, 2012. The utilities should receive no cost recovery for outstanding CWIP because: (1) SONGS 2 & 3 no longer provide electricity, capacity or value to ratepayers, and (2) SCE has already taken "a charge in the second quarter [2013] of between $450 million and $650 million before taxes ($300 million - $425 million after tax), in accordance with accounting requirements."[59]

In Rebuttal, SCE argues variously that CWIP is a routine investment[60] and that SCE should recover for ancillary investments.[61] SDG&E largely agrees with SCE's position.[62]

SCE and SDG&E err in their arguments. The CWIP balances were never placed into commercial operation, were never "used and useful" and therefore, should not be recoverable from ratepayers. SONGS no longer generates electricity for ratepayers and has not generated electricity for ratepayers since January 2012. With the permanent shutdown of SONGS units 2 and 3, ratepayers are not required to reimburse the utilities for capital investments that are no longer needed and were never used and useful. Further, it is established that utility shareholders assume the risk of recovery for loss of their capital investments.[63]

Regarding projects that are still ongoing for the purpose of decommissioning and/or safety, SCE believes that costs associated with these projects should continue in

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57 Ex. SCE-39, p. 14, Table IV-6.

58 Ex. SDGE-16, p. 5, Table IV-3.

59 See Ex. DRA-3, p. 13 at fn. 42. Edison International press release, June 7, 2013, "Southern California Edison Announces Plans to Retire San Onofre Nuclear Generating Station", http://edison.com/investors/ir_news.asp?id=8142.

60 Ex. SCE-42, p. 20 at ln. 2.

61 Ex. SCE-42, p. 20 at lns. 15-17.

62 Ex. SDGE-20, p. KJD 6, ln. 13 through KJD 7, ln. 25.

63 D.92497, 1980 Cal. PUC LEXIS 1024, *117-118.

CWIP and should accrue AFUDC until the projects enters service, at which point the investment and accumulated AFUDC should be added to rate base and depreciated along with the rest of SCE's SONGS-related used and useful assets.[64] The Commission takes a different view.

In Decision No. 90405, the Commission explained the rationale underlying ORA's position in a decision on SDG&E's never-built Sundesert nuclear power plant:

> After due consideration we will adhere to our longstanding policy on AFDC by disallowing AFDC accumulated in connection with the Sundesert project as a recoverable expense for SDG&E. It would be inappropriate and unreasonable for the investors to realize a capitalized return on funds invested to date on this uncertificated and now indefinitely deferred proposed project. AFDC covers the investors' risk when a project is undertaken and carried through to completion. When a proposed project is terminated, and siting and site-related costs are included in plant held for future use and/or amortized, it is proper to exclude the AFDC allowance for investor risk because the project did not come to fruition.
>
> Considerations of equity also strongly support the disallowance of accumulated Sundesert AFDC. While recognizing that SDG&E's promotion and development of the Sundesert project was not imprudent, the Commission finds itself neither disposed nor entitled to shield the utility's investors from all risk associated with its new plant investments. Ratepayers ought not to bear the entire burden of a failed project, and certainly not to the extent of providing a return on funds invested therein.[65]

In Decision No. 92497, the Commission concurred that:

> This is consistent with our rationale stated above that the ratepayer should not have to bear the interest portion of the AFUDC cost representing the carrying cost of money during the construction period and is consistent with the investor's generally bearing the carrying costs. We note that SoCal

[64] Ex, SCE-42, p. 20 at lns. 8-12.

[65] 1979 Cal. PUC LEXIS 589, *35-36.

> did not claim the carrying costs between the time of abandonment and the time of decision in this matter, which is also consistent with our overall allocation of costs to the investor.[66]…When the investor puts his money up for a new project, there is a cost associated with that money for the time it is tied up in the project until the project is complete and earns a return. This is the interest portion of AFUDC. If the project fails, not only does the investor not earn a return, he is at risk that he will lose both the money he had tied up in the project and the carrying costs of that money during the time it was tied up and not earning elsewhere.[67]

In *Humboldt Bay*, the Commission rejected PG&E's proposal to collect AFUDC after the nuclear power plant was no longer "used and useful":

> The shareholder will receive a return and recover accrued AFUDC only if the plant is entered into rate base as "used and useful" plant. This principle fairly allocates risk and provides the proper incentives to utility management.
>
> We recognize that prior Commission decisions disallowing AFUDC dealt primarily with the preconstruction expense of abandoned plants. However, we see no meaningful distinction between preconstruction, construction, and modification work on plant which is never entered in service. The overwhelmingly important criterion is whether the plant is "used and useful" and has a demonstrated capability of providing service to customers. The plant modification work on Unit 3 never was entered in service as "used and useful" plant. Accordingly, no AFUDC should be allowed.[68]

E. Materials and Supplies ("M&S") Costs Should be Removed From Rate Base

SCE testified that it had approximately $100 million in SONGS-related Materials & Supplies (M&S) as of October 31, 2012 and May 31, 2013.[69] According to SCE, the company "earns its full authorized rate of return on the value of its M&S inventory, and

[66] 1980 Cal. PUC LEXIS 1024, *121-122.

[67] Id., *117-118

[68] D.85-08-046, 1985 Cal. PUC LEXIS 687, *31-32.

[69] Ex. SCE-36, p. 14, Table IV-6.

this value is not depreciated ratably over time…SCE proposes to begin amortizing the M&S inventory in 2015" along with salvaging what it can in the meantime.[70] SDG&E testified that its M&S levels were approximately $10 million as of the same dates.[71]

ORA recommends that M&S costs be removed from rate base. Simply put, with a non-operational power plant, the SONGS M&S are no longer used and useful. The same arguments in the sections above apply to this issue. Further, the utilities should aggressively salvage what they can of M&S.

In rebuttal, SCE agreed to "actively pursue" salvage, but could not provide an exact potion to be salvaged.[72] The utilities have yet to provide a meaningful explanation as to why they should recover M&S costs for a non-operational plant.

F. SCE and SDG&E Should Receive a Nuclear Fuel Carrying Cost Rate Based on the Utilities' Commercial Paper Rate, and Cost Recovery for Unsold Nuclear Fuel Should be Considered by the Commission After SCE has Completed Resale Activities

ORA recommends that SCE and SDG&E receive a nuclear fuel carrying cost rate based on the utilities' commercial paper rate, and that cost recovery for unsold nuclear fuel should be considered by the Commission after SCE has completed resale activities.[73] This is a fair proposal which provides the utilities with an incentive to properly maintain their nuclear fuel inventory and move quickly to sell what can be sold.

However, allowing the utilities to receive their five year debt rate as a nuclear fuel carrying cost should not be allowed. SCE's proposal that ratepayers pay $20 million in nuclear fuel carrying costs in 2017 and an additional $22 million in 2018, 5 years after the shutdown of SONGS 2 & 3, has not been adequately justified.

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[70] Ex. SCE-40, p. 11.

[71] Ex. SDGE-16, p. 6, Table IV-4.

[72] Ex. SCE-42, p. 24.

[73] SCE apparently agrees with ORA's proposal for the timing of cost recovery. See Ex. SCE-42, p. 26.

III. CONCLUSION

For all of these reasons stated above, the Commission should adopt ORA's proposals in this proceeding.

Respectfully submitted,

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ATTACHMENT A

Table 1: ORA Recommendations, SONGS OII, Phase 2, Regarding SCE

		Revenue Reductions, $MM	Rate Base Reductions, $MM	Not Eligible for Inclusion in Rate Base, $MM
1	**SGRP Interim Rate Recovery Removal, 11/2012 to 9/2013 (a)**	$106.1	Interim rate recovery only previously permitted	$494.6
2	**Removal of SONGS Net Remaining Plant, 11/2012 from Rates; Amortization of 75% of Net Plant Over 5 years, No Return on Investment (b)**	Would need to be modelled based on ORA's recommendation, SONGS revenue requirement embedded in 2012 GRC revenue requirements	$621.9	Portion related to ISFSI could be included in Rate Base
3	**O&M Reduction, 75% of Recorded Costs From 6/2013 to 12/2014 Permitted (c)**	$100.5	NA	NA
4	**Employee Severance, 75% permitted (d)**	$28.8	NA	NA
5	**No Construction Work in Progress Permitted, Effective 11/1/2012 (e)**	$0.0	NA	$203.5
6	**M&S, Removed From Rate Base (f)**	Would need to be modelled based on ORA's recommendation	$100.0	NA
7	**Nuclear Fuel Carrying Cost, Commerical Paper Rate Only (g)**	Approximately $4.5MM - $10.5MM per year	NA	NA
	Footnotes:			
	a. Source: SCE 2/1/2013 Monthly Report in Compliance with I.12-10-013, ln. 21, Dec. 2012 ($11.6MM) plus 2013 YTD total ($94.5MM) from SCE 11/1/2013 Monthly Report. $494.6MM from SCE 2/1/2013 Monthly Report, ln. 15.	g. SCE 11/1/2013 Monthly Report ln. 24 shows $3.5MM annual cost for 2012 and $3.1MM YTD for 2013. Exh. SCE-51, Table IV-2, ln. 8, p. 2 of 6, shows $8MM cost in 2013 and		
	b. SCE 2/1/2013 Monthly Report, ln. 4.			
	c. SCE 11/1/2013 Monthly Report, ln. 28, shows a total of $134.0 MM for June 2013 to Sept. 2013 only.			
	d. SCE 11/1/2013 Monthly Report, fn. 2, $115 MM accrued.			
	e. SCE 2/1/2012 Monthly Report, ln. 3.			
	f. Exh. SCE-36, p. 14, Table IV-6.			

Table 2: ORA Recommendations, SONGS OII, Phase 2, Regarding SDG&E

		Revenue Reductions, $MM	Rate Base Reductions, $MM	Not Eligible for Inclusion in Rate Base, $MM
1	**SGRP Interim Rate Recovery Removal, 11/2012 to 9/2013 (a)**	$20.5	Interim rate recovery only previously permitted	$127.9
2	**Removal of SONGS Net Remaining Plant, 11/2012 from Rates; Amortization of 75% of Net Plant Over 5 years, No Return on Investment (b)**	Would need to be modelled based on ORA's recommendation, SONGS revenue requirement embedded in 2012 GRC revenue requirements	$113.9	Portion related to ISFSI could be included in Rate Base
3	**O&M Reduction, 75% of Recorded Costs From 6/2013 to 12/2014 Permitted (c)**	$1.4	NA	NA
4	**Employee Severance, 75% permitted (d)**	$5.8	NA	NA
5	**No Construction Work in Progress Permitted, Effective 11/1/2012 (e)**	$0.0	NA	$112.1
6	**M&S, Removed From Rate Base (f)**	Would need to be modelled based on ORA's recommendation	$9.6	NA
7	**Nuclear Fuel Carrying Cost, Commerical Paper Rate Only (g)**	$0.0	NA	NA

Footnotes:

a. Source: SDG&E 5/6/2013 Quarterly Report in Compliance with I.12-10-013, ln. 21, Dec. 2012 ($2.9MM) plus 2013 YTD total ($15.3MM) from SDG&E 10/1/2013 Quarterly Report. $127.9MM from SDG&E 5/6/2013 Monthly Report, ln. 13.

b. SDG&E 5/6/2013 Quarterly Report, ln. 4.

c. SDG&E 10/1/2013 Quarterly Report, ln. 28, shows a total of $5.5 MM for June 2013 only.

d. SDG&E's share of SONGS employee severance costs not indicated in SDG&E Monthly Reports. Calculation is 20% of ORA's estimate for SCE.

e. SDG&E 5/6/2013 Quarterly Report, ln. 3.

f. Exh. SDGE-16A, p. 6, Table IV-4.

g. Exh. SDGE-18A, p. 9, Table 1, fn. 1, "Reflects short term borrowing rate applied to nuclear fuel balance."