

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.13-03-013  
A.13-03-014

**REPLY COMMENTS  
OF THE OFFICE OF RATEPAYER ADVOCATES  
ON THE PROPOSED DECISION RELATING TO  
PHASE 1 ISSUES**

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**I. INTRODUCTION & SUMMARY OF RECOMMENDATIONS**

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) submits these Reply Comments to arguments made by some parties on the Proposed Decision (PD) of Administrative Law Judges Darling and Dudney, relating to the reasonableness of the 2012 expenses charged to the ratepayers of Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E) following the cessation of generation at San Onofre Nuclear Generating Station (SONGS). Silence on any argument not specifically addressed should not be interpreted as assent.

## II. DISCUSSION

### A. The Commission Should Not Reopen The Record On SCE's 2012 Decision-Making Process Regarding Songs

SCE's Comments on the PD focus primarily on SCE's opposition to the PD's conclusions regarding SCE's decision making process during 2012.<sup>1</sup> The PD's conclusion that "SCE knew or should have known by March 15 [2012] that a potential design defect was present in both units"<sup>2</sup> is supported by the facts in the record. And it is the record regarding conditions at SONGS that should be determinative, not SCE's tortured plans to restart SONGS 2 while working through the Nuclear Regulatory Commission's (NRC) procedures. In its Comments, SCE asks the Commission to "reopen the record rather than make findings on an incomplete record that resulted from the evolving scope of Phase 1."<sup>3</sup> Reopening the Phase 1 record is unnecessary since the Commission already has substantial information in the record to decide on when SONGS stopped operating (January 31, 2012) and when a short-term restart plan became unlikely (March 15, 2012).

### B. SCE Could Have Reduced SONGS Costs Earlier, Rather Than Later

SCE's Comments regarding the PD's 2012 O&M adjustment ask the Commission to delete the findings regarding O&M cost reductions and the refund order, and to "receive additional evidence regarding O&M costs had Unit 2 been put in preservation mode."<sup>4</sup> SCE's request is unnecessary and will delay rate reductions to ratepayers, who have been paying for SONGS as if it were still operational since January 2012. O&M cost reductions should have started as of March 15, 2012, and the record supports that conclusion.

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<sup>1</sup> *Comments of Southern California Edison Company (U338-E) On Phase 1 Proposed Decision*, Filed December 9, 2013 (SCE PD comments), pp. 1-6.

<sup>2</sup> PD, p. 37.

<sup>3</sup> SCE PD comments, p. 6.

<sup>4</sup> SCE PD comments, p. 8.

**C. SCE Could Have Avoided Additional Songs Capital Expenditures Earlier, Rather Than Later**

SCE argues that the PD's finding that SCE could have avoided additional SONGS 2012 capital expenditures is erroneous.<sup>5</sup> SCE states "[t]here is no evidence that any capital expenditures could have been avoided or postponed had SCE put Unit 2 in preservation mode for a return to service in 2013."<sup>6</sup> SCE's belief that its Unit 2 restart plan was the only possible path forward is mistaken. The PD states that "SCE knew or should have known by March 15 [2012] that a potential design defect was present in both units."<sup>7</sup> Given that conclusion, the PD correctly finds that SCE could have acted sooner rather than later to reduce 2012 capital expenditures.

**D. SDG&E's Attempts to Shed Its Cost Responsibilities as a SONGS Co-Owner Should be Rejected**

SDG&E appears to be trying to shed its responsibilities as a 20% co-owner of SONGS so as to avoid having its share of 2012 SONGS-related revenue requirements reduced. SDG&E argues that the PD unreasonably imputes SCE's alleged imprudence to SDG&E, resulting in a \$19.3 million revenue requirement refund.<sup>8</sup> SDG&E seems to believe that its minority ownership status absolves the company from any responsibility for SONGS.<sup>9</sup> The Commission should reject SDG&E's self-serving arguments.

After the PD determined Base O&M and capital expenditure reductions for SCE, it simply applied a ratio based on SDG&E's 20% SONGS ownership to calculate the \$19.3 million revenue requirement reduction applicable to SDG&E.<sup>10</sup> Since SONGS did not operate for the majority of 2012, the notion SDG&E should receive its full 2012 SONGS-related revenue requirement for a non-operational power plant is unreasonable. The fact that SDG&E is a part owner of SONGS means that an O&M and capital expenditure revenue requirement reduction

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<sup>5</sup> SCE PD comments, p. 8.

<sup>6</sup> Id.

<sup>7</sup> PD, p. 37.

<sup>8</sup> *Comments Of San Diego Gas & Electric Company (U 902 E) On Phase I Proposed Decision*, Filed December 9, 2013 (SDG&E PD comments), pp. 1-8.

<sup>9</sup> SDG&E PD comments, p. 4.

<sup>10</sup> PD at Appendix E and 97.

for SONGS should be partially allocated to 20% co-owner SDG&E. The PD's findings of fact and conclusions of law in no way impute SCE's alleged imprudence to SDG&E.<sup>11</sup> SDG&E should take comfort in the fact that the PD approved all of SDG&E's other SONGS-related costs, totaling \$60.5 million.<sup>12</sup>

**E. The Commission Should Include Administrative and General Cost Reductions to Both SCE and SDG&E**

While SDG&E's Comments attempt to minimize its responsibilities as a 20% co-owner of SONGS, neither SCE nor SDG&E mention 2012 Administrative & General (A&G) costs for the non-operational power plant. The final decision in this case should take into account that, with the non-operation of SONGS for the majority of 2012, A&G costs for both SCE and SDG&E should also be reduced. A&G costs are typically a percentage of O&M costs and accounted for separately; the Commission should include an A&G reduction since it reduces reasonable 2012 O&M costs. Reduced and idled SONGS staff for the majority of 2012 reduced SONGS-related A&G costs. The Commission should apply its O&M ramp down mechanism to SONGS-related A&G costs.<sup>13</sup>

**F. The PD's Replacement Power Discussion Should Not Be Revised**

SCE writes that it wants to argue in the future that some portions of power replacement costs should not be subject to disallowance, if or when imprudence is found. SCE does not indicate what portions those are, or make an offer of proof regarding the 'testimony' it wants leave to offer in the future.<sup>14</sup> This request to change the PD should be rejected.

SCE's request should be rejected because, as pointed out by SCE, "the Commission [has already] developed the paradigm of disallowing replacement power costs as a remedy for

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<sup>11</sup> SDG&E's PD comments include copious amendments to the PD's findings of fact and conclusions of law, but there is no SDG&E sponsored amendment deleting an imputation of SCE's alleged imprudence to SDG&E.

<sup>12</sup> PD, pp. 66-67.

<sup>13</sup> PD Appendix E.

<sup>14</sup> SCE PD Comments, p. 10.

imprudence associated with utility-owned generation ... .”<sup>15</sup> A short time ago, the Commission held that:

It would be pointless for the Commission to address and determine the reasonableness of forced outages, if financial consequences of unreasonable outages cannot be calculated and imposed.”<sup>16</sup>

Similarly, in D.11-10-002 the Commission disallowed the total cost of “lost energy value” where the IOU [SCE in that case] imprudently operated a hydroelectric plant.<sup>17</sup> Later in the same Decision, the Commission ordered another disallowance based on “replacement energy for the outage” when it found SCE acted imprudently in its operation of a nuclear power plant [coincidentally also SONGS].<sup>18</sup>

Each of these three SCE forced outages (which were due to SCE’s imprudent maintenance) caused SCE to purchase more expensive replacement power than would have been generated, but for the imprudence. The common thread throughout these three recent disallowances is that the Commission held that ratepayers will not suffer financially by being forced to absorb the cost of that more expensive replacement power when that increased cost was due to imprudence. Making or keeping the party that did not cause the harm whole is thus well settled by this Commission.

Not forcing financial injury onto innocent parties is also well settled in California statutory and common law. The California Civil Code states the rule as follows:

For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.<sup>19</sup>

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<sup>15</sup> *Phase 1a: Brief Of Southern California Edison Company (U338-E) On Replacement Power Cost Calculation Method*, filed August 29, 2013, p. 3, available at: <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=76386049>.

<sup>16</sup> D.10-07-049, p. 32; the Commission found that a leak at a nuclear power plant was probably foreseeable and preventable due to prior similar leaks and thus the leak at issue was the result of imprudent maintenance.

<sup>17</sup> D.11-10-002, p. 27. There SCE ran a generator at higher than recommended temperatures to generate additional energy without analyzing the cost of prematurely damaging the generator against the benefit of increased energy. D.11-10-002, pp. 25-27.

<sup>18</sup> D.11-10-002, p. 17; and see generally pp. 15-17, where the Commission found that assembly of parts in the wrong order was imprudent.

<sup>19</sup> California Civil code 3333.

Witkin, Summary of California Law, teaches that “damages are normally awarded for the purpose of compensating the plaintiff for injury suffered, i.e., restoring the plaintiff as nearly as possible to his or her former position, or giving some pecuniary equivalent.”<sup>20</sup> “This differs from the rule applicable to actions for breach of contract, under which the plaintiff is usually entitled to be compensated for the benefits he or she would have received from full performance.”<sup>21</sup>

Whether the Commission looks to place the ratepayers in their former position (making them whole) or in the position as if the duty to prudently maintain the plant had been fully performed, it is clear from California law and Commission precedent that disallowance of the power replacement costs must be ordered if imprudence is found. SCE’s attempt to reserve some mystery argument should be rejected.

### III. CONCLUSION

For all the foregoing reasons, and those set forth in its Opening Comments, ORA recommends that the Commission incorporate the changes above into its final decision in Phase 1 of this OII.

Respectfully submitted,

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<sup>20</sup> 6 Witkin Sum. Cal. Law Torts § 1548.

<sup>21</sup> *Ibid.*