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

RUTH HENRICKS' COMMENT REGARDING ALJS' 9 OCTOBER 2014 PROPOSED DECISION APPROVING SETTLEMENT AGREEMENT AS AMENDED AND RESTATED BY SETTLING PARTIES

Michael J. Aguirre, Esq.
maguirre@amslawyers.com
Maria C. Severson, Esq.
mseverson@amslawyers.com
AGUIRRE & SEVERSON, LLP
501 West Broadway, Suite 1050
San Diego, CA 92101
Telephone: (619) 876-5364
Facsimile: (619) 876-5368
Attorneys for:
RUTH HENRICKS

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RUTH HENRICKS' OPENING COMMENT REGARDING ALJS' 9 OCTOBER 2014 PROPOSED DECISION APPROVING SETTLEMENT AGREEMENT AS AMENDED AND RESTATED BY SETTLING PARTIES

SUMMARY

Ms. Henricks offers comments[1] on the ALJs 9 October 2014 proposed decision, which ratifies the CPUC's (Via ORA) plan (the "Plan") to relieve SCE from legal duties to show: (1) why the defective replacement steam generators' costs should be placed permanently in rates; [2] (2) whether SCE acted reasonably in obtaining and deploying the defective steam generators so that it is just and reasonable to impose the damage they caused on ratepayers, pursuant to Pub. Util. Code § 451; and (3) whether to remove all costs related to the San Onofre plant from SCE and SDG&E's rates. The replacement steam generators at San Onofre failed causing the premature end to the San Onofre plant.

[1] The Comments are made Pursuant to CPUC Rules of Practice and Procedure Rule 14.3.

[2] Decision 5-12-040 pp. 3-4 (After completion of the SGRP, SCE will be required to file an application for inclusion of the costs thereof permanently in rates, regardless of whether the costs exceed $680 million)

The question the CPUC was charged with answering was whether SCE acted unreasonably. If SCE did not act reasonably, then ratepayers under Pub. Util. Code § 451 cannot be made to pay because the failed steam generators and the damage they caused were not reasonably incurred.

The CPUC has denied a hearing on the issue of whether the costs incurred for the replacement steam generators and the loss of the plant were reasonable, the CPUC has denied the most fundamental precepts of due process rights under both the California and United States Constitutions: "governmental action determining the rights or obligations of numerous specified persons is invalid unless the mandates of ***due process*** are satisfied." *Due Process and the Administrative State* 72 Calif. L. Rev. 1044, 1050. The CPUC (ORA), SCE, and SDG&E made the Plan with TURN, the entity to which the CPUC has bestowed the greatest amount of intervenor compensation:[3]

INTERVENOR	NUMBER OF AWARDS	AMOUNT CLAIMED	AMOUNT AWARDED	PERCENTAGE AWARDED OF AMOUNT CLAIMED
The Utility Reform Network	124	$13,439	$12,690	94%
Utility Consumers' Action Network	22	3,416	2,964	87
Disability Rights Advocates	21	1,624	1,341	83

The forces behind the Plan combined to form it and to carry it out raising the specter of "regulatory capture:"

> [O]nce a regulatory agency (like the CPUC} becomes too intertwined with the industry, it not only fails its regulatory role, but also essentially **promotes the industry's policy**, and therefore, "regulatory capture" ensues. Unfortunately then, the regulatory agency neither will be able nor will be inspired to fulfill its obligations, rendering it ineffective in protecting the public. Capturing This

[3] Table 2, 23 July 2013 California State Auditor Report (2012-118) Intervenor Compensation Audit Concerning the Intervenor Compensation Program (program) administered by the CPUC, https://www.bsa.ca.gov/pdfs/reports/2012-118.pdf. Ms Henricks requests Official Notice be taken of facts that are known to the CPUC and verified in the state audit that are beyond dispute.

Watchdog? Consumer Financial Protection Bureau Keeping the Special Interests Out of Its House, 40 W. St. U. L. Rev. 1

SCE used its backdoor access to Commissioners Peevey and Florio to keep the OII off the CPUC agenda for at least five months. On 21 June 2012, the CPUC was set to consider Item 30 "New Order Instituting Investigation" (OII) to obtain information on the recent outages at the San Onofre Nuclear Generating Stations units 2 and 3." (21 June 2012 CPUC Public Agenda, Cover Page and Page 28)

On 19 June 2012, SCE Senior VP for Regulatory Affairs Lee Starck sent an email to MP1@cpuc.ca.gov (Michael Peevey) with a letter dated 19 June 2012 urging the CPUC to "defer issuance of the proposed OII." (19 June 2012 SCE email and letter to Peevey)

The record shows Peevey and Florio honored SCE; its Agenda Changes for 21 June 2012 provides "ITEM NO: 30, HELD TO: 8/2/12, HELD BY: Peevey, REASON: Further Review." (21 June 2012 Agenda Changes)

The 2 August 2012 CPUC Agenda had as Item 5 the New Order Instituting Investigation continued from 21 June 2012. (2 August 2012 CPUC Agenda) It was again deferred: the Agenda Changes for 2 August 2012 for Item 5 provided: "ITEM NO: 5, HELD TO: 8/23/12, HELD BY: Florio, REASON: Further Review." (2 Agenda 2012 Agenda Changes) The CPUC agendas for 23 August 2012, 13 September 2012, 27 September 2012, and the 11 October 2012 did not have items for the San Onofre OII. (See, CPUC agendas for 23 August 2012, 13 September 2012, 27 September 2012, and 11 October 2012)

The CPUC's accommodating postponements did not end with the tardy OII issued in October 2012. On 28 January 2013, ALJ Darling and Commissioner Florio **set aside** for later consideration in a "Phase 3" what the CPUC proclaimed in October 2012 was **the purpose** of the San Onofre Order of Investigation (OII) to wit, determination of the "causes of the SG[4] damage." (28 January 2013 Ruling p.4)

[4] The SG refers to Replacement Steam Generators.

During the interval the CPUC provided, the Utilities, CPUC (ORA), and TURN pieced together in secret the Plan to end the investigation. The ALJs not only stalled the investigation, they even held off discovery of the identities of those responsible for obtaining and deploying the defective steam generators. The ALJs delayed ruling for six months on Ms. Henricks' July 2013 motion to discover those identities, and then denied it on 7 January 2014. (7 January 2014 Ruling p. 1)

There was another ALJ-imposed delay. With the steam generators installed, the plant returned to commercial operation in February 2011. (February 2011 to February 2013). A motion was brought and granted to require SCE to file the application to put the costs permanently in rates, as required by the 2005 decision authorizing the replacement. However, the ALJs again employed delay to relieve SCE of its legal duty to show why the replacement costs should even be in rates, with this reasoning:

> However, the request to include the SGRP cost reasonableness review in Phase 1 of the OII should be denied because it is **premature** and would disrupt the orderly accumulation of evidence of SCE's actions and expenses at SONGS as set forth in the Scoping Memo. (21 February 2013 Ruling p. 3)

The ALJs inverted priorities: they put "orderly accumulation of evidence of SCE's expenses" ahead of finding who and what was responsible for obtaining and deploying the defective steam generators. The ALJs finished off the aborted investigation on 24 April 2014 when it stopped all "work on aspects of the OII," claiming to do so was "in the best interests of ratepayers" while the CPUC considered the Plan. (24 April 2014 Ruling p. 7) In parallel, the CPUC secretly stopped the work of its own investigative consultant (Dr. Budnitz) (See 31 December 2013 Budnitz Invoice). Were the reasons put forward (premature, saving, orderliness) real, or were they used to conceal another purpose: to relieve SCE from accountability?

The Sine Qua Non, the absolutely essential condition of the approval, is the claim that "The primary result of the settlement is ratepayer refunds and credits of approximately $1.3 billion." (Proposed Decision p. 3) The key date for "reducing ratepayer costs and calculation of

refunds" is 1 February 2012, according to the proposed decision. (Proposed decision p. 5) The "capital-related revenue collected thereafter is refunded to ratepayers." (Proposed Decision p. 5) Then comes the fine print: there is no actual refund:

> **Refunds due to ratepayers will be credited to each utility's under-collected Energy Resource Recovery Account balance upon adoption of the settlement by the Commission to reduce otherwise approved rate increases."** (Proposed Decision p. 6)

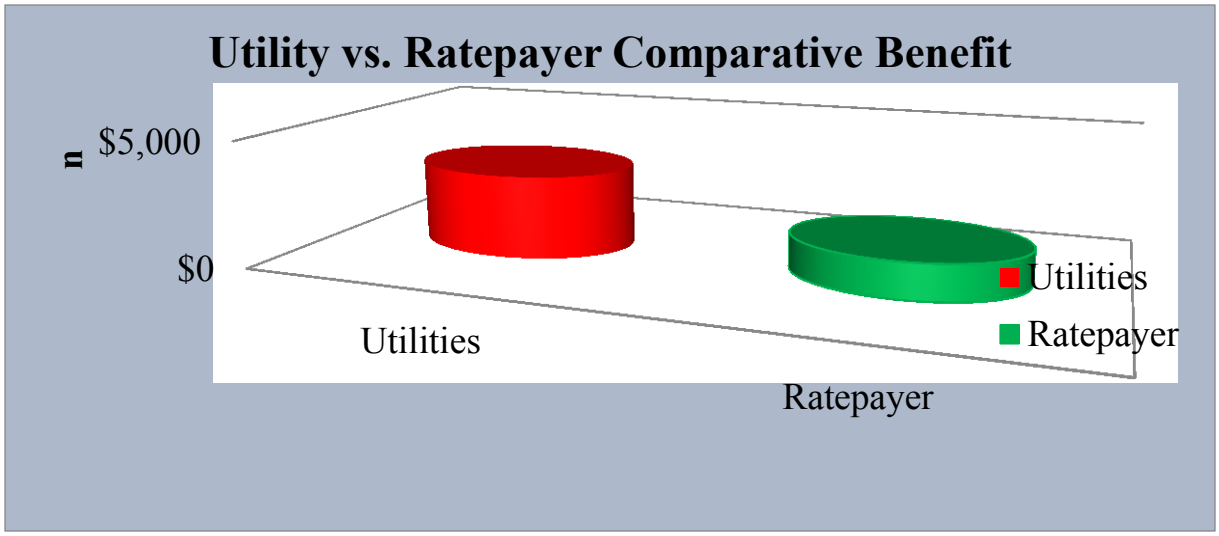
The "refunds" are defined to mean a reduction in the amount due for "otherwise approved rate increases" in "future ERRA proceedings." (Proposed Decision pp. 6, 71) Moreover, SCE told its investors $467 million in the Energy Resource Recovery Account was related to the San Onofre plant. (27 March SONGS OII Settlement Agreement Investor Teleconference slides p. 6) SCE's report to investors undermines any claim ratepayers will recover $1.3 billion from SCE: "SCE **does not expect** implementation of rate recoveries and rate refunds contemplated by the Settlement Agreement will have **a material impact on future net income.**" (27 March 2014 SCE Form 8-K p. 4)

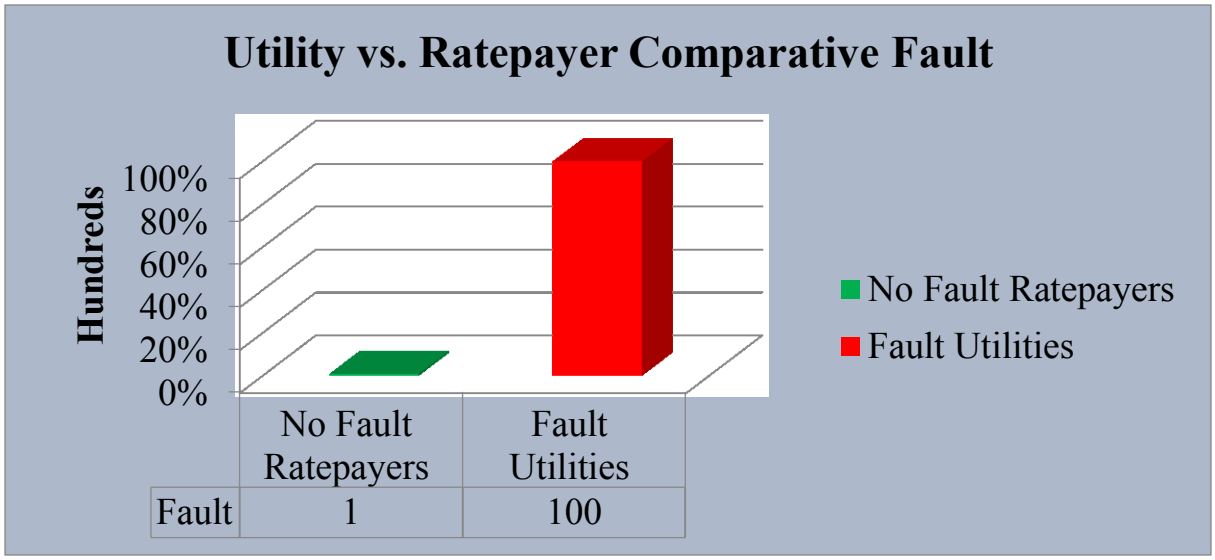
The refund "mechanism" does not a refund make. The refund is a phantom. It is so small, it is not expected to even have a material impact on SCE's income. The linchpin through the end of the axle-tree needed to keep the wheel of approval in place is missing. Trading the investigation for a phantom recovery is not a good bargain for ratepayers, and is reason alone to revise the Proposed Decision to reject it.

The proposed decision also ignores the fundamental question of whether killing the SCE investigation in exchange for the claimed 70% - to - 30% split is right, fair and just. In other words, does SCE's conduct in deploying the defective steam generators that caused a permanent outage of the San Onofre power plant warrant the corporations—SCE and SDG&E—receiving a total of $3,298,600,000 (or 70% of the $4,708,200,000 they sought)? [5] There is no substantial evidence that supports this division of benefits and burdens. *The Utility Reform Network v.*

[5] See Exhibit A-5 and A-6 to the Plan ("Settlement Agreement").

Public Utilities Com. (2014) 223 Cal. App. 4th 945, 959, as the benefit and responsibility charts illustrate:





The CPUC was charged with a simple fiduciary duty to find out whether ratepayers should pay for the damages caused by the defective replacement steam generators. Ratepayers repose trust and confidence in their CPUC Commissioners and ALJs to perform their duties. *People ex rel. Harris v. Rizzo* (2013) 214 Cal. App. 4th 921, 950. An impartial, unbiased adjudicator is an essential element of procedural due process. U.S. Const., amend. XIV, § 1; Cal.

Const., art. I, § 7 (due process clauses); *Marshall v. Jerrico, Inc*. (1980) 446 U.S. 238, 242; *Morrissey v. Brewer* (1972) 408 U.S. 471, 489; *Goldberg v. Kelly* (1970) 397 U.S. 254, 271.

ALJs are offended by the suggestion of collusion. However, the investigation is postponed for months by Commissioners Florio and Peevey. After it was announced in October 2012 it was delayed and put aside into a phase III, that was never reached. During the interval secret meetings with the CPUC's ORA from which was excluded Ms. Henricks. [6] An agreement is reached to trade a refund mechanism but no concrete refund for dropping the investigation. The requirement that there be at least one settlement conference is evaded. The settlement is presented as a huge victory in which ratepayers are falsely led to believe they are to receive a refund. Meanwhile the CPUC's expert consultant report laying out an exact plan for investigating and discovering who and what caused the defective steam generators is buried. The public reports that were supposed to be filed by the utilities are withheld from the public file. The same two Commissioners who delayed the start of investigation issued immediate press releases helping to push momentum behind the settlement.

The evidentiary hearing on a $5 billion issue is limited to 3 hours. A request to the ALJs to put any ex parte communications they had with the utilities is met by an outburst from Mr. Peevey: "Shut up, Shut up, I don't have to answer your G..dam questions!" Meanwhile the same two commissioners are required to recuse themselves in another OII before the Commission for participating in a judge shopping scandal. PG&E has self-confessed that it was regularly involved in improper communications[7] with Mr. Peevey (and staff) and Mr. Florio regarding sensitive PUC business, i.e.

[6] Ms. Henricks was and is in favor of a principled settlement based upon good faith negotiations, contrary to the belief stated by the ALJs in the proposed decision.
[7] 15 September 2014 Pacific Gas And Electric Company's Notice of Improper Ex Parte Communications filed in Application 13-12-012.

-------- Original message --------
From: "Cherry, Brian K"
Date:01/14/2014 5:26 PM (GMT-08:00)
To: "Brown, Carol A."
Subject:

As long as ALJ Wong has the case (which Florio confirms), we are ok with what Mike wants to do on the assignment. Can you get it done ASAP please ?.

From: Florio, Michel Peter [mailto:MichelPeter.Florio@cpuc.ca.gov]
Sent: Friday, January 17, 2014 1:18 PM
To: Cherry, Brian K
Subject: RE: GT& S Case Assigned

I'm horrified! He still has not produced a PD for Sempra's PSEP/TCAP after much prodding and cajoling-- we are considering asking that another ALJ be assigned to finish for him. Plus he may retire any day, and uses that as a threat to deflect any direction. Sepideh spoke to John Wong and he said he's just too overloaded, which we didn't know. John is a true workhorse so it must be true. If I were you I would bump him-- you really can't do any worse! Even a brand new ALJ would at least work hard and try -- you'll get neither from him... Keep me posted and I'll do what I can on this end.....

On Jan 27, 2014, at 3:36 PM, "Brown, Carol A." <carol.brown@cpuc.ca.gov> wrote:

Wong and peterman

From: Cherry, Brian K
Sent: 1/27/2014 3:38:14 PM
To: Brown, Carol A. (carol.brown@cpuc.ca.gov)
Cc:
Bcc:
Subject: RE: OK

Thank you. Thank you. Thank you.

Brian K. Cherry
PG&E Company
VP, Regulatory Relations
77 Beale Street
San Francisco, CA. 94105
(415) 973-4977

These startling facts are red flags or "storm warnings" putting the parties on "inquiry notice" that an investigation, discovery, and an evidentiary hearing is needed to

determine if the Plan to kill the investigation was the product of collusion rather than good faith negotiation. The ALJs did not permit the inquiry. *Deveny v. Entropin, Inc.*,(2006) 139 Cal. App. 4th 408, 428. See, *Consumer Defense Group v. Rental Housing Industry Members*, (2006) 137 *Cal. App. 4th 1185, 1186; Walk Haydel & Assocs. v. Coastal Power Prod. Co.,* 934 F. 4 Supp. 209, 211, (E.D. La. 1996); *Shelton v. Pargo, Inc.*, 582 F.2d 1298, 1300 (4th Cir. N.C. 1978); *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 776 (3d Cir. Pa. 1995); *Commercial Union Ins. Co. v. Ford Motor Co.,* 640 F.2d 210, 211, 1981 U.S. App. LEXIS 20155, 1 (9th Cir. Cal. 1981) *Chevron Corp. v. Donziger*, 2014 U.S. Dist. LEXIS 28253, 1 (S.D.N.Y. 2014); *Dacotah Mktg. & Research, L.L.C. v. Versatility, Inc.,* 21 F. Supp. 2d 570, 572; (E.D. Va. 1998); *Greshko v. County of Los Angeles* (1987) 194 Cal. App. 3d 822, 836; *Continental Cas. Co. v. Westerfield*, 961 F. Supp. 1502, 1503 (D.N.M. 1997); 49 UCLA L. Rev. 991, 993.

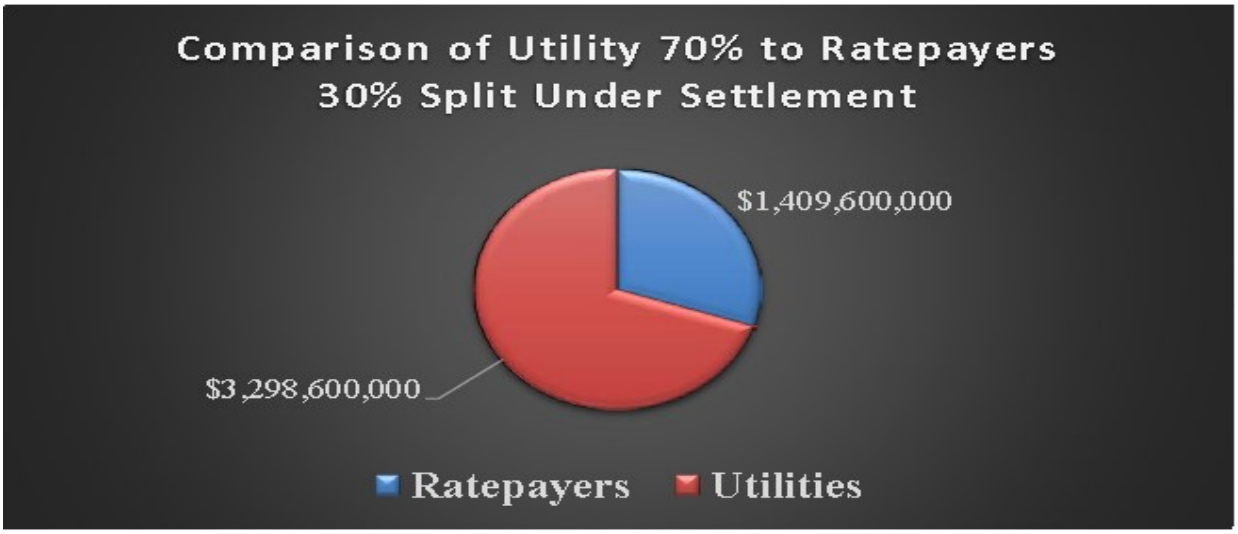
Further, steam generators costing hundreds of millions of dollars engineered to last forty years do not fail in two years without someone's negligence. On its face, the principle of *res ipsa loquitor* applies. In Latin, the phrase *res ipsa loquitur* means "the thing speaks for itself." The Law of Falling Objects: Byrne v. Boadle and the Birth of Res Ipsa Loquitur,59 Stan. L. Rev. 1065. The most widely accepted interpretations of *res ipsa loquitur* include (1) that it creates a permissible inference of negligence for a jury in situations where a plaintiff can only show that an injurious event occurred. *The Law of Falling Objects: Byrne v. Boadle and the Birth of Res Ipsa Loquitur*, 59 Stan. L. Rev. 1065, 1066.

Thus, contrary to the proposed decision's argument that the utilities could, by filing their paperwork ipso facto make out a prima facie case of reasonableness, the utilities should have been placed in a position of showing why they were *not* at fault. Thus, there is no substantial evidence to support a finding the Agreement to End Investigation is reasonable in light of the whole record, is consistent with law, and is in the public interest. CPUC Rules of Practice and Procedure Rule 12.1(d).

PROPOSED DECISION MISSES KEY POINTS

The Proposed Decision does not resolve the key issues. There is no substantial basis supporting a finding the case against SCE is only worth the refund mechanism. There is no substantial evidence in the record showing the value of the refund mechanism. In addition, there is no substantial evidence showing a 30% utility/70% ratepayer allocation is fair because there is no evidence showing the value of the ratepayer case since the CPUC wasted two years blocking any effort to get answers to that question.

The question left unanswered is, does SCE's conduct in deploying the defective steam generators that caused a permanent outage of the San Onofre power plant (San Onofre) warrant the corporations -- SCE and SDG&E -- receiving a total of $3,298,600,000 (or 70% of the $4,708,200,000 [8]they sought)?



There are two basic parts of the damage caused by the defective steam generators: (1) the costs of the steam generators; (2) the unamortized costs of the plant rendered inoperable by the defective steam generators. If SCE's negligent acts caused the forced closure of San Onofre under California law, SCE—not ratepayers—should pay. *Natural Soda Products Co. v. Los Angeles* (1943) 23 Cal. 2d 193, 201. In negligence cases, the measure of damages is the amount

[8] See Exhibit A-5 and A-6 to the Plan ("Settlement Agreement").

which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not. Cal Civ. Code § 3333. So too here, the costs should be borne by SCE and not ratepayers.

Without a sufficient record of fact (as the one missing here), it is not *possible* to assess whether the proposed 70% for utilities and 30% for ratepayers is just and reasonable.

A. Res Ipsa Loquitur

The harm of a permanent San Onofre outage caused by SCE's defective replacement steam generators would not have happened unless someone at SCE was negligent. The defective steam generators were under SCE's control. Ratepayers did not in any way contribute to the failure of the RSG. On these facts, the legal principle *Res Ipsa Loquitor* (these facts speak for themselves) provides a basis for finding SCE acted negligently or unreasonably. CACI Jury Instruction § 417.

B.* Negligence *Per Se

There are other grounds suggesting SCE acted unreasonably in deploying defective steam generators at San Onofre. For example, SCE may have engaged in *per se* negligence. A safety license amendment was required for modifications, additions, removals, or design changes resulting in more than a minimal increase in the likelihood of (1) a safety malfunction; or (2) an accident; or (3) the consequences of malfunction important to safety. 10 CFR 50.59 (1-iv) The Proposed Decision takes Official Notice of a letter from an Nuclear Regulatory Commission (NRC) investigator closing an inquiry into whether SCE cooperated.[9]

Ms. Henricks is herein requesting Official Notice be taken of the 2 October 2014 Nuclear Regulatory Commission Inspector General Report "NRC QVERSIGHT OF LICENSEE'S USE

[9] . Ms. Henricks objects to the taking of Official Notice of this hearsay statement that was nothing more than a letter. At the same time, the ALJs did not take judicial notice of Judicial Opinion of the Atomic Safety and Licensing Board Judges.

OF 10 CFR 50.59 PROCESS TO REPLACE SONGS' STEAM GENERATORS (OIG CASE NO. 13-006)" which reported: "The former Regional Administrator told OIG that ** the licensee's evaluation He said that knowing what they know now, "the steam generators as designed were basically unlicensable. We wouldn't approve them." (p. 25) SCE modified, added to and made design changes without a safety license amendment under 10 CFR 50.90; 10 CFR 50.59. The modifications, additions and design changes were a substantial factor in bringing about the permanent closing of San Onofre. SCE was perforce negligent. CACI Cal. Jury Instruction § 418.

C. Negligence

There are additional grounds for finding SCE acted negligently and unreasonably. SCE officials decided not to submit the RSG to the NRC for review. While they were being built, SCE discovered the RSG had design flaws. SCE may well have decided to not make the design changes in order to avoid review by the NRC under 10 CFR §§ 50.59, 50.90. Two engineers who worked on the RSG project for SCE and its manufacturer Mitsubishi Heavy Industries (MHI), Boguslaw Olech and Tomoyuki Inoue, admitted avoidance of NRC approval was a major premise of the RSG project: "At SONGS, the major premise of the steam generator replacement project was that it would be implemented under the 10 CFR 50.59 rule, that is, without prior approval by the US Nuclear Regulatory Commission (USNRC)." (January 2012 NEI, Article p. 2)

D. Let Dr. Budnitz Finish His Work

A sufficient record does not exist for evaluating these theories of SCE negligence. A record is required *before* any allocation can be determined just and reasonable as required by Cal. Pub. Util. Code § 451. While the issue can be resolved by settlement, it cannot be settled when a "record has not been created." (*See* CPUC 5 September 2014 Ruling, p. 15) CPUC expert Dr. Robert Budnitz has outlined an investigative plan that would provide a basis for assessing what would be a just and reasonable split between ratepayers on one side, and SDG&E and SCE on the other. Dr. Budnitz suggests inquiry should be made to answer the following questions: (1)

What error(s) led to the tube failure(s)? (2) At what stage were those errors made? (3) Who made those errors? (4) What might have been done, and by whom, and at what stage, to have averted those errors? (5) What arrangements in place elsewhere, technical or administrative or both, that were successful in averting thee errors somehow didn't work adequately for the SONGS RSGs? (Dr. Robert Budnitz' 1 December 2013 Report, p. 4).

CONCLUSION

The Proposed Decision put the utilities first and ratepayers second. It ignores the CPUC's hired expert's opinion that certain questions need to be answered as part of the investigation. There is no way to assess a reasonable split as to who (utility corporate shareholders or the innocent ratepayers) should bear the burdens of this colossal and costly debacle.

REQUEST FOR OFFICIAL NOTICE

Ms. Henricks has requested that Official Notice of the following writings which are cited in Ms. Henricks' Comment on the 9 October 2014 Proposed Decision.

No.	Document	Comment pages	Request for Official Notice
1.	31 December 2013 Budnitz Invoice	5	Exhibit 2 to 5 August 2014 Declaration of Michael J. Aguirre in Support of Motion to Reopen the Record filed with the CPUC
2.	27 March 2014 SCE Form 8-K	6, 39	13 May 2014 Request for Official Notice, pp. 56-62; 23 May 2014 Request for Official Notice, pp. 127-132
3.	January 2012 NEI, Article	17, 24	Exhibit 4 to Declaration of Michael J. Aguirre served on parties, but rejected for filing by ALJ Darling according to legal analyst in CPUC Docket Office
4.	MHI Root Cause Report[10]	17, 24	8 May 2014 Request for Official Notice
5.	Dr. Robert Budnitz' 1 December 2013 Report	18	Exhibit 4 to 5 August 2014 Declaration of Michael J. Aguirre in Support of Motion to Reopen the Record filed with the CPUC

[10] The ALJs did not provide copies of the NRC writings that they purported to take Official Notice of. (See 11 September 2014 Ruling p. 4-5). Unlike Ms. Henricks, who provided a copy of the Root Cause Report she requested be Officially Noticed.

6	20 March 2012 Atomic Power Review	23, 30, 31	Exhibit 2 to Declaration of Michael J. Aguirre served on parties, but rejected for filing by ALJ Darling according to legal analyst in CPUC Docket Office.
7	13 May 2013 US NRC Atomic Safety and Licensing Board	16, 23, 30, 31	8 May 2014 Request for Official Notice

The record should reflect that on 5 September 2014, SCE filed an "ex parte" communication with the CPUC attaching an NRC investigator's letter of 28 July 2014. In what appears to be a coordinated action, the ALJs **on their own motion** took Official Notice of hundreds of pages of documents citing to websites sources, they declined to take Official Notice of the writings proffered by Ms. Henricks. This proceeding will be the subject of appellate review. Ms. Henricks includes references to the writings in the Comment in order to preserve the record for appellate purposes. Ms. Henricks will request the appellate court to review the taking of Official Notice and the denial of Official Notice. (See 5 September 2014 SCE ex parte).

Ms. Henricks objects to the official notice the ALJs took on 11 September 2014 of what was called the "NRC Notice of Closure of Investigation (OI 4-2012-038) (July 28, 2014). Closure of Investigation into claims SCE employee(s) willfully failed to provide complete and accurate information to NRC inspectors after claims not substantiated. http://pbadupws.nrc.gov/docs/ML1423/ML14237A162.pdf. This document is a letter from an investigator about an unidentified investigation and is not properly the subject of Official Notice.

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Ms. Henricks requested Official Notice for the limited purpose of supporting the claim there was a reasonable basis to order an investigation, discovery, and evidentiary hearing on the whether SCE acted unreasonably in obtaining and deploying the replacement steam generators, and further, whether imposing the damages would be unjust and unreasonable and therefore not permitted under the law.

Respectfully Submitted,

Dated: 29 October 2014 By: */s/ Michael J. Aguirre*

Michael J. Aguirre, Esq.
maguirre@amslawyers.com
Maria C. Severson, Esq.
mseverson@amslawyers.com
AGUIRRE & SEVERSON, LLP
501 West Broadway, Suite 1050
San Diego, CA 92101
Telephone: (619) 876-5364
Attorneys for RUTH HENRICKS

APPENDIX
PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Finding of Facts

1. SCE did not obtain a license amendment under 10 CFR 50.90 in connection with the replacement steam generators.
2. SCE had admitted its agent, Mitsubishi Heavy Industries (MHI), "made errors" in designing the RSG generators. (Settlement Agreement 3.23)
3. The CPUC did not conduct or permit ratepayer advocates to conduct an investigation of, obtain discovery about, or did it hold an evidentiary hearing about who and what caused the replacement steam generators to fail.
4. On 27 March 2012, the CPUC through ORA issued a press release which stated in pertinent part that ORA signed a comprehensive settlement agreement with SCE, SDG&E, and TURN that will prevent the utilities from charging customers, who were served by the defunct San Onofre Nuclear Generating Station (SONGS), for defective steam generators.
5. TURN issued a news releases on 27 March 2014 announcing the parties had reached a settlement and stating the ratepayers would receive funds of $1.4 billion.
6. SCE reported its earnings went up after SCE announced the closing of San Onofre. [R.T. 2778-2779]
7. SCE stock price went up after the "settlement" was announced. SCE represented to its shareholders on the day the agreement was announced that "SCE **does not expect** implementation of rate recoveries and rate refunds contemplated by the Settlement Agreement will have **a material impact on future net income.**" (27 March 2014 SCE Form 8-K p. 4)
8. CPUC President Peevey declined to put on the record whether he had ex parte communications with SCE officials about the "settlement" while it was under discussion.
9. The Non-settling Parties were limited during the evidentiary hearing to a total of 75 minutes to examine all of the Settling Parties concerning the proposed agreement.
10. The ALJ stayed the proceedings while the agreement was being considered.

Findings of Law

1. License amendments are required for changes in nuclear power plants that materially affect safety under 10 C.F.R. § 50.59.
2. The CPUC has a fiduciary duty to assure itself a settlement agreement represents an arm's-length transaction entered without self- dealing or other potential misconduct under *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116, 129.
3. The Commission cannot adopt a settlement that imposes unreasonable rates because to do so is unlawful under California Public Utilities Code § 451.
4. The Commission cannot adopt a settlement if in the light of the whole record, it is not reasonable, consistent with law, and in the public interest under Rule 12.1(d).
5. In approving a settlement, the Commission must receive and consider enough information about the nature and magnitude of the claims being settled to make an independent assessment of the reasonableness of the terms to which the parties have agreed.
6. In considering a settlement the Commission is called upon to consider and weigh the nature of the claim in determining whether the proposed settlement is reasonable.

7. The Commission may not finally approve the settlement agreement until provided with sufficient information to assure itself that the terms of the agreement are indeed fair, adequate and reasonable. *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116, 133-134; *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499–500.

8. A principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal. Cal Civ Code § 2338; *Jameson v. Gavett* (1937) 22 Cal App 2d 646; *Gonzales v. Robert Hiller Constr. Co.* (1960) 179 Cal App 2d 522.

9. Operating a steam generators at a nuclear power station without a license amendment under 10 CFR 50.59 is negligence per se. See Holmes, The Common Law, 120-129; Morris, The Relation of Criminal Statutes to Tort Liability, 46 Harv. L. Rev. 453.); *Ramirez v. Plough, Inc.,* 6 Cal. 4th 539, 547.

10. Making ratepayers pay for the damage caused by the defective steam generators without providing ratepayers an investigation, discovery and an evidentiary hearing is a violation of state and federal procedural due process rights.

11. Before a settlement can be approved by the Commission, the settling parties are required to invite the non-settling parties to at least one bona fide, good faith settlement conference. CPUC Rule of Practice & Procedure 12.1(b).