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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)

I.12-10-013
(Filed October 25, 2012)

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And Related Matters.)
)
)
_____)

A.13-01-016
A.13-03-005
A.13-03-013
A.13-03-014

**ALLIANCE FOR NUCLEAR RESPONSIBILITY'S
PETITION FOR MODIFICATION OF D.14-11-040**

JOHN L. GEESMAN

DICKSON GEESMAN LLP
1999 Harrison Street, Suite 2000
Oakland, CA 94612
Telephone: (510) 899-4670
Facsimile: (510) 899-4671
E-Mail: john@dicksongeesman.com

Date: April 27, 2015

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

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I. INTRODUCTION.

Pursuant to Rule 16.4 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (“A4NR”) respectfully files a Petition for Modification (“PFM”) of D.14-11-040, which approved a settlement agreement between Southern California Edison Company (“SCE”) and San Diego Gas & Electric Company (“SDG&E”) and four other settling parties resolving rate recovery issues related to the premature shutdown of the San Onofre Nuclear Generating Station (“SONGS”).

A4NR’s PFM is triggered by the Hotel Bristol Notes (the “Notes”) distributed by Commission attorney Harvey Morris to the service list on April 10, 2015.¹ As noted in the April 14, 2015 Administrative Law Judges’ Ruling, SCE has acknowledged that the Notes were *“drafted by then SCE executive Stephen Pickett, with annotations by Commission President Michael Peevey.”*² The content of the Notes, and the failure of SCE to properly disclose the oral and written ex parte communications memorialized by the Notes, constitute what the Commission has previously characterized as *“new facts or circumstances which create a strong expectation that we would have made a different decision in a prior order.”*³ Discovery of the Notes reveals the type of *“most extraordinary circumstances”* which the Commission has

¹ A color copy of what A4NR received from the Commission is included in Appendix A as Attachment 1, showing two distinct shades of blue ink used in the Notes. The black-and-white copy of this document included as Exhibit A to SCE’s April 13, 2015 Supplement to Late-Filed Notice of Ex Parte Communication renders the difference in inks undetectable.

² Administrative Law Judges’ Ruling Directing Southern California Edison Company to Provide Additional Information Related to Late-Filed Notices of Ex Parte Communications (“April 14, 2015 ALJs’ Ruling”), pp. 3 – 4.

³ D.99-05-013, citing D.97-04-049.

previously said must be present to justify a departure from res judicata principles and invoke the broad authority of Cal. Pub. Util. Code §1708.⁴

A4NR makes two fundamental arguments in this PFM: one concerning extrinsic fraud by SCE, which severely prejudiced A4NR (and other non-utility parties) and prevented it (and them) from effective participation in I.12-10-013; the other concerning SCE's fraud-by-concealment, which induced a legally defective settlement agreement in I.12-10-013. A4NR supports its contentions about changes in facts and circumstances with the Declaration attached as Appendix A, and proposes specific wording to carry out its requested modifications to D.14-11-040 in the attached Appendix B. A4NR makes no attempt in this PFM to relitigate issues that have already been considered and rejected by the Commission, mindful that the Commission rarely utilizes the extraordinary remedy available under Cal. Pub. Util. Code §1708.

II. EXTRINSIC FRAUD.

The Notes, and SCE's belated explanations of them, manifest a collusive effort by Mr. Peevey and Mr. Pickett outside the I.12-10-013 proceeding⁵ to scuttle the Commission's investigation nearly seven weeks before evidentiary hearings even commenced. By failing to heed the statutorily prescribed requirements, the Peevey-Pickett meeting was a flagrant violation of Cal. Pub. Util. Code §1703(c), which specifies:

Ex parte communications are prohibited in ratesetting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice. Written ex parte communications may be permitted by any party provided that copies of the communication are transmitted to all

⁴ D.09-02-032.

⁵ Mr. Peevey was not the Assigned Commissioner to I.12-10-013.

parties on the same day. If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days...⁶

Mr. Pickett's failure to comply with the procedural requirements of Commission Rule 8.3(c) and the reporting requirements of Commission Rule 8.4 deprived all of the parties to I.12-10-013, except SCE, of any knowledge concerning:

- that the meeting between Mr. Pickett and Mr. Peevey took place;
- what Mr. Pickett said to Mr. Peevey;
- that Mr. Pickett and Mr. Peevey had engaged in a back-and-forth discussion as evidenced by what SCE now admits are Mr. Peevey's annotations on Mr. Pickett's memorialization of the discussion; and
- that Mr. Pickett had made a written communication by providing the Notes to Mr. Peevey.

SCE's exclusive knowledge of the oral and written communications in the collateral Peevey-Pickett meeting unfairly deprived A4NR and other parties of the ability to fully participate in I.12-10-013. Had SCE made the required disclosures of Mr. Pickett's ex parte communications, it is reasonable to assume that:

1. A4NR and other parties would have exercised their rights to meetings with Mr. Peevey of substantially equal time; and

⁶ This PFM specifically defers addressing the extent to which Mr. Peevey's violations of Cal. Pub. Util. Code §1703(c) separately constitute extrinsic fraud and extraordinary circumstances sufficient to require the remedies sought herein. A4NR may supplement this PFM as appropriate after reviewing any materials filed by SCE in response to the April 14, 2015 ALJs' Ruling.

2. A4NR and other parties would have requested copies of the Notes from Mr. Peevey, or filed requests under the California Public Records Act, to obtain them.

Speaking only for itself, had A4NR received timely notice of Mr. Pickett's March 26, 2013 oral and written ex parte communications to Mr. Peevey, including a copy of the Notes, it would have:

- late-filed a response endorsing the March 11, 2013 motion by Friends of the Earth ("FOE") and the World Business Academy to accelerate consideration of certain Phase 3 issues to a parallel track with Phase 1, countering the opposition responses filed by SCE and the Division of Ratepayer Advocates ("DRA");
- filed a Motion for Reconsideration of ALJ Melanie Darling's May 10, 2013 emailed "*brief version*" ruling on two SCE motions to defer or strike testimony, in which all of A4NR's prepared testimony and nearly all of the prepared testimony submitted by other non-utility parties was "*excluded from Phase 1.*"⁷ Properly informed of Mr. Pickett's ex parte communications, A4NR would have sought reconsideration of ALJ Darling's ruling from the Assigned Commissioner, if necessary – and, if necessary, the full Commission;
- endorsed the recommendation in DRA's June 25, 2013 Motion to Amend the Scoping Memo, instead of opposing DRA's suggested amendment of the Scoping Memo while embracing DRA's request to immediately remove the SONGS revenue requirement from rates;⁸

⁷ Email to I.12-10-013 service list from ALJ Darling, with attached "*Draft Ruling on M2DS.docx*," May 10, 2013.

⁸ Due to ignorance of the Peevey-Pickett meeting, A4NR's July 10, 2013 Response to DRA's Motion mistakenly argued: "*A4NR finds no value in prescribing how the Commission should alter its own Scoping Memo. Organizing the manner and sequence in which the Commission gathers the information which it finds necessary to complete I.12-10-013 is a responsibility which only the assigned Commissioner and Administrative Law Judges can properly*

- attended the March 27, 2014 “*settlement conference*” required by Rule 12.1(b) and pointed out that, in negotiating with the Office of Ratepayer Advocates (“ORA”)⁹ and The Utility Reform Network (“TURN”), SCE had managed to improve its position by \$1.419 – 1.438 billion¹⁰ from the position attributed to Mr. Peevey in the Notes;
- documented in its May 7, 2014 Opening Comments Opposing the Proposed Joint Settlement Agreement (and reiterated in its May 22, 2014 Reply Comments) that, in negotiating with ORA and TURN, SCE had managed to improve its position by \$1.419 – 1.438 billion from the position attributed to Mr. Peevey in the Notes;
- cross-examined the witnesses from SCE, ORA, and TURN at the May 14, 2014 evidentiary hearing on how their claim that the Proposed Joint Settlement Agreement reflected “*a hard-fought process over many months*”¹¹ could be reconciled with a result \$1.419 – 1.438 billion inferior to that articulated by Mr. Peevey in the Notes;
- identified in its September 15, 2014 Comments on the Assigned Commissioner and Administrative Law Judges’ Ruling Requesting Settling Parties to Adopt Modifications to Proposed Settlement Agreement that, despite the improvements represented by the requested modifications, the result remained \$1.239 – 1.309 billion¹² inferior to the position articulated by Mr. Peevey in the Notes.
- argued in its October 29, 2014 Opening Comments on the Proposed Decision approving the Amended and Restated Settlement Agreement (and reiterated in its November 3, 2014

perform. A4NR is satisfied that as substantive decisions are made, the Scoping Memo will be appropriately amended. The attention should be on those substantive decisions.” Id., p. 7.

⁹ The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates in 2013.

¹⁰ The calculation of these amounts is explained in Appendix B to this PFM.

¹¹ April 3, 2014 Joint Motion for Adoption of Settlement Agreement, p. 8.

¹² The calculation of these amounts is explained in Appendix B to this PFM.

Reply Comments) as well as in its October 31, 2014 oral argument to the full Commission that – notwithstanding the “*hard-fought process*” and the requested modifications to correct “*provisions which unfairly disfavor ratepayers*”¹³ – the Commission was being asked to approve an outcome \$1.239 – 1.309 billion worse for ratepayers than the position articulated by Mr. Peevey in the Notes.

SCE’s unlawful oral and written communications with Mr. Peevey, and its unlawful failure to provide timely proper disclosure of such communications, constitutes an extrinsic fraud which prevented A4NR from fully presenting its arguments in I.12-10-013¹⁴ and justifies the extraordinary remedy permitted by Cal. Pub. Util. Code §1708 to modify D.14-11-040 as requested below.

III. CAL. CIV. CODE §§ 1565 – 1568, 1571 – 1574, 1709 – 1710.

SCE’s failure to provide timely proper disclosure of the oral and written ex parte communications with Mr. Peevey constituted fraud-by-concealment against the parties that SCE induced to enter into the SONGS settlement. The Commission’s lack of authority to award damages may moot the literal application of common law fraud principles, and each of the affected parties may have a different calculation of claimed damages if an award were possible. Nevertheless, the Commission should consider the elements of fraud-by-concealment in assessing whether D.11-10-040’s determination that the Amended and Restated Settlement Agreement met the requirements of Rule 12.1(d) can survive the discovery of the Notes.

¹³ September 5, 2014 Assigned Commissioner and Administrative Law Judges’ Ruling Requesting Settling Parties to Adopt Modifications to Proposed Settlement Agreement, p. 2.

¹⁴ A4NR believes that other non-utility parties in I.12-10-013, especially the non-settling parties, were similarly disadvantaged by SCE’s extrinsic fraud.

Under California law, the elements of an action for fraud and deceit based on concealment are (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage. *Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 748; *Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612 – 613.

As included in Appendix A to this PFM, the post-Notes-discovery statement by ORA confirms that each of these elements was present:

- *“ORA is outraged at the revelations regarding CPUC rule violations that occurred prior to the commencement of the SONGS settlement negotiations, and that Edison’s actions have undermined the results of ORA’s good faith negotiations to represent the best interest of ratepayers.”*
- *“ORA cannot honestly say that it got the best deal for ratepayers. Edison was likely able to use its knowledge of Peevey’s position to steer the settlement in the direction it wanted.”*
- *“While ORA believes it worked to strike a good deal for ratepayers based on legal precedents, we are troubled by the possibility that we might have been able to strike a better deal.”*
- *“The process for fair dealings at the CPUC had been severely compromised.”*
- *“ORA recommends, at a minimum, Edison be sanctioned and required to return to ratepayers an additional \$648 million, which represents the difference between ORA’s original litigation position and what the settlement provided.”¹⁵ (emphasis in original)*

¹⁵ Appendix A, Attachment 3, unnumbered pp. 1 – 2.

As discussed in the Declaration attached as Appendix A to this PFM, A4NR disagrees with “ORA’s Comparative Analysis” (hyperlinked in the ORA statement and apparently co-authored with TURN) suggesting that the Amended and Restated Settlement provides \$780 million to \$1.059 billion more in ratepayer savings than suggested in the Notes.¹⁶ A4NR considers the ORA/TURN analysis to be an understandable attempt at image protection by ORA and TURN, but in no way a rebuttal to A4NR’s fraud-by-concealment argument: both ORA and TURN would likely have negotiated a better settlement had they not been deceived by SCE’s unlawful concealment of Mr. Pickett’s oral and written ex parte communications.

Similarly, A4NR believes that FOE was entitled to know that Mr. Peevey’s articulated framework included a \$90 million environmental offset before signing onto a proposed settlement devoid of any such offset, or even an Amended and Restated Settlement Agreement which reduced such amount to \$25 million. And the Coalition of Utility Employees, aware that the National Labor Relations Act compels employers to disclose all relevant information as a tenet of good faith in collective bargaining, would likely hesitate to knowingly waive its legal right to the information deliberately withheld by SCE.

A4NR was not a signatory to the Amended and Restated Settlement Agreement and claims no contractual remedy. But the Commission has a much larger interest in the integrity of D.14-11-040 than can be achieved by simply deferring to the rescission choices of the contracting parties. A settlement obtained through fraud-by-concealment cannot be characterized as either consistent with law or in the public interest. If the Rule 12.1(d)

¹⁶ Appendix A, Attachment 2, p. 5.

affirmation which underpins D.14-11-040 cannot withstand knowledge of SCE's fraudulent conduct, the Commission must modify its Decision pursuant to Cal. Pub. Util. Code §1708.

IV. CONCLUSION.

Because of the extrinsic fraud and fraud-by-concealment described above, either of which would be sufficient cause, A4NR petitions the Commission to modify D.14-11-040 as suggested by the language in Appendix B. Doing so would set aside the Commission's approval of the Amended and Restated Settlement Agreement; reinstate the Phase 1 Proposed Decision, and order preparation of a Proposed Decision for Phase 2, for future consideration by the Commission; direct the parties to submit written recommendations to the Commission for how best to conclude I.12-10-013; and transfer to A.13-11-003 (SCE's pending 2015 General Rate Case) and A.14-11-003 (SDG&E's pending 2016 General Rate Case) any ratesetting adjustments made necessary by the modification of D.14-11-040.

As indicated above, after reviewing any materials filed by SCE in response to the April 14, 2015 ALJs' Ruling, A4NR may supplement this PFM as appropriate.

Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN
DICKSON GEESMAN LLP

Date: April 27, 2015

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

Appendix A

Declaration of John L. Geesman

DECLARATION OF JOHN L. GEESMAN

Under penalty of perjury, I, John L. Geesman declare as follows:

1. My name is John L. Geesman. I am a partner with the law firm Dickson Geesman LLP and provide legal representation to the Alliance for Nuclear Responsibility (“A4NR”) in several proceedings before the California Public Utilities Commission (“Commission” or “CPUC”), including the Commission’s investigation of the premature closure of the San Onofre Nuclear Generating Station (“SONGS”), I.12-10-013. Apart from my work as an attorney, my professional experience has included 19 years (1983 – 2002) as an investment banker specializing in the U.S. bond markets. My financial career came between two separate periods of employment at the California Energy Commission, which included service as Executive Director (1979 – 1983) and as a Commissioner (2002 – 2008). In my last 10 years as an investment banker (1992 – 2002), I served in part-time positions as Chairman of the Board of Governors of the California Power Exchange, Chairman of the California Managed Risk Medical Insurance Board, President of the Board of Directors of The Utility Reform Network (“TURN”), and Board Member of the California Independent System Operator. I hold a JD degree from the University of California, Berkeley, School of Law (1976) and a BA degree in political science from Yale College (1973). I have participated in dozens of business and political negotiations, in both private and public settings, during the course of my professional career.

2. I have enjoyed numerous professional interactions with Michael Peevey in our various capacities since being on opposing sides of the 1976 California Nuclear Safeguards Initiative

ballot measure, including as two of a handful of Gray Davis appointees that met repeatedly during 2003 to hammer out California's Energy Action Plan. I would characterize our relationship over four decades as always friendly, often adversarial, and consistently respectful.

3. On the evening of April 10, 2015, I received the electronic transmission of the Hotel Bristol Notes ("Notes") from Commission attorney Harvey Morris, which he identified as having been provided to the Commission by the California Attorney General late that afternoon. I have included the Notes as Attachment 1 to this Declaration. Over the weekend of April 11 – 12, 2015, I analyzed the differences between the terms outlined in the Notes and the March 27, 2014, settlement proposal negotiated by Southern California Edison Company ("SCE"), San Diego Gas & Electric Company ("SDG&E"), the Office of Ratepayer Advocates ("ORA"), and TURN. On April 13, 2015, I transmitted my assessment to the staff of the Assembly Utilities and Commerce Committee, with a copy served to the I.12-10-013 service list. I include that letter as Attachment 4 to this Declaration.

4. My April 13, 2015, conclusion was that SCE (and by its SONGS co-ownership, SDG&E) managed to improve its position by at least \$919 million, and arguably \$1.522 billion, from the position attributed to Mr. Peevey in the Notes. I have subsequently reviewed an ORA press release dated April 17, 2015, included as Attachment 3 to this Declaration, and a TURN press release dated April 17, 2015. Both press releases electronically link to the same comparison document, which I have carefully examined and include as Attachment 2 to this Declaration. Based on the information in the ORA/TURN document and my further reflection, I have revised

my estimate of SCE's improved bargaining position in negotiating the March 27, 2014 settlement proposal to a range of \$1.419 billion and \$1.438 billion.

5. The ORA/TURN document alters the comparison somewhat in order to include the improvements in the settlement prompted by the September 5, 2014, Assigned Commissioner and Administrative Law Judges' Ruling Requesting Settling Parties to Adopt Modifications to Proposed Settlement Agreement. Taking credit for the modifications requested by Commissioner Florio, ALJ Darling, and ALJ Dudney modestly improves the comparison but does not change my conclusion that SCE gained significant negotiating advantage over ORA and TURN by its one-sided knowledge of the position attributed to Mr. Peevey in the Notes. I have adjusted my analysis to include the modifications requested by the Assigned Commissioner and ALJs and concluded, as explained below, that the result remains \$1.239 billion to \$1.309 billion inferior to the position articulated by Mr. Peevey in the Notes. I remain convinced, however, that the appropriate measure of SCE's superior bargaining power is not a comparison to the final settlement, but instead the comparison to the March 27, 2014, settlement proposal actually negotiated by ORA and TURN.

6. My responses to the specific items raised in the ORA/TURN document are as follows:

- **Recovery of Base plant costs:** ORA/TURN impute to Mr. Peevey's use of the words "*debt level return*" the nowhere-stated assumption that this phrase refers to a rate also applied to SCE's equity capital, rather than simply the recovery of SCE's cost of debt. As indicated in my letter to the Assembly committee, I did not attempt any quantification for this item in my analysis because of fluctuating interest rates and the opacity of the present value

calculation in the settlement proposal. I firmly believe that if ORA/TURN had known of the phrasing in the Notes, they would never have entertained a “*debt level return*” being applied to equity in their negotiations with SCE. **Result: no change in my assessment.**

- **Nuclear fuel:** ORA/TURN include this subject, never mentioned at all in the Notes, to suggest that ratepayers would somehow be better off by \$65 million if no nuclear fuel is sold. Notwithstanding the qualitative strangeness of such a conclusion, this numerical value is apparently determined by neglecting the fact that commercial paper is a form of debt and then assuming “*debt level return*” means something different from recovery of SCE’s cost of debt. Because nuclear fuel is never discussed in the Notes, I did not address it in my assessment. I firmly believe that if ORA/TURN had known of the phrasing in the Notes, they would never have entertained any rate higher than SCE’s commercial paper rate being applied to nuclear fuel in their negotiations with SCE. As indicated in its Phase 2 testimony, “*SCE is requesting to recover the actual fuel carrying cost ... based on the company’s short-term borrowing rate.*”¹ **Result: no change in my assessment.**
- **Replacement steam generators:** ORA/TURN ignore the reference in item #1 of the Notes to “*pre-RSG investment*”, which qualifies what portion of the SONGS rate base would be eligible for a “*debt level return*”. ORA/TURN similarly ignore the use of that same nomenclature in item # 2 of the Notes, which indicates that both “*RSG and post-RSG investment*” would be disallowed retroactively out of rate base. ORA/TURN combine two separate lines, “*retroactively out of rate base*” and “*effective ~~2/1/2012~~*”,² to assert “*there is no basis to conclude that the Peevey-Pickett note contemplated disallowances of costs*

¹ SCE-40, p. 20.

² ORA/TURN misstate this as “2/1/12” with no indication of cross-out. Attachment 2, p. 2.

prior to February 1, 2012”³ but fail to acknowledge that the 2/1/2012 date is crossed out in the Notes. ORA/TURN inexplicably point to “another date that has been crossed out and is not readable” to suggest, without support, that “a later date may have also been contemplated.”⁴ Or, perhaps, I would add, an unreadable earlier date – which, logically, is of equal speculative likelihood but more consistent with the term “pre-RSG investment”. Because both cross-outs appear to be in a different shade of ink from the body of the Notes, and because it is presently impossible to determine what back-and-forth between Mr. Peevey and Mr. Pickett prompted them, this is a classic weight-of-the-evidence question. Eliminating all uncertainty about either Mr. Peevey’s precise meaning or the verbatim accuracy of Mr. Pickett’s note-taking, however, is not my point. I firmly believe that if ORA/TURN had known of the phrasing in the Notes, they would have forcefully rejected anything less than full disallowance of the RSGs in their negotiations with SCE. **Result: no change in my assessment, which is that the Peevey framework was more favorable to ratepayers by \$194 million.**⁵

- **Operations and Maintenance costs:** ORA/TURN evade the plain meaning of the word “shutdown” and instead invent a June 12, 2013 date⁶ for “shutdown” -- five days past the date specified in the settlement as when “SCE permanently retired SONGS Units 2 and 3.”⁷ With no suggestion as to why Mr. Peevey or Mr. Pickett required such precision in Mr.

³ *Id.*

⁴ *Id.*

⁵ According to SCE’s and SDG&E’s separate May 1, 2014 responses to Question 04 posed by ALJs Darling and Dudney in their April 24, 2014 ruling, this amount totaled \$194.08 million (\$168.18 million for SCE, as indicated in SCE-54, Response to Question 04, unnumbered page 2, Column H; and \$25.9 million for SDG&E, as indicated in SDG&E-22, p. 3).

⁶ Attachment 2, p. 2.

⁷ Amended and Restated Settlement Agreement, ¶3.23.

Pickett's dictation-taking, ORA/TURN insist that if the Notes had considered "*the outage that began on January 31, 2012*" to be the "*shutdown*" then a specific date in 2012 would have been identified "*rather than stating 'shutdown + 6 months' (which demonstrates that 'shutdown' had not yet occurred at the time the note was drafted).*"⁸ I doubt that many of the ratepayers ORA/TURN represent would agree that the "*shutdown*" had not yet occurred on March 26, 2013 (or be as unforgiving of the generalities used in Mr. Pickett's note-taking), and my point remains: I firmly believe that if ORA/TURN had known of the phrasing in the Notes, they would have forcefully rejected any date later than August 1, 2012 as the commencement of "*shutdown + 6 months*". **Result: no change in my overall assessment, which is that the Peevey framework was more favorable to ratepayers, but I have reduced the difference to \$446 million to reflect the Commission's approval of Advice Letters filed by SCE and SDG&E.**⁹

- **Use of nuclear decommissioning trust funds:** ORA/TURN generate by far the largest amount of their claimed savings, "*approximately \$434 million*"¹⁰ of a \$780 million to \$1.059 billion total, from a windfall discovery of the Nuclear Decommissioning Trusts. Viewing withdrawals from the Trusts as "*refunds*"¹¹ for ratepayers is akin to raiding your children's college fund for a "*free*" vacation. While bonafide decommissioning costs should certainly

⁸ Attachment 2, p. 2.

⁹ Amended and Restated Settlement Agreement, ¶3.43, identifies \$785 million as provisionally authorized base O&M costs (100% share) for the years 2012 and 2013. ORA/TURN correctly point out that SCE Advice Letter 3139-E and SDG&E Advice Letter 2672-E (both approved March 10, 2015) reduce this amount by \$80.9 million to \$704.1 million. My April 13, 2015 letter to the Assembly Committee mistakenly suggested subtracting the \$126 million identified in ¶3.44 for incremental Steam Generator Inspection and Repair Costs, but the settlement's disallowance of these costs did not reduce the GRC-authorized O&M amounts. The Notes would have eliminated recovery of the entire 2013 amount (\$397.6 million) and one-third of the 2012 amount (\$129.1 million), only allowing recovery of \$258.3 million for base O&M. Consequently, the difference is \$445.8 million (\$704.1 million minus \$258.3 million).

¹⁰ Attachment 2, p. 3.

¹¹ *Id.*

be charged to the Trusts after review for reasonableness, celebrating the bulk shifting of unreviewed costs to the Trusts “rather than ratepayers, whenever possible”¹² is myopic. Amounts collected from ratepayers, and the untaxed investment returns on such collections, are the only source of funding for the Trusts. Worse, with the Trusts currently sized on the basis of hyper-optimistic assumptions about how quickly the federal government will remove spent fuel from the SONGS site,¹³ the ORA/TURN heralding of withdrawals as “refunds”¹⁴ increases the likelihood of additional contributions being required from future ratepayers who never received electricity from SONGS. I did not attribute any savings to withdrawals from the Nuclear Decommissioning Trusts because the Notes clearly indicate the intent to maintain the current CPUC review process for decommissioning costs. **Result: no change in my assessment.**

- **Contribution to the Greenhouse Gas research:** ORA/TURN seize upon the unspecified source of funding in the Notes to speculate that ratepayers might be charged instead of the shareholder-funding requirement ultimately suggested¹⁵ in the September 5, 2014 ruling by the Assigned Commissioner and ALJs. Reading such a possibility into the Notes’ phrase, “SCE to donate”, seems quite a linguistic stretch. I suspect the environmental offset provision would have been more likely to be included in the March 27, 2014 settlement proposal if it had been a cost passed through to ratepayers. Since ORA/TURN do not distinguish between the \$90 million program in the Notes and the \$25 million program in

¹² *Id.*

¹³ See discussion in D.14-12-082, p. 22.

¹⁴ Attachment 2, p. 3.

¹⁵ As stated at p. 9 of the Ruling, the first mention of the research program in the I.12.10-013 record, “we find the public interest would be met by shareholders directing funds to offset this significant consequence to SONGS ratepayers.”

the Amended and Restated Settlement, they appear to attach no value to it irrespective of funding source. I have assumed the Commission would not have approved the measure were there no value, and have assumed shareholders would be the funding source for either size program. Again, however, my point is directed to the negotiating advantage gained by SCE's one-sided knowledge of the position attributed to Mr. Peevey in the Notes. I firmly believe that if Friends of the Earth had known of the \$90 million amount in the Notes, it would have demanded a change in terms before accepting (as a signatory) a zero amount in the March 27, 2014 settlement proposal or, perhaps, even the \$25 million amount in the Amended and Restated Settlement Agreement. **Result: no change in my assessment, which is that the Peevey framework was \$90 million more favorable to ratepayers than the proposed settlement, and \$65 million more favorable to ratepayers than the final settlement.**

- **Recovery of funds from NEIL and Mitsubishi:** ORA/TURN characterize any recovery from Nuclear Energy Insurance Limited ("NEIL") as "*potential litigation proceeds*"¹⁶ rather than a claim under an insurance policy already paid for by ratepayers. They focus their comparison of the 100% ratepayer share contained in the Notes against the 95% ratepayer share in the final settlement, rather than the 82.5% ratepayer share they agreed to in the March 27, 2014 proposed settlement. They do not distinguish between the accidental outage claim and the accidental property damage claim. Regarding SCE's arbitration claim against Mitsubishi Heavy Industries, ORA/TURN acknowledge that the March 27, 2014 proposed settlement they negotiated, when compared to the Notes, offers superior benefit to

¹⁶ *Id.*

ratepayers only in a scenario where the recovery exceeds \$800 million. Both ORA and TURN previously acknowledged that they had not assessed the likelihood or amount of any potential recovery from NEIL or Mitsubishi¹⁷-- a factor which may have contributed to the September 5, 2014, Florio/Darling/Dudney request for modifications -- which reinforces my assumption that ORA/TURN heavily discounted the prospect of large recoveries.

Consequently, I firmly believe that if ORA/TURN had known of the position attributed to Mr. Peevey in the Notes, heavily-weighted to benefit ratepayers in lower recovery scenarios, they would have demanded similar sharing in their negotiations with SCE of the March 27, 2014 settlement proposal. The modifications requested in the September 5, 2014 Assigned Commissioner and ALJs Ruling recapture much of the benefit SCE's insider knowledge had gained under my earlier projections,¹⁸ but my focus is on the unfair bargaining advantage SCE gained in negotiating the March 27, 2014 settlement proposal. **Result: no change in my assessment, which is that the Peevey framework for recoveries from NEIL was at least \$72 million more favorable to ratepayers, and for recoveries from Mitsubishi \$33 – 52 million more favorable to ratepayers, than the March 27, 2014 proposed settlement. After the Assigned Commissioner and ALJs ruling, the Peevey framework for recoveries from NEIL remained \$20 million more favorable for ratepayers than the final settlement. For recoveries from Mitsubishi, the final settlement improves upon the Peevey framework for amounts above \$200 million: with ratepayer benefit of \$20 million in a**

¹⁷ A4NR-50; A4NR-51; Transcript, pp. 2723 – 2725 (Pocta – ORA, Marcus – TURN).

¹⁸ By grouping together the discussion of NEIL and Mitsubishi recoveries, the ORA/TURN document fails to address the different probabilities of recovery from the two potential sources. As a consequence, I have not netted the separate Florio/Darling/Dudney modifications to the NEIL and Mitsubishi formulae against each other here. I do so, however, in the summary at the end of this Declaration.

\$300 million recovery; \$40 million in a \$400 million recovery; and \$70 million in a \$500 million recovery.¹⁹

- **OII Process:** This is the final category in the ORA/TURN document and does not provide any estimate of financial benefit separate from the other items above. Instead, ORA/TURN reiterate that *“shutdown O&M’ costs are not collected from customers”*²⁰ because they are recovered from decommissioning trust funds. As I indicate in the discussion of decommissioning above, bonafide decommissioning costs should certainly be charged to the Trusts after review for reasonableness. While acknowledging that 2014 O&M costs remain subject to a reasonableness review, ORA/TURN repeat their earlier claim: *“For 2013-2014, this treatment results in approximately \$434 million in refunds.”*²¹ I did not attribute any savings to withdrawals from the Nuclear Decommissioning Trusts because the Notes clearly indicate the intent to maintain the current CPUC review process for decommissioning costs. **Result: no change in my assessment.**

7. A material aspect of my earlier assessment, which is not addressed by the ORA/TURN comparison with the Notes, is Construction Work in Progress (“CWIP”). The Notes make no mention of CWIP, but the March 27, 2014 settlement proposal (and the Amended and Revised Settlement which the Commission approved) rolled CWIP into Base Plant. If the omission of CWIP in the Notes is logically interpreted to preclude recovery of CWIP which was not in service on February 1, 2012 – the position which I firmly believe ORA and TURN would have taken in their negotiations with SCE had they been properly informed of the content of the Notes – then

¹⁹ My earlier assessment did not quantify recovery from Mitsubishi above \$500 million.

²⁰ Attachment 2, p. 4.

²¹ *Id.*

SCE was able to gain at least a \$584 million²² bargaining advantage by its unlawful failure to disclose its oral and written ex parte communications. **Result: no change in my assessment.**

The Peevey framework was at least \$584 million more favorable to ratepayers than both the proposed settlement and the final settlement.

8. After reviewing each item in the ORA/TURN document as discussed above, and expanding my earlier assessment to include a comparison of the Notes with the final settlement, I summarize my estimate of the erosion of ratepayer benefit as follows:

	<u>Proposed Settlement</u>	<u>Approved Settlement</u>
Enriched return:	No quantification	No quantification
RSG disallowance	\$194 million	\$194 million
NEIL insurance claims:	At least \$72 million	At least \$20 million
MHI recovery formula:	\$33 – 52 million	\$0 -- 70 million gain
Excess O&M	\$446 million	\$446 million
CO ₂ mitigation	\$90 million	\$65 million
Excess CWIP	<u>At least \$584 million</u>	<u>At least \$584 million</u>
TOTAL²³:	\$1.419 – 1.438 billion	\$1.239 – 1.309 billion

9. I empathize with the awkwardness created for ORA/TURN by discovery of the Notes. These are material amounts. I do not denigrate the negotiating skills of either organization, but instead attribute the deficient outcome entirely to the unfair bargaining advantage usurped by SCE through its unlawful conduct. I am highly confident that the capable negotiators at ORA and TURN would not have significantly undershot the position attributed to Mr. Peevey by the

²² This amount is identified as of December 31, 2013, based on the Amended and Restated Settlement Agreement, ¶13.40 and ¶13.41, and SDG&E-22, Attachment A. The amount represents a growth in CWIP of 60% for SCE and 31% for SDG&E since February 1, 2012, with no estimate for what growth in CWIP continued to accrue after December 31, 2013.

²³ These total amounts should be increased by whatever amount of CWIP SCE and SDG&E accrued after December 31, 2013.

Notes if they had been provided the information they were entitled to under statute and Commission Rules.

10. As I observed in my earlier assessment, Mr. Peevey obviously did not feel strongly enough about the position he staked out in the Hotel Bristol meeting to make it a pre-condition to his support of the final settlement. This is of no consequence. Even if his discussion with Mr. Pickett is interpreted as no more than a prod to SCE to negotiate a settlement, SCE should not have illicitly concealed its ex parte communications – including the content of the Notes – in order to gain an unfair negotiating advantage over ORA and TURN.

Under penalty of perjury, I declare that the foregoing statements of fact are true and correct to the best of my knowledge and that the statements of opinion expressed above are based on my best professional judgment.

/s/John L. Geesman
April 27, 2015

Attachment 1

Hotel Bristol Notes



HOTEL BRISTOL
A LUXURY COLLECTION HOTEL

Warsaw

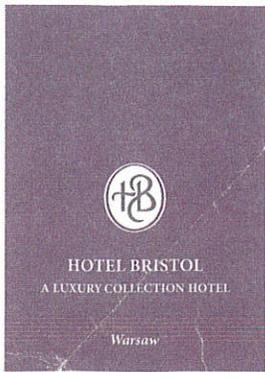
1. Pre-RSG investment: recover w/ debt-level return through 2022.
2. RSG and post-RSG investment: disallow "retroactively out of rate base" effective 2/1/2012 ~~2/1/2012~~
3. Replacement power responsibility: customer
4. NEIL/insurance recoveries: to customers
5. MHI recovery: 1st to SCE to the extent of the disallowance
2^d to customers
6. Decommissioning costs: remain in rates through time of decommissioning -- periodic redetermination in CPUC proceedings as before
7. O&M:
 - a) Already approved GRC amounts through shutdown + 6 months
 - b) OII to determine shutdown O&M through end of 2017 (i.e., not in GRC)
 - c) shutdown O&M 2018 and beyond determined in GRC's
 - d) Shutdown O&M to include reasonable severance for SONGS employees - A pool of \$50 million

Next
page

+48 22 55 11 000 telephone / telefon
+48 22 625 25 77 facsimile / fax

KRAKOWSKIE PRZEDMIEŚCIE 42/44
00-325 WARSZAWA, POLAND

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8. Environmental offset: SCE to donate ~~\$5.0~~¹⁰ million per year 2014-2022 to _____ { as agreed upon GHG, climate, or environmental academic research fund, institution, etc. }

9. Process
- a) settlement agreement approved in OII
 - b) balance of OII closed except for shutdown O&M phase
 - c) new OII phase for shutdown O&M per 7(b) and 7(d) above
 - d) 2018 GRC for shutdown O&M 2018 and beyond
 - e) Usual CPUC proceedings for review of decommissioning costs

MHI Recovery

- 1 - First \$200 million — 50% cost, 50% SCE
- 2 - Next \$200 million — 70% cost, 30% SCE
- 3 - Any above \$400 million up to disallowance — 80% cost, 20% to a
- 4 - Above disallowance — 25% SCE, 75% cost

+48 22 55 11 000 telephone / telefon
 +48 22 625 25 77 facsimile / fax
 KRAKOWSKIE PRZEDMIEŚCIE 42/44
 00-325 WARSZAWA, POLAND
 luxurycollection.com/bristolwarsaw

Attachment 2

ORA/TURN Comparative Analysis

**THE UTILITY REFORM NETWORK
OFFICE OF RATEPAYER ADVOCATES**
*Differences between terms identified on the note and
the proposed/final SONGS settlement*

Recovery of Base plant costs (Note item #1)

The note calls for SCE and SDG&E to recover these costs at a “debt-level” return through 2022. The note refers to “debt-level” return for the entire amount of unrecovered plant investments (apart from the Replacement Steam Generators). The note does not specify when the base plant would be removed from rates (SCE and SDG&E had proposed June 1, 2013). By contrast, the proposed settlement removes base plant from rates on February 1, 2012 and provides zero return on the equity portion of the plant and only 50% of preferred returns on that portion of the plant investment. For SCE, a “debt-level” return for the unrecovered investment would be 7.64% while the settlement allows a return of 2.62%.¹ For SDG&E, a “debt-level” return for the unrecovered investment would be 6.88% while the settlement provides a return of 2.41%.²

Conclusion - The lower level returns included in the proposed settlement results in a reduction of over \$200 million (Net Present Value) in ratepayer costs. If the note intended to remove base plant from rates later than February 1, 2012 (as proposed by SCE and SDG&E), the settlement would provide even larger reductions.

Nuclear fuel (Note item #1)

The note appears to call for SCE and SDG&E to recover approximately \$593 million in nuclear fuel costs (which are “Pre-RSG investment”) at a “debt-level” return through 2022.³ The proposed settlement allows recovery of nuclear fuel at a commercial paper rate of return (currently 0.1%) and requires that ratepayers be credited with 95% of the proceeds from the sale of any of this fuel to other nuclear plant owners.

Conclusion - The settlement results in significantly lower costs for ratepayers. If no nuclear fuel is sold, the settlement would result in approximately \$65 million in lower ratepayer costs.

¹ This comparison accounts for the “tax gross up” applied to equity returns set at debt levels and any returns on preferred stock. This “gross up” is a standard utility practice in ratemaking. SCE’s “debt-level” return would be 7.64% (5.49% plus taxes on equity returns) while the settlement allows a return of 2.80% (2.62% plus taxes on preferred stock return).

² Due to the “tax gross up”, SDG&E’s “debt-level” return would be 6.88% (5.00% plus taxes on equity returns) while the settlement allows a return of 2.41% (2.35% plus taxes on preferred stock return).

³ As of December 31, 2013, the net book value of nuclear fuel investments was \$477 million for SCE and \$115.8 million for SDG&E (Settlement §3.38). As shown in footnotes 1 and 2, this “debt-level” return would be 7.64% for SCE (after tax gross up) and 6.88% for SDG&E (after tax gross up).

Replacement Steam Generators (Note item #2)

The note calls for the RSG investments to be disallowed “retroactively out of ratebase effective 2/1/12”. Since the note references disallowances “effective” February 1, 2012, there is no basis to conclude that the Peevey-Pickett note contemplated disallowances of costs prior to February 1, 2012. Had the note intended such treatment, the disallowance would have either been “retroactive” to an earlier date or would not have made this provision “effective” as of any particular date. The removal of RSG investments “retroactive” to February 1, 2012 is the same treatment provided by the settlement. The note references both the 2/1/2012 date and another date that has been crossed out and is not readable, suggesting that a later date may have also been contemplated. In the investigation, SCE and SDG&E proposed changing the rate treatment of its base plant as of June 2013 when SONGS was permanently retired.

Conclusion – No difference assuming a 2/1/2012 date. If the note intended to remove the RSG investments from rates later than February 1, 2012 (for example, the permanent shut-down date of June 1, 2013), the settlement would provide reductions of approximately \$189 million: \$148 million for SCE and \$41 million for SDG&E.⁴

Operations and Maintenance costs (Note item #7)

The note calls for SCE and SDG&E to retain “O&M” (Operations and Maintenance) revenue requirements “already approved” in the most recent General Rate Cases (GRCs) “through shutdown + 6 months.” SONGS was permanently shutdown on June 12, 2013. Using the actual shutdown date, the note would allow recovery of previously authorized revenue requirements through the end of 2013. Had the note intended to reference the outage that began on January 31, 2012, it would have specified an actual date in 2012 (such as August 1, 2012) rather than stating “shutdown + 6 months” (which demonstrates that “shutdown” had not yet occurred at the time the note was drafted).

For 2012, the settlement allows SCE and SDG&E to retain the lower of actual costs or GRC-authorized O&M revenue requirements. For 2013, the settlement requires SCE and SDG&E to refund the difference between authorized O&M revenue requirements and actual recorded costs. Actual O&M expenses were lower than GRC-authorized revenue requirements for SDG&E in 2012 (by \$3.4 million) and 2013 (\$23.5 million) and for SCE in 2013 (by \$54 million).⁵

Conclusion - The more favorable provision in the settlement results in a reduction of \$80.9 million -- \$54 million for SCE ratepayers and \$26.9 million for SDG&E ratepayers.

⁴ See SCE Advice Letter 3139-E, Attachment A; SDG&E Advice Letter 2672-E, Attachment C.

⁵ See SCE Advice Letter 3139-E, Attachment A (shows \$53.983 million credit due to lower actual vs. authorized O&M spending in 2013), SDG&E Advice Letter 2672-E, Attachment C (shows \$3.369 million credit due to lower actual vs. authorized O&M spending in 2012 and \$23.485 million credit in 2013).

Use of nuclear decommissioning trust funds (Note item #7)

The note assumes that all O&M costs after the shutdown of the plant would be paid through customer rates. In contrast, the settlement calls for SCE and SDG&E to recover their post-shutdown costs from the Nuclear Decommissioning Trusts, rather than ratepayers, whenever possible.⁶ Consistent with the settlement, SCE and SDG&E have pending requests to recover approximately \$434 million from their nuclear decommissioning trust funds for O&M costs incurred between June of 2013 and December 31, 2014.⁷ If the CPUC approves these requests to access the trust funds, approximately \$434 million would be returned to ratepayers.

Conclusion – Under the settlement, ratepayers would receive approximately \$434 million in refunds that are not contemplated under the note.

Contribution to the Greenhouse Gas research (Note item #8)

The note calls for SCE to “donate” \$90 million between 2014-2022 to an agreed-upon entity to perform research on greenhouse gases and climate change. The note does not indicate whether these funds would come from ratepayers or shareholders. The proposed settlement has no provisions addressing any such contributions. The CPUC issued a ruling modifying the settlement to require SCE and SDG&E to contribute \$25 million over 5 years to the University of California for this purpose and specifying that shareholder money (not customer rates) is the source of these contributions. If the note contemplated that the \$90 million would be funded through rates, the final settlement represents a savings of \$90 million. If the note intended that the \$90 million would come from shareholder fund, the impact on ratepayers would be the same under the note and the final settlement.

Conclusion – The settlement results in ratepayer savings of either \$0 or \$90 million depending on whether the note contemplated ratepayer-financed contributions.

Recovery of funds from NEIL and Mitsubishi (Note items #4 and #5)

Both the note and the approved settlement address the allocation of potential litigation proceeds from Nuclear Energy Insurance Limited (NEIL) and Mitsubishi Heavy Industries (MHI). Under the note, the allocation of proceeds from NEIL would go “to customers”. Although the proposed settlement would have allocated 82.5% of NEIL proceeds to ratepayers (and 17.5% to shareholders), the final approved settlement requires that 95% of NEIL proceeds be allocated to ratepayers. Since there have been no recoveries to date from NEIL, it is not possible to determine the difference of allocating 95% vs. 100% of any proceeds to ratepayers.

⁶ Settlement §5(d) & §4.8(b).

⁷ This amount includes post-shutdown O&M costs for 2013 and 2014 incurred by SCE and SDG&E. See SCE Advice Letter 3193-E (seeking \$340 million from trusts for post-shutdown costs between June 7, 2013 and December 31, 2014), SDG&E Advice Letter 2724-E (seeking \$54.59 million from trusts for 2013 post-shutdown costs), SDG&E Application 15-02-006 (seeking \$39.36 million from trusts for 2014 post-shutdown costs),

Under the note, the allocation of proceeds from MHI would be as follows:

	<u>Ratepayers</u>	<u>Shareholders</u>
0-\$200 million	50%	50%
\$201-400 million	30%	70%
\$401-"up to disallowance" ⁸	20%	80%
In excess of "disallowance"	75%	25%

SCE is seeking over \$4 billion from MHI in its arbitration claims. Compared to the note, the proposed settlement is slightly less favorable to ratepayers in the event that recoveries are less than \$800 million (but would be more favorable to ratepayers if recoveries are higher than \$800 million). Under the final approved settlement (as modified by the CPUC), all proceeds would be shared 50/50 between ratepayers and shareholders. The final settlement agreement is far more favorable for ratepayers than the note if total recoveries exceed \$200 million.

Conclusion – The ultimate difference to ratepayers cannot be determined until NEIL coverage is successfully obtained, the arbitration proceedings between SCE and Mitsubishi are resolved, and the final amount of recoveries has been determined.

OII Process (Note items #7(b), #7(c) and #9)

The note calls for SONGS "shutdown" costs through 2017 to be decided in a new "shutdown O&M phase" of the CPUC SONGS OII with "shutdown O&M 2018 and beyond determined in [General Rate Cases]". The settlement does not contain any similar provisions. Under the settlement, the SONGS OII is not continued for this purpose and "shutdown O&M" costs are not collected from customers. The settlement provides that costs relating to "shutdown O&M" are instead financed via decommissioning trust funds and directs the utilities to seek a determination as to the reasonableness of 2014 costs in a separate ongoing CPUC proceeding (A.14-12-007) that includes involvement from a wide range of active stakeholders.

Conclusion – Under the settlement, all post-shutdown costs (beginning in June of 2013) are to be treated as decommissioning expenses and collected from decommissioning trust funds. For 2013-2014, this treatment results in approximately \$434 million in refunds from the decommissioning trust funds. If the Note intended to allow collection of "shutdown O&M" in rates through 2018, the consequences for consumers would be significantly greater.

⁸ The note does not explain how much recovery would be needed to satisfy the "disallowance". SCE and SDG&E would likely have proposed that the "disallowance" be calculated based on any expenses they could not recover under a settlement plus their anticipated recovery of RSG and base plant capital assuming a full rate of return on debt, preferred and shareholder equity.

**SUMMARY OF DIFFERENCES BETWEEN
APPROVED SETTLEMENT AND PEEVEY-PICKETT NOTE**

COST CATEGORY	RATEPAYER SAVINGS UNDER SETTLEMENT
Base plant	>\$200 million
Nuclear fuel	≤\$65 million
Replacement steam generators	\$0 - \$189 million
O&M costs	\$80.9 million
Use of decommissioning trust funds	≥ \$434 million
Greenhouse gas research	\$0 - \$90 million
NEIL/MHI recoveries	TBD based on actual recoveries
TOTAL SAVINGS	\$780 - 1,059 million

Attachment 3

ORA Statement



FOR IMMEDIATE RELEASE

PRESS RELEASE

Media Contact:

Cheryl Cox, Policy Advisor, 415-703-2495, cxc@cpuc.ca.gov

ORA Press Room: <http://www.ora.ca.gov/newsroom.aspx>

**ORA Director Joe Como Response to
Conduct by Southern California Edison and Former CPUC President Michael Peevey to
Undermine the SONGS Settlement Process**

SAN FRANCISCO, April 17, 2015 – The Office of Ratepayer Advocates (ORA), the independent consumer advocate within the California Public Utilities Commission (CPUC) wants at least \$648 million returned to customers of Southern California Edison Company (Edison) and San Diego Gas & Electric Company (SDG&E) because of recently revealed evidence of inappropriate conversations between former CPUC President Michael Peevey and Edison Executive Vice President Stephen Pickett. These two individuals worked in secret to outline an acceptable financial settlement of the San Onofre Nuclear Generating Station (SONGS) closure. This back-channel deal between a regulator and the utility may have undermined the efforts of ORA and The Utility Reform Network (TURN) to negotiate the best deal for ratepayers.

ORA is outraged at the revelations regarding CPUC rule violations that occurred prior to the commencement of the SONGS settlement negotiations, and that Edison's actions have undermined the results of ORA's good faith negotiations to represent the best interests of ratepayers. ORA looks forward to actively participating in any investigation to uncover further wrongdoing.

On February 9, 2015, ORA first became aware of the discussion between Peevey and Pickett when Edison filed with the CPUC a 2-year late ex parte notice of the meeting that occurred in March 2013 in Warsaw, Poland. On Friday April 10, 2015, we learned that the conversation outlined a framework for a SONGS settlement and was memorialized on hotel stationery (commonly referred to as the Hotel Bristol Notes). ORA had not seen the Hotel Bristol Notes until they were publically released one week ago by the California Attorney General.

ORA has reviewed the Hotel Bristol Notes and has made a [comparative analysis](#) with the final SONGS settlement agreement. The Hotel Bristol Notes appear to set a framework for settlement that is similar to the elements of the settlement that was ultimately accepted by the CPUC. The Hotel Bristol



Notes appear to demonstrate the degree to which Peevey and Pickett collaborated to orchestrate a settlement of the SONGS outage investigation. Based on ORA's analysis of the Hotel Bristol Notes and the final settlement agreement, customers still saved at least \$780 million more than the "deal" that Peevey and Pickett had described.

However, ORA cannot honestly say that it got the best deal for ratepayers. Edison was likely able to use its knowledge of Peevey's position to steer the settlement in the direction it wanted. While ORA believes it worked to strike a good deal for ratepayers based on legal precedents, we are troubled by the possibility that we might have been able to strike a better deal.

Conversely, to simply undo the SONGS settlement would not be beneficial to ratepayers. The settlement resulted in a cost savings of \$1.4 billion for utility customers -- \$1.12 billion for Edison customers and \$286 million for SDG&E customers. Customers are not currently required to pay for the defective replacement steam generators as of the date they ceased operating on February 1, 2012. Customers are, however, required to pay the costs associated with SONGS during the time the plant was operable and for other costs not related to the defective replacement steam generator. Separately, customers have paid into a decommissioning trust fund for several decades that will cover the costs to decommission SONGS.

The process for fair dealings at the CPUC had been severely compromised. But to simply invalidate the settlement and go back to the hearing room would essentially give Edison the opportunity to litigate for an outcome that may be worse than the settlement. Edison should not be given a second bite at the apple. But if the CPUC were to scrap the SONGS settlement, ORA is prepared to vigorously litigate for a better outcome.

Alternately ORA recommends, at a minimum, Edison be sanctioned and required to return to ratepayers an additional \$648 million, which represents the difference between ORA's original litigation position and what the settlement provided. Furthermore, as more information is developed in the investigation that determines the extent to which Edison worked to mislead the CPUC by artifice or false statements, Edison should be further sanctioned.

See ORA's [Comparative Analysis](#).

See ORA's [SONGS webpage](#) for details and link to Settlement.

For more information on ORA, please visit www.ora.ca.gov.

Attachment 4

Letter to Assembly Committee

April 13, 2015

Ms. Sue Kately, Chief Consultant
Assembly Utilities and Commerce Committee
State Capitol, Room 5136
Sacramento, California 95814

Dear Ms. Kately:

You have asked for my assessment of the differences between the terms outlined in the Hotel Bristol Notes¹ and the March 27, 2014 settlement proposal negotiated by SCE, TURN, and ORA. It appears to me that SCE managed to improve its position by at least \$919 million, and arguably \$1.522 billion, from what CPUC President Peevey had identified at the Hotel Bristol as “a framework for a possible resolution.”

A probable explanation for the backsliding attributable to TURN’s and ORA’s negotiation efforts is SCE’s one-sided knowledge of what Mr. Peevey considered “acceptable.” Prompt disclosure of ex parte communications like that between Mr. Pickett and Mr. Peevey is an essential prerequisite for a level playing field in regulatory proceedings.

Following the sequence of the Notes regarding the principal areas of difference, I arrive at the \$919 – 1.522 billion amount as follows:

1. The Notes indicate Mr. Peevey would restrict return on the plant investment made prior to the Replacement Steam Generators to a “debt-level return” through 2022. The March 27, 2014 settlement proposal enriches this to include 50% of the cost of preferred stock. SCE’s authorized capital structure in 2013 included 43% debt and 9% preferred stock. The effect of adding the preferred stock component into the March 27, 2014 settlement proposal likely increases the allowed return by 10.5%, assuming rates on debt and preferred stock average to be roughly equivalent over the 10 year period despite market fluctuations. Because of these

¹ SCE’s February 9, 2015 “Late-Filed Notice of Ex Parte Communication” identifies the Notes as written by its Executive Vice President Stephen Pickett to record CPUC President Michael Peevey’s “framework for a possible resolution of the Order Instituting Investigation (OII) that he [Peevey] would consider acceptable but would nonetheless require agreement among at least some of the parties to the OII.”

fluctuations and the opacity of the present value calculation in the March 27, 2014 settlement proposal, I have not attempted any quantification of this increased return.

2. The Notes indicate Mr. Peevey would disallow the entire Replacement Steam Generator investment, while the March 27, 2014 settlement proposal allows recovery of \$ 194 million collected in rates before February 1, 2012. **Ratepayer bottom line: *Peevey framework was more favorable by \$194 million.***

3. The Notes indicate Mr. Peevey would give ratepayers all of any recovery from the NEIL insurance, while the March 27, 2014 settlement proposal would provide the utilities with 17.5% of such recovery. Given the \$409 million accidental outage claim identified in Edison's April 29, 2014 Form 10-Q, this is a \$72 million difference. Because the settlement never identified an amount for the separate accidental property damage claim to be filed with NEIL, I have not attempted to value the 17.5% difference on it. **Ratepayer bottom line: *Peevey framework was more favorable by at least \$72 million.***

4. The Notes indicate Mr. Peevey would allow utility retention of any amounts recovered from MHI as follows: 50% of the first \$200 million; 70% of the next \$200 million; 80% of any additional recovery until the disallowance amount was met; and 25% of any recovery beyond that. The March 27, 2014 settlement proposal awarded the utilities 85% of the first \$100 million; two-thirds of the next \$800 million; and 25% of any recovery above \$900 million. While it is extremely speculative to estimate whether there will be any recovery from MHI, Mr. Peevey's "framework" was \$52 million more favorable to ratepayers for a \$200 million recovery; \$49 million more favorable for a \$300 million recovery; \$45 million more favorable for a \$400 million recovery; and \$33 million more favorable for a \$500 million recovery. It is only in the hyper-optimistic scenario of a recovery from MHI approaching \$700 million that the two approaches converge. **Ratepayer bottom line: *Peevey framework was more favorable by \$33 - \$52 million.***

5. The Notes indicate that Mr. Peevey would restrict recovery of O&M to the amounts conditionally approved in the previous GRC through August 1, 2012. The March 27, 2014 settlement proposal expands O&M recovery to all of 2012 and 2013 with no reasonableness review, minus \$126 million for the incremental Steam Generator Inspection and Repair costs. O&M for August 2012 thru December 2013 totaled \$656 million. **Ratepayer bottom line: *Peevey framework was more favorable by \$530 million.***

6. The Notes indicate that Mr. Peevey would demand SCE make an annual environmental mitigation contribution of \$10 million for nine years from 2014 thru 2022. The March 27, 2014

settlement proposal is silent on this point. **Ratepayer bottom line: Peevey framework was more favorable by \$90 million.**

Significantly, the Notes make no mention of CWIP but the March 27, 2014 settlement proposal rolls CWIP into Base Plant. If the omission of CWIP in the Notes is logically interpreted to preclude recovery of CWIP which never went into service after February 1, 2012, the \$919 -- 938 million difference identified above would be increased by \$584 million. **Ratepayer bottom line: Peevey framework was more favorable by \$584 million.**

To summarize the regress from the Hotel Bristol Notes to the March 27, 2014 settlement proposal:

Enriched return:	No quantification
RSG disallowance:	\$194 million
NEIL insurance claims:	At least \$72 million
MHI recovery formula:	\$33 – 52 million
Excess O&M:	\$530 million
CO ₂ mitigation:	\$90 million
Excess CWIP	<u>\$584 million</u>
TOTAL:	\$1.503 – 1.522 billion

While he has few defenders today, Mr. Peevey's position as identified in the Notes would have provided ratepayers with substantially more than the March 27, 2014 settlement proposal. My point is not to denigrate the negotiating capabilities of TURN or ORA, but to quantify the impact of SCE's unlawful defiance of the CPUC's ex parte requirements. Obviously, Mr. Peevey did not feel strongly enough about his Hotel Bristol definition of "acceptable" to insist that it be imposed on the final settlement after lesser amounts had been agreed to by TURN and ORA.

These are material amounts, and strongly reinforce the concerns expressed earlier by Chairman Rendon about the settlement and the manner in which it was entered into.

Sincerely,

/s/ John L. Geesman
Attorney for Alliance for Nuclear Responsibility

cc: I.12-10-013 service list

Appendix B

Proposed Wording Changes to D.14-11-010

Proposed Wording Changes

FINDINGS OF FACT

- Retain existing Findings of Fact 1 thru 5.
- Rewrite existing Finding of Fact 6 as follows:

6. This ~~is~~was not an all-party settlement.

- Delete existing Findings of Fact 7 thru 26, and replace with the following:

7. On November 25, 2014, the Commission issued Decision (D.) 14-11-040, which adopted the Amended Agreement.

8. The statutory deadline for completion of this OII proceeding has been extended twice. (See D.15-01-037 and D.15-03-043). The proceeding remains open for consideration and potential prosecution of possible Rule 1.1 violations based on conduct of parties and/or their representatives during the course of these proceedings.

9. On April 10, 2015, the California Attorney General provided the Commission a color copy of a two-page document which appeared to be notes from a meeting between SCE Executive Vice President Stephen Pickett and then-President Michael Peevey at the Hotel Bristol in Warsaw, Poland on March 26, 2013. The Commission promptly circulated this document via e-mail to the service list of the OII.

10. On April 27, 2015, the Alliance for Nuclear Responsibility filed and served a Petition for Modification of D.14-11-040, alleging that SCE's oral and written *ex parte* communications with then-President Peevey in the March 26, 2013 meeting, combined with its failure to make timely proper disclosure of such *ex parte* communications, constituted an unfair and unlawful negotiating advantage which invalidated the Commission's determinations in Conclusions of Law 6 and 7 of D.14-11-040.

11. A hearing was held on the Petition for Modification on _____, 2015.

CONCLUSIONS OF LAW

- Retain existing Conclusions of Law 1 and 2.
- Delete existing Conclusions of Law 3 thru 11 and 14 thru 20, and replace with the following:
 3. SCE's failure to make timely proper disclosure of its March 26, 2013 oral and written *ex parte* communications with then-President Peevey were violations of Rule 8.3(c), Rule 8.4, and Cal. Pub. Util. Code §1703(c).
 4. SCE's failure to make timely proper disclosure of its March 26, 2013 oral and written *ex parte* communications with then-President Peevey created an unfair and unlawful bargaining advantage in its negotiation of the Agreement and the Amended Agreement.
 5. SCE's failure to make timely proper disclosure of its March 26, 2013 oral and written *ex parte* communications with then-President Peevey constituted fraud-by-concealment on the parties with which it negotiated, and those other parties which it induced to sign, the Agreement and the Amended Agreement.
 6. SCE's failure to make timely proper disclosure of its March 26, 2013 oral and written *ex parte* communications with then-President Peevey constituted an extrinsic fraud on the parties to the OII.
 7. SCE's unlawful conduct constitutes the extraordinary circumstances which justify the remedies provided in Cal. Pub. Util. Code §1708.
 8. The processes by which the Settling Parties developed the Agreement, submitted it to the Commission, and the Commission considered it, are not consistent with Article 12 of our Rules or principles of due process.
 9. The Amended Agreement fails to meet the requirements of Rule 12.1(d) because it is neither consistent with law nor in the public interest, and it cannot be approved.
 10. It is reasonable to reinstate the proposed decision for Phases 1 and 1A and to order the preparation of a proposed decision for phase 2.
- Renumber and rewrite existing Conclusions of Law 12 and 13 as follows:
 - ~~12~~ 11. SCE shall maintain the SONGSMA and SONGSOMA in order to support its application for reasonableness review of 2014 SONGs-related expenses, until ordered to close the accounts.

~~13~~ 12. SDG&E shall maintain the SONGSBA and SONGSOMA in order to support its application for reasonableness review of ~~2014~~ SONGs-related expenses, until ordered to close the accounts.

ORDERING PARAGRAPHS

- Delete existing Ordering Paragraphs 1 thru 5, and replace with the following:

1. The Administrative Law Judges will prepare and issue a proposed decision for Phase 2.

2. The parties are directed to submit written recommendations, within 30 days of the effective date of this Order, for how the Commission should proceed with the remainder of its investigation.

3. The ratesetting adjustments required by our modification of D.14-11-040 will be addressed in A.13-11-003 (SCE's pending 2015 General Rate Case) and A.14-11-003 (SDG&E's pending 2016 General Rate Case).

- Renumber and rewrite existing Ordering Paragraphs 6 and 7 as follows:

~~6~~ 4. The Proposed Decision for Phases 1 and 1A is hereby ~~withdrawn~~ reinstated.

~~7~~ 5. Investigation 12-10-013, Application (A.) 13-01-016, A.13-03-005, A.13-03-013, A.13-03-014 remain open for consideration and potential prosecution of possible Rule 1.1 violations based on conduct of parties and/or their representatives during the course of these proceedings.

ICTA

- Rewrite first sentence of first paragraph of Summary on p. 2 as follows:

This decision ~~approves~~ modifies D.14-11-040, and withdraws our approval of a settlement agreement between Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) (collectively, the Utilities) and four other settling parties which ~~provides~~ provided resolution of rate recovery issues related to the premature shutdown of San Onofre Nuclear Generating Station (SONGS), following a steam generator tube leak on January 31, 2012.

- Delete subsequent language in Summary until first full paragraph on p. 3, and retain existing paragraphs thru first full paragraph on p. 4, the last sentence of which should be rewritten as follows:

The Settling Parties fairly reflected a diverse array of affected interests in this proceeding.

- Rewrite last sentence of second full paragraph on p. 4 as follows:

Opposing Parties ~~are~~ were optimistic the evidence ~~will~~ would show SCE has whole or partial fault related to the defective RSG design, shifting liability for some costs.

- Retain subsequent paragraph and rewrite first full paragraph on p. 5 as follows:

Based on the entirety of the record established to date, and after thorough consideration of the Settling Parties' arguments, the opposition by Opposing Parties, and other parties' comments, we determined that the modified settlement, ~~is~~ was a reasonable, efficient and timely resolution of this investigation. Although more parties ~~have since~~ subsequently voiced support, it ~~is~~ was not an all-party settlement. Due to belated discovery of oral and written ex parte communications on March 26, 2013 between SCE and then-President Michael Peevey, that were not properly reported by SCE, we cannot find the settlement to have been fairly negotiated and are compelled to withdraw our determination that it was consistent with Rule 12.1(d). Accordingly, we modify D.14-11-010 to remove our approval of the settlement.

- Delete subsequent paragraphs of Summary thru first full paragraph on p. 7.
- Retain subsequent Section 1 Background and Section 2 Procedural History thru second full paragraph on p. 19, the last sentence of which should be rewritten as follows:

It ~~is~~ was not an all-party settlement, and ~~is~~ was strongly opposed by some.

- Retain remainder of Section 2 Procedural History thru first full paragraph on p. 21, and rewrite second full paragraph as follows:

This proceeding was submitted on September 24, 2014, and D.14-11-010 approving the Amended Agreement was issued on November 25, 2014.

- Add the following language to Section 2 Procedural History:

On February 9, 2015, SCE filed “Southern California Edison Company’s (U338E) Late-Filed Notice of *Ex Parte* Communication” reporting a March 26, 2013 meeting between SCE Executive Vice President of External Relations Stephen Pickett and Commission President Michael Peevey at the Hotel Bristol in Warsaw, Poland . On February 10, 2015, A4NR filed a motion requesting that the Commission investigate sanctions against SCE for violations of Rule 1.1 and Rule 8.4. The A4NR motion has not yet been ruled upon.

On April 10, 2015, the California Attorney General provided the Commission a two-page document which appeared to be notes from the meeting between Mr. Pickett and Mr. Peevey at the Hotel Bristol in Warsaw, Poland on March 26, 2013. The Commission promptly produced the document via e-mail to the service list for this proceeding. SCE stated in a press release later on April 10, 2015 that the notes were drafted by Mr. Pickett and contained annotations by Mr. Peevey. On April 13, 2015, SCE filed a supplement to its Late-Filed Notice of *Ex Parte* Communication which attached the notes and asserted that SCE did not have the notes in its possession prior to April 10, 2015.

On April 27, 2015, A4NR filed a Petition to Modify D.14-11-040, alleging that SCE’s oral and written *ex parte* communications with then-President Peevey in the March 26, 2013 meeting, combined with its failure to make timely proper disclosure of such *ex parte* communications, constituted an unfair and unlawful negotiating advantage which invalidated the Commission’s determinations in Conclusions of Law 6 and 7 of D.14-11-040.

We held a hearing on A4NR’s Petition to Modify D.14-11-040, consistent with Cal. Pub. Util. Code §1708, on _____, 2015.

- Delete Sections 3 thru 10, renumber Section 11 as Section 3, and rewrite it as follows:

~~Michel Peter Florio~~ Catherine J.K. Sandoval is the assigned Commissioner and Melanie M. Darling and Kevin Dudney are the co-assigned ALJs in this proceeding.

- Delete Appendix A and Appendix B.