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BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Joint Application of Southern California Edison)
Company (U 338-E) and San Diego Gas &)
Electric Company (U 902-E) to Find the 2014) Application 14-12-007
SONGS Units 2 and 3 Decommissioning Cost) (Filed December 10, 2014)
Estimate Reasonable and Address Other Related)
Decommissioning Issues.)
_____)

**ALLIANCE FOR NUCLEAR RESPONSIBILITY'S NOTICE
OF ORAL AND WRITTEN EX PARTE COMMUNICATIONS**

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NOTICE OF ORAL AND WRITTEN EX PARTE COMMUNICATIONS

Pursuant to California Public Utilities Commission (“CPUC” or “Commission”) Rules of Practice and Procedure 8.1 thru 8.4, the Alliance for Nuclear Responsibility (“A4NR”) provides notice of the following ex parte communications at the Commission’s offices on March 21, 2016. Each communication was initiated by A4NR:

1. A4NR Representatives:

Rochelle Becker, Executive Director, A4NR

David Weisman, Outreach Coordinator, A4NR

John Geesman, Attorney, Dickson Geesman LLP

2. Commission Attendees and Times of Meetings:

(a) At approximately 10:30 a.m., A4NR’s representatives met for approximately 29 minutes with Ehren Seybert, personal adviser to Commissioner Peterman.

(b) At approximately 11:37 a.m., A4NR’s representatives met for approximately 26 minutes with Rachel Peterson and Lester Wong, personal advisers to Commissioner Randolph.

(c) At approximately 2:03 p.m., A4NR’s representatives met for approximately 26 minutes with Christine Hammond, personal advisor to President Picker.

(d) At approximately 2:33 p.m., A4NR’s representatives met for approximately 33 minutes with Matt Tisdale, personal adviser to Commissioner Florio.

3. Description of Communications:

A4NR discussed the Proposed Decision (“PD”) and emphasized that

- Southern California Edison Company (“SCE”) and San Diego Gas & Electric Company (“SDG&E”) failed to meet their burdens of proof that the onsite fuel storage assumption, (i.e., that the federal government will begin accepting spent nuclear fuel nationally in 2024) used in their decommissioning cost estimate is reasonable.
- Three business days after issuance of the PD, SCE and SDG&E abandoned the 2024 assumption in their newly filed Nuclear Decommissioning Cost Triennial Proceeding, A.16-03-004, and substituted a 2028 date instead, although SCE’s filing says its new Palo Verde estimate uses a 2032 date.
- SCE and SDG&E have ignored record evidence of official statements from the federal government which identify 2048 as the predicted opening of a permanent repository.
- SCE and SDG&E have ignored the 2013 decision by the U.S. Court of Appeals for the D.C. Circuit which suspended collections for the Nuclear Waste Fund and declared federal consideration of alternatives to Yucca Mountain, including any proposed interim storage facility, contrary to existing statute. The D.C. Circuit decision labeled the 2048 date “pie in the sky.”
- Continued slippage in the federal government’s removal of spent fuel from the SONGS 2&3 site would have a material impact on decommissioning costs, adding \$149 million (2014 dollars) for every decade of delay.

- The PD misallocated the burden of proof in finding SCE’s and SDG&E’s 2024 assumption reasonable simply because no other party persuasively demonstrated the reasonableness of an alternative date.
- Reliance on a demonstrably unreasonable 2024 date nullifies the PD’s finding that SONGS 2&3 decommissioning costs are adequately funded. Granting the utilities’ request to reduce current trust contributions to zero, with shortfalls absorbed by future customers, eviscerates Commission policies favoring intergenerational equity and devalues the tax-advantaged compounding of investment returns.
- The Commission should maintain the current level of trust contributions for now and defer determination of reasonable onsite spent fuel storage assumptions to A.16-03-004.

A4NR distributed copies of its Opening Comments on the PD, previously served on the parties on March 16, 2016, and a copy is attached to this Notice.

Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN
DICKSON GEESMAN LLP

Date: March 24, 2016

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

ATTACHMENT

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Joint Application of Southern California Edison)
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Estimate Reasonable and Address Other Related)
Decommissioning Issues.)
_____)

**ALLIANCE FOR NUCLEAR RESPONSIBILITY'S OPENING COMMENTS
ON PROPOSED DECISION APPROVING DECOMMISSIONING COST ESTIMATE**

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I. INTRODUCTION.

Pursuant to Rule 14.3 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (“A4NR”) respectfully submits its Opening Comments on the Proposed Decision (“PD”) of Administrative Law Judge Maribeth Bushey in the 2014 SONGS Units 2 and 3 Decommissioning Cost Estimate and Related Decommissioning Issues Joint Application filed by Southern California Edison Company (“SCE”) and San Diego Gas and Electric Company (“SDG&E”).

A4NR’s Opening Comments identify factual and legal errors in the PD regarding the reasonableness of SCE’s and SDG&E’s estimate of Spent Fuel management costs, which *“is premised on the U.S. Department of Energy (“DOE”) starting to receive spent nuclear fuel in 2024, which leads to SONGS spent fuel being scheduled for transfer starting in 2030.”*¹ The PD’s reliance on the 2024 date is the underpinning of its authorization to SCE and SDG&E to reduce decommissioning trust contributions from current customers to zero. SCE calculated that a ten-year delay of its current estimate for removal of spent fuel from the SONGS site would increase costs by \$149 million, and that a 100-year delay would add \$1,490,000,000.² Should changes to the utilities’ current assumption about the duration of onsite spent fuel storage at SONGS prompt a need for contributions from future ratepayers, the Commission’s policies to promote inter-generational equity³ will be eviscerated.

II. THE PD EMBRACES AN UNSUPPORTED 2024 DOE START DATE.

¹ PD, p. 7.

² Transcript, SCE-Bledsoe, p. 281, ln. 24 – p. 283, ln. 26.

³ See D.14-12-082, p. 14, citing D.95-12-055, 63 CPUC2d 570 at 612.

The PD places the Commission in the lonely position of proclaiming allegiance to a purported DOE schedule which has no other known adherents anywhere. A good indicator of the extreme outlier status of the 2024 assumption is the embarrassing spectacle of its abrupt abandonment by SCE and SDG&E just three business days after the PD’s mailing. SCE and SDG&E now assert that DOE will begin accepting spent nuclear fuel in 2028,⁴ and SCE acknowledges that the consultant study on which its current Palo Verde decommissioning cost estimate is based uses a 2032 DOE start date instead.⁵ SCE openly sought to distance itself from the 2024 assumption during this proceeding, indicating in its prepared testimony that *“this schedule is likely to be extended in future updates”*⁶ and estimating under cross-examination a greater than 50% likelihood of such extensions.⁷

The PD cites D.14-12-082 as having *“addressed this [DOE start date] issue”*⁸ but does not appear to comprehend the misgivings voiced by the Commission then. In accepting the utilities’ 2024 assumption for the 2012 Nuclear Decommissioning Cost Triennial Proceeding (“NDCTP”), D.14-12-082 made clear that the 2024 date was derived from *“DOE information which has not been updated for at least one triennial cycle”*⁹(i.e., the 2009 NDCTP). As the Commission stated, *“We find there is little more than speculation in the record to support the projected date ...”*¹⁰ A remarkable feature of the PD’s adoption of this same 2024 date is that SCE and SDG&E failed to update the 2012 NDCTP assumption, despite having earlier adjusted a 2020 date used in the 2009 NDCTP to reflect lack of progress by the federal government.¹¹ By

⁴ A.16-03-004, SCE-01, p. 6.

⁵ A.16-03-004, SCE-05, p. 8.

⁶ Exhibit-01, p. 25, lns. 7 – 9.

⁷ Transcript, SCE-Bledsoe, p. 312, ln. 15.

⁸ PD, p. 18.

⁹ D.14-12-082, p. 22.

¹⁰ *Id.*

leaving intact an assumption SCE admitted it *“adopted about four years ago,”*¹² the PD would have the Commission effectively conclude that we are four years closer to a DOE acceptance date than when the 2012 NDCTP filing was assembled. The PD makes no Findings of Fact to support such a conclusion.

III. THE PD IGNORES DOE’S 2013 ESTIMATE OF A 2048 DATE.

The PD cites SCE’s statement *“that it used the 2024 start date from the previous Decommissioning Cost Estimate because ‘it would be wholly speculative to make any other assumption,’”*¹³ but does not attempt to justify SCE’s and SDG&E’s failure to address DOE’s 2013 announcement of a 2048 start date. SCE testified that it *“is reviewing available information from DOE to determine if the DOE start date assumption requires updating”*¹⁴ and A4NR pointed out the contrary federal information contained in Reference 9 to SCE’s and SDG&E’s Joint Application.¹⁵ As described on the first page of Reference 9, the Generic Environmental Impact Statement (“GEIS”) issued by the U.S. Nuclear Regulatory Commission (“NRC”) with the 10 C.F.R. 51.23 continued storage decision, *“Recently, the U.S. Department of Energy (DOE) reaffirmed the federal government’s commitment to the ultimate disposal of*

¹¹ SCE witness Thomas Palmisano explained that the 2012 NDCTP had adjusted an earlier assumed DOE acceptance date of 2020 (Transcript, SCE-Palmisano, p. 61, Ins. 5 – 17; p. 85, ln. 26 – p. 86, ln. 6.). Transcript, SCE-Palmisano, p. 86, Ins. 16 – 18.

¹² SCE Opening Brief, p. 29.

¹³ PD, p. 19.

¹⁴ Exhibit-01, Appendix A-1, p. A-1-26. SCE’s Opening Brief, p. 9, claimed the utilities’ Decommissioning Cost Estimate *“reflects the most recent, reliable information regarding regulations, technology, and site conditions related to SONGS 2&3 decommissioning.”*

¹⁵ A4NR Opening Brief, pp. 6 – 7; A4NR Reply Brief, pp. 5 – 8; Exhibit 38, p. 1; and A4NR Protest, p. 4.

spent fuel and predicted that a repository would be available by 2048 (DOE 2013).¹⁶ The PD makes no Findings of Fact to support the reasonableness of the 2024 start date assumption in the face of the 2048 estimate by DOE.

IV. THE PD MISALLOCATES THE BURDEN OF PROOF.

The PD appears to attach significance to its observation, *“No party offered an alternative date [for DOE starting to receive spent nuclear fuel] with a persuasive supporting analysis.”¹⁷* More broadly, the PD states that A4NR *“contended that the actual decommissioning costs were likely to be higher [than SCE’s and SDG&E’s estimate] but presented no evidence on the actual amount it believed would be needed for decommissioning.”¹⁸* Neither statement relates to whether SCE and SDG&E demonstrated the reasonableness of their Decommissioning Cost Estimate and rate change requests by a preponderance of evidence.

Read in the context of Finding of Fact 7, and the absence of any attempt in the PD to justify the reasonableness of the utilities’ 2024 start date assumption, these statements in the PD go beyond mere characterization of the record and transform into an unlawful shifting of the burden of proof in a ratesetting proceeding.

A4NR’s presentation of evidence which contradicted the reasonableness of SCE’s and SDG&E’s assumed 2024 DOE start date, and which quantified the impact on the trusts of the

¹⁶ NUREG-2157, p. 1-1, accessible at <http://pbadupws.nrc.gov/docs/ML1419/ML14196A105.pdf>. Page 1-28 identifies “DOE 2013” as “Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste. Washington, D.C. Accession No. ML13011A138.”

¹⁷ PD, p. 19.

¹⁸ *Id.*, p. 8.

potential DOE delays evaluated in the NRC’s GEIS, was sufficient to meet its burden of going forward. A4NR had no burden to identify an alternative DOE start date or calculate a different Decommissioning Cost Estimate. Using a cost metric initially provided by SCE in discovery, then updated by SCE’s rebuttal testimony, A4NR quantified the large financial risks embedded in the utilities’ assumed 2024 DOE start date:

Rather than the roughly 38 years of post-operation SONGS 2&3 onsite SNF storage SCE assumes, A4NR believes a reasonable estimate for trust-sizing would extend at least to the median of the ‘long-term timeframe’ evaluated in the NRC GEIS, if not the full 160 years. Extending the SNF storage period to reflect the 80-year median would cause a conclusion that dry storage costs have been underestimated by \$625.8 million. Using the full ‘long-term timeframe’ analyzed by the NRC GEIS increases this funding deficit to \$1,817.8 million.¹⁹

Finding of Fact 7 obliquely imputes reasonableness to the utilities’ 2024 DOE start date assumption, and their resultant Decommissioning Cost Estimate, simply because none of the other parties “*persuasively demonstrated the reasonableness of an alternative date ...*”²⁰ By this logic, any date specified by SCE and SDG&E would be considered reasonable (even a date 24 years earlier than DOE’s most recently announced intent!) absent an equally specific date persuasively demonstrated by another party. Rather than confront the fundamental choice between apportioning the risk of DOE schedule slippage to present ratepayers or to future ratepayers, the PD reduces its reasonableness review to a pin-the-tail-on-the-donkey contest between speculative dates. Because both SCE and SDG&E propose “*changes in electrical rates or charges*” under Cal. Pub. Util. Code §8327, shifting the burden of proof to other parties²¹

¹⁹ A4NR Opening Brief, p. 7, internal footnotes omitted.

²⁰ PD FOF 7.

cannot satisfy the statutory requirement accurately specified by the PD:

... pursuant to Pub. Util. Code §451 all rates and charges collected by a public utility must be 'just and reasonable,' and a public utility may not change any rate 'except upon a showing before the commission and a finding by the commission that the new rate is justified.' (§454)²²

V. THE PD'S FINDINGS OF FACT ARE DEFICIENT.

Cal. Pub. Util. Code §1705 requires the Commission to make findings of fact on all issues material to its decision in this proceeding. The PD, without discussion of its break with past Commission policy (e.g., *"we are committed to preventing intergenerational inequities whenever possible"*²³), arbitrarily assigns to future ratepayers the entire risk of slippage in DOE's schedule for the acceptance of spent fuel from SONGS 2&3. The prepared utility testimony was matter-of-fact about how any future funding shortfalls will be addressed: *"The SONGS Participants will obtain authorization as necessary through the ratemaking processes to provide for future contributions if required."*²⁴ The PD is nonchalant about this prospect and implicitly treats contributions from current and future ratepayers as fully fungible, noting only that the Commission retains jurisdiction over the reduction of current trust fund collection to \$0.0, *"which is subject to review and possible revision in future Decommissioning Cost Estimate proceedings and Nuclear Decommissioning Cost Triennial Proceedings."*²⁵

²¹ The disagreement between A4NR and ALJ Bushey on this point was also addressed in colloquy at the August 12, 2015 Prehearing Conference. Transcript, pp. 71 – 75, 82 – 88.

²² PD, p. 15.

²³ D.14-12-082, p. 36.

²⁴ Exhibit-01, Appendix A-3, p. A-3-7.

²⁵ PD, p. 20. Even SCE's economist, Dr. Paul Hunt, professed more sensitivity to intergenerational equity concerns: *"I think the Commission should strive to limit as much as possible the responsibility of customers who did not*

As the California Supreme Court has clarified,

Findings of fact by the Public Utilities Commission are essential to afford a rational basis for judicial review and to assist the court in ascertaining the principles relied on by the Commission so that the court can determine whether the Commission acted arbitrarily; additionally, findings are essential to assist the parties in preparing for rehearing or review, to assist others planning activities involving similar questions and to help the Commission avoid careless or arbitrary action.²⁶

The PD makes three findings regarding the utilities' 2024 DOE start date, two of which are irrelevant to whether SCE and SDG&E have met their burdens of proof, and one of which is purely conclusory. Finding of Fact 6²⁷ is irrelevant because no change in electrical rates or charges was considered in D.14-12-082, so the requirements of Cal. Pub. Util. Code §§ 451 and 454 were not at issue as they are here. Finding of Fact 7²⁸, as previously discussed, is irrelevant to whether SCE's and SDG&E's reliance on the 2024 DOE start date was a reasonable basis on which to size the trusts. And the absolute conclusoriness of FOF 8²⁹ renders it opaque for ascertaining the principles relied upon or avoidance of careless or arbitrary action. There is no conclusion of law in the PD addressing the assumed 2024 DOE start date.

The Supreme Court has, occasionally, invalidated commission decisions based on the insufficiency of factual findings or evidence supporting such findings. (See *California*

receive power from the SONGS units to pay for decommissioning ... you would be very concerned about distributing money prematurely if it resulted in an obligation on future customers." Transcript, SCE-Hunt, p. 166, Ins. 15 – 24. Dr. Hunt could not explain how his concerns about intergenerational equity might apply to the extraordinary uncertainty about the timeframe for onsite storage of spent fuel at SONGS: "*I don't know. I've not contemplated that particular question.*" *Id.*, p. 168, Ins. 15 – 16.

²⁶ *California Manufacturers Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 251, 258 – 259.

²⁷ FOF 6: "*The Commission has previously determined that for purposes of making cost estimates in the 2012 Nuclear Decommissioning Cost Triennial Proceeding that it was reasonable to assume that the U.S. Department of Energy will begin to accept Spent Nuclear Fuel for long-term storage in 2024.*"

²⁸ FOF 7: "*No party persuasively demonstrated the reasonableness of an alternative date for U.S. Department of Energy to begin to accept Spent Nuclear Fuel for long-term storage.*"

²⁹ FOF 8: "*For purposes of the 2014 Decommissioning Cost Estimate for SONGS Units 2 and 3, it is reasonable to assume that the U.S. Department of Energy will begin to accept Spent Nuclear Fuel for long-term storage in 2024.*"

Manufacturers, supra, 24 Cal.3d at pp. 259 – 260 [purported justification for rate increase on some categories of customers is “*conservation of natural gas resources*,” but no evidence in record explains why increasing rates on particular customers, and reducing rates for others, results in vindication of expressed policy]; *Greyhound Lines, Inc. v. Public Utilities Com.* (1967) 65 Cal.2d 811, 812 – 813 [finding that the “*[t]he public interest requires the establishment*” “of peak hour bus service is too general to meet requirements of § 1705]; *California Motor Transport Co. v. Public Utilities Com.* (1963) 59 Cal.2d 270, 271 – 275 [single finding of “*public convenience and necessity*” is too general to support approval of certificate sought by trucking company].)

Although it is ordinarily within the Commission’s discretion to determine what factors are material to its decisions, to deny the outsize influence on SONGS 2&3 decommissioning costs of the length of time spent fuel is stored onsite is to ignore the elephant in the room.

VI. THE PD CANNOT OUTFRAN THE EVIDENCE.

Juxtaposed against the admission in the utilities’ prepared testimony that “*DOE currently has no plans, program, or schedule in place for acceptance of utility spent fuel*,”³⁰ selection of any specific date for commencement of DOE would be inherently speculative. Because the DOE start date mechanically drives the assumed duration of the SONGS 2&3 onsite storage requirement, significant delay in this start date – when 18 years of delayed performance of DOE’s 1998 contractual obligations have produced “*no plans, program, or schedule in place*” – will significantly increase the Decommissioning Cost Estimate. Using the

³⁰ Exhibit-01, Appendix A-1, p. A-1-26.

\$149-million-per-decade cost sensitivity which SCE calculated, and testified could be scaled upward and downward linearly,³¹ the Commission can readily quantify the financial risk which the PD summarily transfers from current ratepayers to future ratepayers. By any measure, these are material amounts.

The Gordian knot quality of federal policy for long-term storage of spent nuclear fuel was on full display in the D.C. Circuit's 2013 decision to suspend indefinitely collections from plant operators to the Nuclear Waste Fund established by statute to fund DOE's efforts:

The Secretary's position—his 'non determination'—is purportedly predicated on a Departmental report issued in 2011 termed a 'Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste.' Even if that so-called strategy led to a statutorily required determination, it would still be problematic because, as petitioners point out, the strategy is based on assumptions directly contrary to law.

Most glaring is the conflict between the statutory requirement that sites other than Yucca Mountain cannot even be considered as an alternative to Yucca Mountain, 42 U.S.C. § 10172, and the 'strategy's' assumption that whatever site is chosen, it will *not* be Yucca Mountain. The other conflicts are related to this prime conflict. The 'strategy' suggests that a temporary storage facility might be operational by 2025 and that the temporary facility could be constructed *without* NRC first issuing a license for the construction of a permanent facility. But the statute requires that precondition. The statute is obviously designed to prevent the Department from delaying the construction of Yucca Mountain as the permanent facility while using temporary facilities. 42 U.S.C. § 10168(d)(1). Finally—and this is quite revealing—the strategy assumes that the Department would be required to obtain the consent of the jurisdiction where the permanent depository is to be sited. That is, of course, reflective of the political considerations the Department faces but, unfortunately, it is directly contrary to the statute, which explicitly allows Congress to override a host state's disapproval. 42 U.S.C. § 10135; *accord In re Aiken Cnty.*, 725 F.3d 255, 260 (D.C.Cir.2013) ('[A]n agency may not rely on political guesswork about future congressional appropriations as a basis for violating existing legal mandates.'). Finally, the strategy projects completion of a permanent depository (located somewhere) not until 2048, in contrast to the statute, which directed completion by 1998. 42 U.S.C. § 10222(a)(5)(B). That is truly 'pie in the sky.'³²

³¹ Transcript, SCE-Bledsoe, p. 281, ln. 24 – p. 283, ln. 26.

³² *National Ass'n of Regulatory Utility Comm'rs v. United States Dep't. of Energy*, 736 F.3d 517, 519, (D.C.Cir.2013).

The PD scrupulously avoids acknowledgment of the fiduciary role³³ which the Commission plays in matters concerning the Nuclear Decommissioning Trusts. It is well understood that SCE and SDG&E ratepayers are the ultimate beneficiaries of the trusts, and that the Commission is their sole representative under the master trust agreements. A fiduciary must give “*priority to the best interest of the beneficiary.*” *Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 222. The multi-decade nature of the decommissioning trusts, and the greatly enhanced financial returns of tax-advantaged trust investments compounding over long periods of time, require a more precise delineation of “*best interest of the beneficiary*” than simply invoking an amorphous, undifferentiated class of “*ratepayers*” that is static over time.

In balancing competing fiduciary duties to different generational cohorts of SCE and SDG&E ratepayers, the Commission owes a higher allegiance than manifest in the PD to the priorities articulated by the Legislature in the Nuclear Facility Decommissioning Act of 1985.

Specifically:

- Cal. Pub. Util. Code §8322(b): *It is in the best interests of all citizens of California that the costs of electricity generated by nuclear facilities be **fairly distributed among present and future California electric customers so that customers are charged only for costs that are reasonably and prudently incurred.*** (emphasis added)
- Cal. Pub. Util. Code §8323: *It is the intent of the Legislature in enacting this chapter **to protect electric customers, both present and future, from the risks of unreasonable costs** associated with ownership and operation of nuclear powerplants. To that end, the commission or board with respect to each electric utility owning or operating a nuclear powerplant, shall develop regulations and guidelines that **promote realism in estimating costs**... (emphasis added)*

³³ See D.14-01-036, p. 67; D.00-07-017, COL 1; and D.03-06-070, p. 16.

- Cal. Pub. Util. Code §8325(c): *The commission shall authorize an electrical corporation to **collect sufficient revenues in rates to make the maximum contributions to the fund** established pursuant to Section 468A of the United States Internal Revenue Code and applicable regulations, **that are deductible for federal and state income tax purposes** ... (emphasis added)*

In reconciling its legal obligations with the evidentiary record in this proceeding, the Commission must revise the PD to reflect:

- SCE’s admission in testimony that its 2024 DOE start date assumption would likely be extended,³⁴ and the subsequent abandonment of the 2024 assumption three business days after mailing of the PD;³⁵
- the 24-year gap between the utilities’ 2024 start date assumption, and DOE’s 2013 announcement of a 2048 start date,³⁶ notwithstanding SCE’s claim to be using “*the most recent, reliable information*”;³⁷
- the legal impossibility of an interim storage facility and the “*pie in the sky*” nature of the 2048 date for a permanent facility, without change in federal law, as explained by the U.S. Court of Appeal, D.C. Circuit in suspending the funding for DOE’s long-term spent fuel storage efforts.³⁸

In the face of such facts, the inability to satisfy the requirements of Cal.Pub. Util. Code §§ 451 and 454 is self-evident.

VII. CONCLUSION.

³⁴ Exhibit-01, p. 25, Ins. 7 – 9.

³⁵ A.16-03-004, SCE-01, p. 6; A.16-03-004, SCE-05, p. 8.

³⁶ NUREG-2157, p. 1-1.

³⁷ SCE Opening Brief, p. 9.

³⁸ *National Ass'n of Regulatory Utility Comm'rs v. United States Dep't. of Energy*, 736 F.3d 517, 519, (D.C.Cir.2013).

The factual and legal errors in the PD render unsustainable its determination that SCE and SDG&E met their burdens of proof regarding the reasonableness of the \$396,267,000 (2014 dollars) projection of dry storage costs³⁹ in the Decommissioning Cost Estimate. As stated in A4NR's Opening Brief:

... A4NR's primary recommendation is that current contribution levels be maintained until SCE and SDG&E meet their burdens of proof in a future DCE proceeding. With that proviso, and reiterating its statement at the August 12, 2015 Prehearing Conference that it does not wish to stop or slow down work on decommissioning Units 2&3, A4NR is presently indifferent whether the Commission denies the DCE outright; conditions its approval of the DCE upon a subsequent showing that SNF costs have been adequately funded; or severs the SNF portion and approves the remainder of the DCE.⁴⁰

Pursuant to Rule 14.3(c), supporting findings of fact and conclusions of law are attached as an Appendix to these Opening Comments.

Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN

DICKSON GEESMAN LLP

Date: March 16, 2016

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

³⁹ Exhibit-38, p. 7, A13.

⁴⁰ A4NR Opening Brief, p. 20.

APPENDIX

Changes to Findings of Fact and Conclusions of Law

Findings of Fact

6. ~~The Commission has previously determined that for purposes of making cost estimates in the 2012 Nuclear Decommissioning Cost Triennial Proceeding that it was reasonable to assume that the U.S. Department of Energy will begin to accept Spent Nuclear Fuel for long-term storage in 2024.~~ Assuming that the U.S. Department of Energy will begin to accept Spent Nuclear Fuel for long-term storage in 2024 is inconsistent with announcements made in 2013 and 2014 by the federal government, including the Nuclear Regulatory Commission Generic Environmental Impact Statement identified as “Reference 9” in the Joint Application filed by Edison and SDG&E.

7. ~~No party persuasively demonstrated the reasonableness of an alternative date for the U.S. Department of Energy to begin to accept Spent Nuclear Fuel for long-term storage.~~ The U.S. Court of Appeal, D.C. Circuit, in 2014 ordered the suspension of collections by the U.S. Department of Energy for the Nuclear Waste Fund and declared that federal development of a long-term storage site other than Yucca Mountain, including any interim storage site, is inconsistent with current law and will require an act of Congress.

8. For purposes of the 2014 Decommissioning Cost Estimate for SONGS Units 2 and 3, Edison and SDG&E failed to meet their burdens of proving that it is reasonable to assume that the U.S. Department of Energy will begin to accept Spent Nuclear Fuel for long-term storage in 2024.

Conclusions of Law

1. The 2014 Decommissioning Cost Estimate of \$4.411 billion is reasonable for SONGS Units 2 and 3, except for the failure by Edison and SDG&E to establish the reasonableness of the assumed \$396.267 million cost of dry storage of Spent Nuclear Fuel.
2. SDG&E's estimate of its own decommissioning costs of \$16.549 million for SONGS Units 2 and 3, plus its share of costs to be incurred by Edison, is reasonable, except for the failure by Edison and SDG&E to establish the reasonableness of the assumed \$396.267 million cost of dry storage of Spent Nuclear Fuel.
3. The respective Decommissioning Cost Estimates for Edison and SDG&E should be approved, except for the assumed \$396.267 million cost of dry storage of Spent Nuclear Fuel.
4. Because of Edison's and SDG&E's failure to establish the reasonableness of the assumed \$396.267 million cost of dry storage of Spent Nuclear Fuel, it cannot be determined ~~that~~ the Nuclear Decommissioning Trusts of Edison and SDG&E are sufficiently funded, plus forecasted return on assets, to meet the current Decommissioning Cost Estimates.
5. ~~Edison and SDG&E should be authorized to reduce to \$0.0 their respective annual contribution to the Nuclear Decommissioning Trust and to refund any overcollections via the Nuclear Decommissioning Adjustment Mechanism.~~
6. ~~We similarly find that SDG&E's own decommissioning costs of \$16.549 million is reasonable. The respective Decommissioning Cost Estimates for Edison and SDG&E should be approved.~~