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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.	Investigation 12-10-013
And Related Matters.	Application 13-01-016 Application 13-03-005 Application 13-03-013 Application 13-03-014

ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING ON PARTY FILINGS SUBMITTED ON FEBRUARY 15, 2018 AND ADDITIONAL INFORMATION TO BE PROVIDED BY PARTIES

Summary

This ruling addresses information provided in recent filings submitted by parties, and modifies the current proceeding schedule. This ruling receives the "other agreements" referenced in the January 30, 2018 Settlement Agreement[1]

[1] The 2018 Settlement Agreement refers to Attachment 1 to the Joint Motion for Adoption of Settlement Agreement filed on January 30, 2018 and entered into by Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), the Alliance for Nuclear Responsibility (A4NR), the California Large Energy Consumers Association (CLECA), California State University (CSU), Citizens Oversight dba Coalition to Decommission San Onofre (Citizens Oversight), the Coalition of California Utility Employees (CUE), the Direct Access Customer Coalition (DACC), Ruth Henricks, the Office of Ratepayer Advocates

Footnote continued on next page

into the evidentiary record, and addresses additional information needed from the parties. In addition, this ruling also requires parties to file individual or joint testimony that includes responses to specific questions set out in Attachment A to this ruling.

Background

The *Joint Ruling of Assigned Commissioner and Administrative Law Judge Granting in Part and Denying in Part the Joint Motion of the Alliance for Nuclear Responsibility, the California Large Energy Consumers Association, California State University, Citizens Oversight, the Coalition of California Utility Employees, the Direct Access Customer Coalition, Ruth Henricks, the Office of Ratepayer Advocates, San Diego Gas & Electric Company (U 902-E), Southern California Edison Company (U 338-E), Southern California Edison Company (U 338-E), the Utility Reform Network, and Women's Energy Matters to Stay Proceeding in Investigation 12-10-013 Et Al.* was issued on February 6, 2018 (February 6, 2018 Joint Ruling). The February 6, 2018 Joint Ruling:

1. Required each of the Joint Parties to submit a declaration as to whether there are any additional agreements that have been entered into with any other party, sub-set of parties, or third parties that reference or are contingent upon the Commission adopting the 2018 Settlement Agreement[2] by February 15, 2018;

(ORA), The Utility Reform Network (TURN), and Women's energy Matters (WEM) (collectively the Joint Parties).

[2] The 2018 Settlement Agreement refers to the Settlement Agreement entered into by the Joint Parties attached as Attachment 1 to the Joint Motion for Adoption of Settlement Agreement filed on January 30, 2018 by the Joint Parties.

2. Required SCE and SDG&E (collectively, the Utilities) to file a motion to enter the Utility Shareholder Agreement[3] into the evidentiary record; and
3. Required Southern California Edison Company, Ruth Henricks, and Citizens Oversight to file a motion to enter the Federal Court Agreement[4] into the evidentiary record

On February 15, 2018, A4NR, CLECA, CSU, CCUE, DACC, ORA, the Utilities, TURN, and WEM (collectively the Requesting Parties) served and filed declarations addressing whether the individual entity had entered into any additional agreements that are contingent upon the Commission adopting the January 30, 2018 Settlement Agreement submitted by the Joint Parties[5] as required by the February 6, 2018 Ruling.

Ruth Henricks and the Citizens Oversight (collectively, the "Objecting Parties") are parties to the Federal Court Agreement and intervenors in this proceeding. Neither party submitted declarations in compliance with the February 6, 2018 Joint Ruling, nor did either party join in the motion submitted by SCE on February 15, 2018 requesting that the Federal Court Agreement be admitted into the evidentiary record. Instead Objecting Parties submitted a

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[3] The Utility Shareholder Agreement is attached as Attachment A to the Motion of San Diego Gas & Electric Company and Southern California Edison Company to Enter Utility Shareholder Agreement into the Evidentiary Record dated February 15, 2018.

[4] The "Federal Court Agreement" is an agreement between Southern California Edison Company, Ruth Henricks, the Citizens Oversight Inc., Nicole Murray Ramirez, Neil Lynch, Hugh Moore, David Keeler, Frances Karl Holtzman, and Roger Johnson to resolve current federal litigation in the case of *Citizens Oversight, Inc. et al. v. CPUC*, et al., No. 15-55762 (9th Circuit 2015) and *Citizens Oversight, et al. v. California Public Utilities Commission*, et al. No. 3:14-cv-02703 (S.D. Cal. 2014). The Federal Court Agreement was attached as Attachment A to the February 15, 2018 filing of SCE.

[5] The Joint Parties consist of all of the Requesting Parties, Ruth Henricks, and the Citizens Oversight.

Response in Objection to the Joint Ruling of Assigned Commissioner and Administrative Law Judge Filed 5 (sic) February 2018.[6] The Objecting Parties also objected "to the CPUC requirement they file declarations identifying any other agreements on the grounds that the order is vague and ambiguous and does not identify any legal authority for the directive."[7]

On March 2, 2018 the Joint Parties submitted additional information requested in the February 6, 2018 Joint Ruling as to a comparison of the party positions with the outcome in the proposed 2018 Settlement Agreement, and a reference document as to which provision of the 2014 Settlement Agreement[8] are altered by the proposed 2018 Settlement Agreement. The Joint Ruling required the parties to provide an "underline strikeout" version of the 2014 Settlement Agreement showing how the proposed Settlement Agreement alters the existing agreement. The parties instead submitted (as Appendix D to the Joint Parties March 2, 2018 filing) "a version of the 2014 Agreement that is marked to identify terms and conditions modified by the 2018 Agreement…"[9] The parties state that:

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[6] The response mistakenly has the ruling listed as being filed on the 5th instead of the 6th of February.

[7] Ruth Henricks' and Coalition to Decommission San Onofre's Response in Objection to Joint Ruling of Assigned Commissioner and Administrative Law Judge Filed 5 (sic) February 2018 at 3.

[8] The 2014 Settlement Agreement is the agreement adopted in D.14-11-040.

[9] Joint Parties March 2, 2018 filing at 5.

> Although the 2018 Agreement has the effect of modifying certain terms and conditions of the 2014 Agreement, as illustrated by Appendix D, the 2018 Agreement is a separate agreement, not a restatement of the 2014 Agreement. If approved by the Commission, the 2018 Agreement will have legal effect starting on the Cessation Date (as defined in the 2018 Agreement).[10]

Appendix D presents the terms and conditions of the 2014 Settlement Agreement not altered by the 2018 Settlement Agreement in unmarked black text. Appendix D presents terms and conditions of the 2014 Settlement Agreement that are altered by the 2018 Settlement Agreement in highlighted text with a column in the right margin that identifies the corresponding provisions of the 2018 Settlement Agreement that alters the highlighted terms and conditions.

Discussion

Other Agreements

The February 6, 2018 Joint Ruling required specific parties to file and serve motions to enter the "other agreements" identified in the Joint Motion into the evidentiary record in this proceeding. These other agreements are: 1) the Federal Court Agreement; and 2) the Utility Shareholder Agreement. Both of these "other agreements" are referenced and defined within the 2018 Settlement Agreement.

SDG&E and SCE submitted a Joint Motion to Enter the Utility Shareholder Agreement into the Evidentiary Record on February 15, 2018 as directed in the February 6, 2018 Joint Ruling. SCE submitted a Motion to Enter the Federal

[10] Joint Parties March 2, 2018 filing at 5.

Court Agreement into the Evidentiary Record of I.12-10-013 on February 15, 2018. This ruling accepts both agreements into the record as follows:

1. The Utility Shareholder Agreement is identified and marked as exhibit Joint Utilities-1.
2. The Federal Court Agreement is identified and marked as exhibit SCE-58.
3. This ruling admits both Exhibit Joint Utilities-1, and Exhibit SCE-58 into the evidentiary record of the proceeding.

Objecting Parties February 15, 2018 Filing

The February 6, 2018 Joint Ruling directed all of the Joint Parties, including Ruth Henricks and the Citizens Oversight, to file declarations as to whether the party has entered into any other agreements that reference or are contingent upon the Commission adopting the 2018 Settlement Agreement. Ruth Henricks and Citizens Oversight were also directed to file a motion jointly with SCE to have the Federal Court Agreement admitted into the evidentiary record. Ruth Henricks and Citizens Oversight instead filed a response objecting to the Joint Ruling on February 15, 2018. Both parties failed to submit the required declarations, and the motion to admit the Federal Court Agreement in to the evidentiary record. We consider this response in objection a motion for reconsideration by these parties and deny such motion.[11] SCE filed the required motion requesting to admit the Federal Court Agreement into the evidentiary record (this ruling admits the Federal Court Agreement into the evidentiary record), we therefore deem such objection to the directive to file the motion to

[11] The objection by Ruth Henricks and Citizens Oversight is overruled, and noted for the record.

enter the Federal Court Agreement into the evidentiary record moot and no further action on that portion of the ruling is required.

Party Declarations

In the February 6, 2018 Joint Ruling, each of the Joint Parties were directed to provide information in the form of a declaration as to whether any agreements outside of the 2018 Settlement Agreement have been entered into by any of the parties. This information is required to fully assess whether sufficient factual and legal considerations are before the Commission to determine the entire scope, all material terms, of the 2018 Settlement Agreement. Rule 12.1 of the Commission Rules of Practice and Procedure[12] requires a proposed settlement to "contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the ground on which adoption is urged."

Pursuant to Rule 12.1(d), the Commission is required to carefully review any proposed settlement (in its entirety) and to independently determine whether the settlement is reasonable in light of the entire record, consistent with the law, and in the public interest. The Joint Parties were (February 6, 2018 Joint Ruling) directed to identify any other agreements that they entered into individually or collectively, or of which they individually or collectively have knowledge that are contingent upon the Commission adopting the 2018 Settlement Agreement or reference the 2018 Settlement Agreement. If there are no other agreements entered into by the Joint Parties (individually, collectively, or a sub-set of) that relate to the 2018 Settlement Agreement, then each party was

[12] All references to rules are to the Commission Rules of Practice and Procedure unless otherwise noted.

to provide a declaration attesting to the fact that no such agreements exist among the parties, any sub-set of the parties, or with any of the individual Joint Parties (collectively or individually) with third parties pursuant to Rule 1.1[13]. Each of the Joint Parties, except for Ruth Henricks and the Citizens Oversight individually filed and served the service list in this proceeding with such declaration on February 15, 2018.

Ruth Henricks and the Citizens Oversight filed a response objecting to the February 6, 2018 Joint Ruling on February 15, 2018. Both parties failed to submit the required declarations. We consider this response in objection a motion for reconsideration by these parties and deny such motion.[14] Unless or until we receive the declarations from all Joint Parties concerning whether there are or are not additional agreements that are contingent upon the Commission adopting the 2018 Settlement Agreement or that reference the 2018 Settlement Agreement we do not know whether all material terms are before the Commission to properly assess the 2018 Settlement Agreement in accordance with Rule 12. Therefore, Ruth Henricks and Citizens Oversight are directed to submit the declarations required by the February 6, 2018 Joint Ruling no later than 5pm on April 15, 2018.

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[13] Rule 1.1 states:

> Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

[14] The objection of Ruth Henricks and Citizens Oversight is overruled, and noted for the record.

We remind the parties that failure to comply with a Commission ruling is a violation of Rule 1.1, and the proceeding protocols attached to the January 6, 2018 Ruling. Each day that a party fails to comply with a Commission ruling may be considered a continuing violation. The Commission may issue an Order to Show Cause that could result in sanctions against the party if the Commission finds the party has committed such a violation.[15]

The January 30, 2018 Proposed Settlement and March 2, 2018 Responses

Rule 12.1(a) requires a proposed settlement to "contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the ground on which adoption is urged." Rule 12.1(d) requires that the Commission "not approve settlements, whether contested or uncontested, unless the settlement in reasonable in light of the whole record, consistent with law, and in the public interest." Based on the information provided to date we require additional factual and legal information to assess the scope of the 2018 Settlement Agreement and to determine whether the 2018 Settlement Agreement meets the requirements of Rule 12.1(d). The parties are to to address the issues and questions individually or jointly[16] set forth in Attachment A to this ruling in prepared testimony. We intend to review prepared testimony, and hold evidentiary hearings on issues that require further clarification if necessary. The parties are encouraged to present the 2018 Settlement Agreement as Joint Testimony with either joint or individual

[15] *See* PUC 2111 and 2108.

[16] To the extent parties choose to offer the 2018 Settlement Agreement and responses to the questions in Attachment A to this ruling as joint testimony a panel of witnesses that represent a cross section of the Joint Parties is to be available to respond to questions.

responses to the issues set out in Attachment A as testimony. Parties may also submit testimony consistent with the scope set forth in the January 8, 2018 Joint Ruling.[17]

After these outstanding issues are addressed on the record, we will issue a proposed decision based on that record. This proposed decision may or may not accept the 2018 Settlement Agreement as proposed, but will be consistent with the requirement that rates be just and reasonable.

We therefore conclude the information provided by the Joint Parties to date is insufficient to fully assess the 2018 Settlement Agreement and require additional information as set forth in Attachment A to this ruling. Parties shall serve prepared testimony, either jointly or individually, consistent with the schedule set forth below.

Schedule

The modified proceeding schedule shall be as set forth below:

[17] Ruling of Assigned Commissioner and Administrative Law Judge Setting Schedule and Clarifying Issues for Evidentiary issued January 8, 2018 in this proceeding.

Event	Date
Individual or joint testimony to be served; Stipulation of Undisputed Facts; and Joint Case Management Statement.	April 27, 2018
Status Conference (Los Angeles)	May 2 , 2018 10:00 a.m.
Public Participation Hearing Sea Country Senior and Community Center – Grand Ballroom 24602 Aliso Creek Rd., Laguna Niguel, CA 92677	May 2, 2018 6:00 p.m.
Reply Testimony if needed	May 11, 2018
Evidentiary Hearings (Los Angeles)	May 23 and 24, 2018 10:00 a.m.-3:30pm (parties to arrive at 9:30 a.m. to address off the record administrative and logistical matters. Parties are to be prepared to begin hearings- go on the record- at 10:00 a.m.).
Concurrent Opening Briefs Filed (briefs may be filed individually or jointly) [A request for oral argument must be included with party[ies] opening briefs]	June 15, 2018
Concurrent Reply Briefs Filed (briefs may be filed individually or jointly)	June 22, 2018
PPH	July 18, 2018
Proposed Decision	TBD
Oral Argument (if requested)	TBD

IT IS RULED that:

1. The parties are to submit testimony individually or jointly consistent with this ruling. The Joint Parties or a sub-set of the parties may offer the 2018 Settlement Agreement as joint testimony.

2. Ruth Hendricks, and Citizens Oversight shall serve and file the declarations required by the February 6, 2018 ruling, to the extent that these parties continue to support the 2018 Settlement Agreement, no later than April 15, 2018.

3. The schedule is modified as set forth in this ruling.

Dated March 22, 2018, at San Francisco, California.

/s/ MICHAEL PICKER	/s/ DARCIE L. HOUCK
Michael Picker	Darcie L. Houck
Assigned Commissioner	Administrative Law Judge

ATTACHMENT A

A. Nuclear Fuel Investment

Commission Decision (D.)14-11-040 adopted a settlement agreement (2014 Settlement Agreement) concerning the premature closure of the San Onofre Nuclear Generating Station (SONGS). The 2014 Settlement Agreement included provisions concerning Nuclear Fuel Investment (NFI) cost allocation and recovery. The NFI provisions are set forth in sections 4.6 and 4.7 of the 2014 Settlement Agreement. As stated in D.14-11-040, the total NFI as of December 31, 2013 came to $593 million with $477 million allocated to Southern California Edison Company (SCE) and $116 million to San Diego Gas & Electric Company (SDG&E). The 2014 Settlement Agreement allowed the utilities to recover these entire amounts respectively, plus 5% "of the proceeds from selling nuclear fuel, net costs such as costs for storing and preparing fuel for sale, etc. The [95%] ratepayer share of net proceeds will reduce the NFI recovered in rates."

The proposed 2018 Settlement Agreement would alter the NFI-related cost allocation provisions as set forth in sections 3.2(e), 3.5(d) and 3.5(e) of the 2018 Settlement Agreement. The 2018 Settlement Agreement proposes to make changes where the NFI is no longer recoverable in rates from and after the Cessation Date, and 100% of nuclear fuel sales shall be retained by the utilities (*see* section 3.2(e)). Please answer the following questions with respect to NFI and the sale of nuclear fuel:

1. Broken down by utility, please detail how much of the $593 million NFI the Utilities have recovered through rates to date. This should include the dollar amount Utilities have recovered, and the amounts attributable to capital and rate of return.
2. Section 3.5(d) states that "no disallowances, adjustments, or offsets of any kind shall be made to rates in respect of any amounts the Utilities could have received or avoided, but did not receive or avoid, in respect of the acquisition, sale or other disposition of Nuclear Fuel Investment or M&S." Does this mean that the Utilities will not seek recovery of any and all costs going forward as to the nuclear fuel investment (i.e. storage and maintenance costs, or other costs associated with maintaining and marketing the nuclear fuel)? And if so, would this be from the Cessation Date going forward, or from the effective date of D.14-11-040?
3. Will the Utilities continue to seek recovery of nuclear fuel contract cancellation costs in the nuclear decommissioning triennial proceeding, or will shareholders be responsible for these costs as part of the exchange for the Utilities retaining 100% of the nuclear fuel sales?
4. With respect to nuclear fuel:
    a. On November 20, 2014, the date D.14-11-040 was approved by the Commission and the "Effective Date" under the 2014 Settlement

Agreement, how much of SONGS' nuclear fuel was available for sale, and what was its per unit and total market price?

b. Since November 20, 2014, have the Utilities sold any of SONGS' nuclear fuel? If so, please detail when all of these sales occurred, the total amount of fuel sold in each sale, the per unit price of each sale, the total dollar amount of each sale, and the amounts distributed (credited) to ratepayers and Utilities as per the 95% / 5% allocation in the 2014 Settlement Agreement. Also provide totals to date detailing how much nuclear fuel has been sold, the dollar amount that fuel has been sold for, and the amounts distributed (credited) to ratepayers and Utilities as per the 95% / 5% allocation, if any.

c. What is the current amount of nuclear fuel that is or will be available for sale?

d. How do the Utilities forecast future sales of nuclear fuel? What was the forecast on November 20, 2014 for the amount of fuel detailed in 2(a)? What is the Utilities' most recent forecast for the remaining quantity of nuclear fuel? Please identify at least two independent forecasts of nuclear fuel prices that can be used for comparison.

B. <u>Greenhouse Gas Program</u>

Section 3.4 of the 2018 Settlement Agreement modifies section 4.16 of the 2014 Settlement Agreement by reducing the utility pledge amount to create a Research, Development, and Demonstration (RD&D) program with a goal of deploying new technologies, methodologies, and/or design modifications to reduce greenhouse gas emissions from $25 million to $12.5 million. The 2018 Settlement Agreement also provides that the $12.5 million be directed to California State University and specifically excludes the University of California from being eligible to participate in the program (section 3.4(h) of the 2018 Settlement Agreement).

1. Is this the appropriate proceeding to address creation of a new RD&D program, particularly given the history behind the inclusion of this program in the 2014 Settlement Agreement? How would such a program fit into the broader framework of California's greenhouse gas emission reduction programs?
2. Section 3.4(d) states that "[i]t is expected that Utility personnel who are currently engaged in Utility technology programs shall also be engaged in the competitive grant proposal process described in Section 3.4(b) of [the 2018 Settlement] Agreement, including solicitation of grants, awards of grants, and administration of grants (including any associated reporting requirements). The costs of such personnel shall continue to be recovered in full via general rates, Electric Program

Investment Charge (EPIC) funding, and/or other Commission-approved programs, and such costs shall not reduce the New Contribution Amount."

a. The new RD&D program appears to have costs that the 2018 Settlement Agreement anticipates will be recovered from ratepayers. What is the anticipated cost to ratepayers for engagement by Utility personnel in the competitive grant proposal process, including solicitation of grants, awards of grants, and administration of grants (including any associated reporting requirements)?
b. Do the Utilities anticipate having to hire additional personnel to meet the requirements of the engaged activities described in section 3.4(d) of the 2018 Settlement Agreement?
c. If the Utilities intend to use EPIC funds for engagement of Utility personnel in the new RD&D program as described in section 3.4(d) of the 2018 Settlement Agreement, why would the new program not be considered part of the Utilities Commission-approved plans under EPIC? Why would the program not be required to adhere to EPIC's program requirements or other requirements as deemed appropriate by the Commission (see Section 3.4(c) of 2018 Settlement Agreement)?

3. Section 3.4(h) states that the University of California shall not be eligible to participate in the competitive grant proposal process described in Section 3.4(b) of the 2018 Settlement Agreement or otherwise receive any funds pursuant to Section 3.4 of the 2018 Settlement Agreement or Section 4.16 of the 2014 Settlement Agreement.
   a. Are any other entities excluded from participating in the new RD&D program created by the 2014 Settlement Agreement and 2018 Settlement Agreement other than the University of California? If not, is it appropriate for the Commission to specifically exclude only the University of California? What support is there in the record for this provision of the 2018 Settlement Agreement?
   b. Does the University of California (individual campus) have unique or specialized expertise in the type of research and development that the program intends to foster? Does California State University have unique or specialized expertise in the type of research and development that the program intends to foster?
   c. The parties should also consider to what extent a wholesale exclusion of the University of California from participation creates potential due process concerns, and address such concerns either in testimony or briefing in this matter.

C. Mitsubishi Heavy Industries

Section 4.11(c) of the 2014 Settlement Agreement adopted in D.14-11-040 requires the utilities and ratepayers to split the net recoveries, i.e. "Litigation Balance," from Mitsubishi 50/50. Section 3.2(d) of the 2018 Settlement Agreement alters this allocation by allowing the utilities to "retain all amounts received from MHI [i.e. Mitsubishi] in 2017 pursuant to the award issued on March 13, 2017…." With respect to the net recoveries from MHI, please answer the following questions:

1) Provide a table detailing the amount awarded (total, and per utility), litigation costs (total, and per utility, as well as amounts utilities required to pay for MHI legal costs), and the resulting litigation balance (total, and per utility).
2) Under section 4.11(c) of the 2014 Settlement Agreement, has any of the amount recovered from MHI been transferred (credited) to ratepayers? If so, please detail the amount(s) transferred.
3) Discuss the reasonableness of the Utilities retaining 100% of the amount recovered from MHI as described in the 2018 Settlement Agreement as opposed to splitting that amount 50/50 as ordered in D.14-11-040. Responses to this issue are not intended to delve into confidential settlement discussions, however there needs to be additional support for this provision in the record.
4) Confirm that the amount, if retained by the Utilities, will be applied toward legal costs for the MHI arbitration, and the Utilities will not seek any additional recovery for Utilities' or MHI legal costs associated with the MHI arbitration.
5) As stated in 3.2(d) of the 2018 Settlement Agreement, the Utilities previously "credited customers approximately $5 million in proceeds received from MHI." More recently, pursuant to SDG&E Advice Letter 3127-E, ratepayers were credited $1.246 million and $0.393 million in 2014 and 2017 respectively. Does section 3.2(d) require the amounts previously credited to ratepayers be returned to the Utilities?

(END OF ATTACHMENT A)