Decision 18-07-037 July 26, 2018

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

DECISION ON THE JANUARY 30, 2018
JOINT MOTION FOR ADOPTION OF SETTLEMENT AGREEMENT

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DECISION ON THE JANUARY 30, 2018 JOINT MOTION FOR ADOPTION OF SETTLEMENT AGREEMENT

Summary

The California Public Utilities Commission grants the Joint Motion of the Alliance for Nuclear Responsibility, the California Large Energy Consumers Association, California State University, Citizens Oversight doing business as (dba) Coalition to Decommission San Onofre, the Coalition of California Utility Employees, the Direct Access Customer Coalition, Ruth Henricks, the Office of Ratepayer Advocates, San Diego Gas & Electric Company, Southern California Edison Company, The Utility Reform Network, and Women's Energy Matters (2018 Settling Parties) and adopts the Settlement the 2018 Settling parties entered into and executed (the 2018 Settlement Agreement) with the modifications set forth in this decision. The 2018 Settlement Agreement, as modified (the 2018 Revised Settlement Agreement)[1], resolves the Commission's investigation 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.

The decision adopts the majority of the 2018 Settlement Agreement with modifications to Section 3.4. The modifications eliminate Section 3.4 as set forth in the 2018 Settlement Agreement and replaces it with a new Section 3.4 as set forth below.

This proceeding shall remain open.

[1] The 2018 Revised Settlement Agreement refers to the 2018 Settlement Agreement as modified consistent with Ordering Paragraph 2 of this decision.

1. Background[2]

In January 2012, the owners of the San Onofre Nuclear Generating Station (SONGS) nuclear power plant, Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) (collectively the Utilities) took Unit 3 of the plant offline because of a failure of replacement steam generators manufactured by Mitsubishi Heavy Industries (MHI) that were installed in 2011. At that time, SONGS Unit 2 was in a scheduled refueling outage at the end of cycle 16. SONGS Unit 2 had the same replacement steam generators manufactured by MHI, which were installed in 2010. The steam generators malfunctioned due to a design deficiency in the in-plane component of the fluid elastic instability modeling of the tubes inside the replacement steam generators that caused excessive wear in the tubing. Since both Units experienced similar problems of excessive wear in their replacement steam generator tubing, as a precaution both Units 2 and 3 were taken offline in 2012 and not restarted. In June 2013 SCE announced plans to permanently shut down the plant.[3]

Pursuant to Public Utilities Code § 455.5,[4] the California Public Utilities Commission (the Commission) issued an Order Instituting Investigation (OII) on October 25, 2012,[5] initiating a multi-phase investigation into the actions and

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[2] For a more detailed summary of the background information of this proceeding see D.05-12-040, D.14-11-040, D.15-12-060, May 9, 2016 Joint Ruling, and December 13, 2018 Joint Ruling. Also see the responses filed by the Utilities on June 2, 2016, and the briefs filed by the parties on July 7 and July 21, 2016, as well as the October 10, 2017 Joint Ruling in this proceeding and January 8, 2018 Joint Ruling in this proceeding.

[3] See Order Instituting Investigation (I.)12-10-013 at 3-4 and D.14-11-040 at 8-9.

[4] All code section references are to the Public Utilities Code unless otherwise specified.

[5] Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3 issued on October 25, 2012. The OII was issued prior to SCE's June 2013 announcement that SONGS Units 2 and 3 would be permanently shut down.

expenses associated with the extended outages at SONGS. The scope of the investigation included the causes of the outages, the Utilities' responses, the future of the SONGS Units 2 and 3, and the resulting effects on the provision of safe and reliable electric service at just and reasonable rates.[6]

The OII identified rate recovery issues including: (1) review of all post-2011 Operations & Maintenance (O&M) costs and capital spending; (2) costs of scheduled Request for Offers (RFO) and emergent activities; (3) removal of non-useful generation assets from rate base; and (4) various questions around the costs, viability, and prudency of the Steam Generator Replacement Program (SGRP) approved in Decision (D.)05-12-040.[7]

SCE and SDG&E were ordered to separately record all SONGS-related expenses, beginning as of January 1, 2012, into a SONGS outage memorandum account (SONGSOMA),[8] subject to refund, and report the expenses to the Commission on a regular basis.[9] The Commission later confirmed the order in decisions on the General Rate Case (GRC) applications for each utility.[10]

Within the OII, the Commission stated its intention to consolidate other future proceedings to encompass review of the full range of post-outage costs

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[6] OII at 21.

[7] The Commission in adopting D.05-12-040 authorized the SGRP that failed in 2012 shortly after the steam generators were replaced. This decision describes the project, proposed costs, and the reasonableness review that the Commission reserved the right to conduct after implementation of the SGRP.

[8] I.12-10-013 at 10-13 and Ordering Paragraph (OP) 4. The SONGSOMA is different than SCE's SONGS Memorandum Account (SONGSMA) authorized by D.12-11-051 and SDG&E's SONGS Balancing Account (SONGSBA) created by D.06-11-026 and most recently reauthorized D.13-05-010.

[9] SCE reports to the Commission monthly on its SONGSOMA and SDG&E reports on its SONGSOMA quarterly.

[10] D.12-11-051 at Findings of Fact (FOF) 366, Conclusions of Law (COL) 21-22, OP 9, 10 (SCE); D.13-05-010 at FOF 19, COL 7, 8 (SDG&E).

and activities.[11] Subsequently, SCE and SDG&E each filed applications for reasonableness review of 2012 recorded O&M, non-O&M costs, and capital spending,[12] for approval of the totality of the SGRP costs,[13] and for power purchased during 2012, including replacement of power lost due to the outages.[14] In these applications, the Utilities sought full recovery in rates for all of the identified expenses.

The proceeding was divided into several phases. The following legal issues were also briefed by the parties: 1) review and refund 2012 estimates of O&M and capital spending, as deferred by the GRC decision; and 2) removal of any SONGS assets and associated O&M from rate base pursuant to § 455.5, prior to SCE's 2015 GRC. The Assigned Commissioner and Administrative Law Judge issued a ruling resolving the questions as follows:[15]

> (1) Regarding Phase 1, the Commission has legal authority to conduct the deferred final reasonableness review of SONGS-related expenses (100%) sought in SCE's 2012 GRC and immediately order refunds, if warranted.
>
> (2) Regarding Phase 2, the Commission has authority pursuant to § 455.5 to remove SONGS assets and associated expenses from rate base in this consolidated proceeding which has been categorized as ratesetting.

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[11] OII at 8-9.

[12] A.13-01-016 (SCE), A.13-03-013 (SDG&E).

[13] A.13-03-005 (SCE), A.13-03-014 (SDG&E).

[14] A.13-04-001 (SCE), A.13-03-013 (SDG&E).

[15] Assigned Commissioner and Administrative Law Judge Ruling on Legal Matters (April 30, 2013).

Several parties participated in Phase 1 and Phase 1A of the proceeding. In addition to the Utilities, these parties are Office of Ratepayer Advocates (ORA),[16] The Utility Reform Network (TURN), Alliance for Nuclear Responsibility (A4NR), World Business Academy (WBA), Women's Energy Matters (WEM), Joint Parties (comprised of National Asian American Coalition, Ecumenical Center for Black Church Studies, Latino Business Chamber of Greater Los Angeles and Chinese American Institute for Empowerment), and Citizens Oversight dba Coalition to Decommission San Onofre (CDSO).[17] Ruth Henricks (Henricks) and other parties filed several, primarily procedural, motions during the proceeding.

In addition, the ALJs sought input about the OII issues from the public during 2013. They held four public participation hearings regarding the SONGS outages: two in Costa Mesa on February 21, 2013, and two in San Diego on October 1, 2013.

A proposed decision (PD) for Phase 1/1A was published for comment on November 19, 2013.[18] A Pre-Hearing Conference (PHC) for Phase 2 occurred on July 12, 2013, and evidentiary hearings were held October 7 to 11, 2013. While the PD for Phase 1/1A was pending and before a PD for Phase 2 was issued, a

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[16] ORA was formerly known as Division of Ratepayer Advocates (DRA) and filed as such during these proceedings prior to the reopening of the record.

[17] Other entities which were granted party status in the OII and participated at some point are: Friends of the Earth (FOE), the California Large Energy Consumers Association (CLECA), Direct Access Customer Coalition jointly with the Alliance for Retail Energy Markets (DACC/AReM).

[18] On January 14, 2014, four Commissioners (Peevey, Florio, Sandoval and Peterman) participated in a noticed all-party meeting to discuss the Phase 1/1A PD; at the time, the seat of the fifth Commissioner was vacant.

sub-set of the parties filed a motion requesting that the Commission adopt a proposed settlement (Proposed 2014 Settlement Agreement).[19]

On April 3, 2014, SCE, SDG&E, TURN, ORA, FOE, and the Coalition of California Utility Employees (CCUE) (collectively the 2014 Settling Parties) filed and served a Joint Motion for Adoption of Settlement (the 2014 Joint Motion). The 2014 Settling Parties asserted the proposed 2014 Proposed Settlement Agreement, if approved, "would resolve all issues in the OII and consolidated proceedings."[20] A4NR, Henricks, and WEM opposed the 2014 Proposed Settlement Agreement on the grounds that, among other things, Phase 3 of the proceeding was intended to address issues that would allow the Commission to determine whether SCE acted prudently in managing the SGRP, and that the Proposed 2014 Settlement Agreement did not meet the requirements of Rule 12 of the Commission's Rules of Practice and Procedures.[21]

On May 7, 2014 (or earlier), comments on the 2014 Joint Motion were filed by WBA, CDSO, Joint Parties, A4NR, CCUE, CLECA, DACC/AReM, WEM, and Henricks.[22] On May 14, 2014, the ALJs[23] conducted an evidentiary hearing regarding the 2014 Proposed Settlement Agreement.[24] On May 22, 2014, Reply Comments on the 2014 Joint Motion were filed by Henricks, Joint Parties, the 2014 Settling Parties, SCE, CDSO, A4NR, and WEM.

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[19] On March 20, 2014, SCE, SDG&E, TURN, and ORA served a notice of settlement conference to be held on March 27, 2014.

[20] 2014 Joint Motion at 1.

[21] All Rules are referencing the Commission's Rules of Practice and Procedure unless otherwise stated.

[22] Henricks filed an "Objection" which the Docket Office characterized as "comments."

[23] At this time there were two (2) ALJS, ALJ Darling and ALJ Dudney assigned to the proceeding.

[24] Commissioners Peevey and Florio observed the hearing.

On September 5, 2014, the assigned Commissioner[25] and the then-assigned ALJs issued a Ruling Requesting the 2014 Settling Parties to Adopt Modifications (Modification Ruling) to the 2014 Proposed Settlement Agreement. The Modification Ruling identified provisions that needed to be clarified or modified to meet the public interest. The 2014 Settling Parties disputed the view that the identified provisions were not in the public interest; nonetheless, they voluntarily accepted the requests and amended the 2014 Proposed Settlement Agreement to accomplish the Commission's public interest objective.[26] Several non-settling Parties filed comments ten days later confirming their continued opposition to the 2014 Proposed Settlement Agreement and the proposed modifications. On September 24, 2014, the 2014 Settling Parties filed and served an "Amended and Restated Settlement Agreement" (the 2014 Settlement Agreement) which included the requested modifications.

On November 25, 2014, the Commission issued D. 14-11-040 which approved the 2014 Settlement Agreement among SCE, SDG&E, ORA, TURN, FOE and CCUE. The 2014 Settlement Agreement resolved all substantive issues in the OII.[27]

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[25] Commissioner Michael Florio was assigned to the proceeding from initiation through March 30, 2015. Commissioner Catherine Sandoval was the assigned Commissioner from March 30, 2015 through December 31, 2016. President Michael Picker was then assigned and remains the assigned Commissioner for this proceeding.

[26] Joint Response to Assigned Commissioner and Administrative Law Judge Ruling dated September 19, 2014 (Modification Ruling).

[27] This included resolution of A.13-03-005 and A.13-03-005. The replacement of the four steam generators was approved by the Commission in D. 05-12-040 which ordered a reasonableness review of the utilities' expenses related to the replacement project after completion. The proceeding however remained opened to address whether violations of Rule 1.1 by certain parties had occurred. See D.14-11-040 at OP 7:

> 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

(footnote continued on next page)

Henricks and CDSO filed an Application for Rehearing (AFR) on December 18, 2014.[28] Henricks and CDSO based the AFR on grounds that include:

(1) The Commission acted without, or in excess of, its powers or jurisdiction;

(2) The Commission has not proceeded in the manner required by law;

(3) The findings in the decision of the Commission are not supported by substantial evidence in light of the whole record; and

(4) The order or decision of the Commission was procured by fraud or was an abuse of discretion. [29]

On February 9, 2015, SCE late-filed a Notice of *Ex Parte* Communication regarding a meeting that occurred on or about March 26, 2013, between SCE's then-Executive Vice President Stephen Pickett and the Commission's then President, Michael Peevey, at an industry conference in Warsaw, Poland regarding ratemaking treatment for SONGS post-shutdown costs.[30]

On August 5, 2015, based on SCE's admissions, the then-assigned ALJ ruled that SCE had committed ten separate violations of Rule 8.4 by failing to report oral and written communications between SCE and Commission decision makers which met the definition of *ex parte* communication as set forth in the Commission's Rules of Practice and Procedure (Rules). The Ruling also ordered

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(footnote continued from previous)

prosecution of possible Rule 1.1 violations based on conduct of parties and/or their representatives during the course of these proceedings.

[28] AFR of D.14-11-040 filed by Henricks and CDSO on December 18, 2014.

[29] *Id.* at 2.

[30] D.15-12-016 at 5.

SCE to show cause why it should not be held in contempt of the Commission and sanctioned for ten violations of Rule 8.4 as well as Rule 1.1, the Commission's Ethics Rule.

A4NR on April 27, 2015, as amended on May 26, 2015, and ORA on August 11, 2015, both filed Petitions for Modification (PFM) of D.14-11-040 alleging that had SCE properly and timely filed the *ex parte* notices, the terms of the 2014 Settlement Agreement would have been more favorable to ratepayers. On June 24, 2015, TURN filed its response to A4NR's PFM. TURN's response described the issues created by the series of events recounted above and concluded that

> recent revelations of extensive private conversations and deal making between Edison and Mr. Peevey create the public perception that the settlement process was fundamentally and irreparably tainted and drove outcomes that are unfair to ratepayers. . . . and that the most direct way to restore public confidence on these matters is to reopen the proceeding and determine the allocation of SONGS-related costs without any possible involvement by Mr. Peevey and based exclusively on testimony, evidentiary hearings and briefs.[31]

On December 8, 2015, the Commission issued D.15-12-016 which affirmed eight violations of Rule 8.4 by SCE stemming from its failure to report, before or after, *ex parte* communications that occurred between SCE and a Commissioner. That decision also found that SCE twice violated Rule 1.1, the Commission's Ethics Rule, as a result of the acts and omissions of SCE and its employees which misled the Commission, showed disrespect for the Commission's Rules, and undermined public confidence in the agency. The Commission imposed a fine of

[31] TURN Response to PFMs dated June 24, 2015 at 2-4.

$16,740,000 for the violations, and ordered SCE to create and maintain a website tracking all non-public individual communications related to these consolidated proceedings by SCE representatives with Commissioners, their advisors, or other Commission decision makers.

On May 9, 2016 the then assigned Commissioner and then assigned ALJ issued a ruling reopening the record and setting a briefing schedule. On December 13, 2016 the then assigned Commissioner and ALJ issued a Joint Ruling directing the parties to meet and confer, and to provide further recommendations for procedural action and substantive modifications to D.14-11-040 no later than April 28, 2017. On April 26, 2017 all parties participating in the meet and confer sessions requested an extension to the meet and confer deadline from April 28, 2017 to August 15, 2017. On May 26, 2017 the ALJ issued a ruling granting the extension. On August 15, 2017 the parties notified the Commission that a settlement could not be reached at that time and the parties filed further recommendations on how to conclude the proceeding.[32]

On October 10, 2017 the assigned Commissioner and ALJ issued a ruling setting a status conference.[33] The Parties filed status conference statements on October 30, 2017. A status conference was held on November 7, 2017. On January 8, 2018 the assigned Commissioner and ALJ issued a ruling setting a schedule and clarifying issues for evidentiary hearings.

SCE, SDG&E, A4NR, CLECA, CSU, CDSO, CCUE, DACC, Henricks, ORA, TURN, and WEM (collectively the 2018 Settling Parties) entered into a settlement

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[32] On August 15, 2017 CLECA, DACC, and WEM filed joint recommendations, ORA, TURN, A4NR, SCE, and SDG&E filed individual recommendations. Henricks and CDSO did not file further recommendations on August 15, 2017.

[33] Ruling of Assigned Commissioner and Administrative Law Judge Setting Status Conference dated October 10, 2017.

and filed a motion[34] on January 30, 2018 requesting that the Commission adopt this settlement (Attachment 1 to the 2018 Joint Motion).[35] We consider and issue our determination as to the proposed settlement agreement entered into between the 2018 Settling Parties on January 30, 2018 (2018 Settlement Agreement) in this decision.

2. Positions of the Parties

2.1. The Settling Parties

The 2018 Settling Parties[36] filed the 2018 Joint Motion on January 30, 2018 requesting that the Commission adopt the 2018 Settlement Agreement. The 2018 Settling Parties affirmed on April 27, 2018 in a jointly filed case management statement[37] that they continue to support the 2018 Settlement Agreement as submitted on January 30, 2018 with no modifications.

2.2. Friends of the Earth

Friends of the Earth (FOE) actively participated in the proceeding and was a signatory to the 2014 Settlement Agreement in D.14-11-040. FOE has not withdrawn its support of the 2014 Settlement Agreement. FOE also participated in the Settlement Conference on January 30, 2018.[38] FOE actively supports the 2018 Settlement Agreement.

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[34] Joint Motion for Adoption of Settlement Agreement dated January 30, 2018 (the 2018 Joint Motion).

[35] The 2018 Joint Motion, including Attachment 1 (the 2018 Settlement Agreement) is attached to this decision as APPENDIX 1.

[36] A4NR, CLECA, CSU, CDSO, CCUE, DACC, Henricks, ORA, SDG&E, SCE, TURN, and WEM are collectively referred to as the 2018 Settling Parties.

[37] Joint Case Management Statement of the 2018 Settling Parties, and FOE filed on April 27, 2018. (April 27th Joint Case Management Statement).

[38] April 27th Joint Case Management Statement.

2.3. Public Watchdogs

Public Watchdogs filed a motion requesting party status on February 28, 2018.[39] Public Watchdogs opposes the 2018 Settlement Agreement and raised seven (7) issues regarding the 2018 Settlement Agreement. Public Watchdogs' motion was opposed by the 2018 Settling Parties. The assigned Commissioner and ALJ granted Public Watchdogs limited party status as to the seventh issue raised in its motion.[40]

Public Watchdogs' seventh issue concerned whether the 2018 Settlement Agreement "challenges the Commission's legal authority and process."[41] The challenge to authority and process raised by Public Watchdogs centers around the Federal Court Agreement[42] referenced in the 2018 Settlement Agreement. The Federal Court Agreement was entered into between SCE (a defendant in the Federal Court Actions) and two intervenors in this Commission proceeding (Henricks and CDSO[43]) and several other persons who are not intervenors in this Commission proceeding (plaintiffs/appellants in the Federal Court Actions). The Federal Court Agreement would require CDSO, Henricks, and the other

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[39] Motion for Party Status of Public Watchdogs filed on February 28, 2018.

[40] *Id.* at 6.

[41] *Id.*

[42] SCE-58, Agreement to Resolve *Citizens Oversight, Inc. et al. v. CPUC et al.*, No. 15-55762 (9th Cir. 2015) and *Citizens Oversight, Inc., et al. v. California Public Utilities Commission, et al.*, No. 3:14-cv-02703 (S.D. Cal. 2014) (collectively the Federal Court Actions), dated January 30, 2018 (Federal Court Agreement).

[43] CDSO is a "project" of Citizens Oversight. The Articles of Incorporation and Bylaws for Citizens Oversight, Inc., as well as the Fictitious Business Name Statement of Citizens Oversight, Inc. doing business as (DBA) Coalition to Decommission San Onofre are attached to CDSO notice of intent to claim intervenor compensation filed with the Commission on September 23, 2013.

plaintiffs/appellants to dismiss the Federal Court Actions,[44] and would also provide for a payment of roughly $5.4 million in legal fees to these intervenors' attorneys if the Commission adopts the 2018 Settlement Agreement.

Public Watchdogs asserts that the Federal Court Agreement sets a precedent that could lead to regulated utilities entering into these types of agreements in the future with other party opponents in rate cases to avoid litigation over disputed issues. Further, Public Watchdogs asserts that the Federal Court Agreement is contingent upon the Commission adopting the 2018 Settlement Agreement and therefore threatens the purpose of the intervenor compensation program as it creates an "incentive for utilities to buy the cooperation of intervenors outside the court."[45]

2.4. Other Parties

No other parties have asserted a position in opposition to the 2018 Settlement Agreement.

3. 2018 Settlement Agreement

3.1. Terms of the 2018 Settlement Agreement

The 2018 Settling Parties reached a mutually agreeable position on all disputed issues in this proceeding, as set forth in the 2018 Settlement Agreement. ORA filed the 2018 Joint Motion on behalf of the 2018 Settling Parties on January

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[44] CDSO (through Citizens Oversight) and Henricks (and additional individuals that are not party to this proceeding) filed a lawsuit in federal court, *Citizens Oversight, Inc. et al., v. California Public Utilities Commission et al*., Case No.: 14-CV-02703-CAB-NLS (the Federal Court Action), asserting that they were unlawfully charged for the defective SGRP that led to the opening of this OII. The case was dismissed in the District Court for lack of subject matter jurisdiction, and the plaintiffs appealed to the Ninth Circuit Court of Appeals on the issue of the Commission's satisfaction of state notice and comment requirement; this appeal is currently pending.

[45] Motion for Party Status of Public Watchdogs at 6.

30, 2018.[46] The 2018 Settling Parties assert that the 2018 Settlement Agreement "resolves the issues in this Order Instituting Investigation (OII), is reasonable in light of the record, comports with applicable law, and is in the public interest."[47] The 2018 Settling Parties request that the Commission adopt the 2018 Settlement Agreement in its entirety without change.[48]

The following information summarizes key terms and provisions of the 2018 Settlement Agreement.

- **Key Definitions:**
  - **Cessation Date**:[49] The date on which the combined remaining balance of the SONGS Regulatory Assets of the Utilities equals $775 million (excluding deferred tax assets). The Cessation Date is estimated to be December 19, 2017, assuming the Commission approves in the ERRA Proceeding SCE's proposal to apply the DOE Proceeds to reduce SCE's SONGS Regulatory Assets, in which case SCE's SONGS Assets will equal $624 million (excluding deferred tax assets) and SDG&E's SONGS Regulatory Assets will equal $151 million. In the event the Commission does not approve SCE's proposal in the ERRA Proceeding to apply the DOE Proceeds to reduce SCE's SONGS Regulatory Assets, the Cessation Date is estimated to be April 21, 2018, in which case SCE's SONGS Regulatory Assets will equal $636 million (excluding deferred tax assets) and SDG&E's SONGS Regulatory Assets will equal $139 million.
  - **Implementation Date**:[50] the date on which the rate change resulting from the 2018 Settlement Agreement is implemented

[46] See 2018 Settlement Agreement attached to Joint Motion as Attachment 1.

[47] See 2018 Joint Motion at 2.

[48] See 2018 Joint Motion at 2 and 16; and the April 27th Joint Case Management Statement at 1.

[49] 2018 Settlement Agreement at Section 1.8.

[50] *Id.* at Section 1.15.

by the Utilities in accordance with Section 3.3 of the 2018 Settlement Agreement.

- **Nuclear Fuel**: [51] All assets to which the Utilities hold title containing uranium products designed to be used as fuel for a nuclear reactor, in whatever form, including U308, UF6, enriched uranium product, and conversion and enrichment services required to produce and sell those products.
- **Overcollection Amount**:[52] All SONGS Costs collected in rates on or after the Cessation Date and before the Implementation Date.
- **Power Charge Indifference Adjustment (PCIA):**[53] As stated in Commission Decision 16-09-044, a charge "assessed by a utility on departing load customers to cover generation costs incurred on that customer's behalf before the customer decided to leave bundled service."
- **Refund End Date**:[54] The date of the Utility's next scheduled rate change following the Implementation Date. The Refund End Date will occur as soon as practical after the Approval Date. If the Approval Date occurs prior to October 1, 2018, the Refund End Date will occur no later than January 1, 2019.
- **SONGS:**[55] San Onofre Nuclear Generating Station Units 2 and 3.
- **SONGS Cost**:[56] Base Plant, Materials and Supplies (M&S) Investment, Nuclear Fuel Investment, and Construction Work in Progress (CWIP) authorized to be recovered under the 2014 Settlement Agreement.

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[51] *Id.* at Section 1.21.

[52] *Id.* at Section 1.22.

[53] *Id.* at Section 1.24.

[54] *Id.* at Section 1.25.

[55] *Id.* at Section 1.26.

[56] *Id.* at Section 1.28.

- **SONGS DA Ratemaking Consensus Protocol**:[57] The Direct Access (DA) Customer Ratemaking Consensus Protocol for SONGS Outage and Retirement, an agreement among SCE, SDG&E, CLECA, the Alliance for Retail Energy Markets, and DACC to ensure that the PCIA continues to achieve bundled customer indifference and that the impacts of the SONGS outages and retirement are borne by bundled and departing load customers equitably and symmetrically, as approved by the Commission in Decision 14-05-003.
- **SONGS Regulatory Assets:**[58]
  - For SCE, consistent with the manner in which SCE has previously reported to the Commission, SONGS Regulatory Assets are defined as the Net Book Value of Base Plant, CWIP, M&S Investment and Nuclear Fuel Investment, equal to $624 million as of December 19, 2017, assuming the Commission approves in the ERRA Proceeding SCE's proposal to apply the DOE Proceeds to reduce SCE's SONGS Regulatory Assets.
  - In the case of SDG&E, consistent with the manner in which SDG&E has previously reported to the Commission, SONGS Regulatory Assets are defined as the present value of the future revenues expected to be provided to recover the allowable cost of that abandoned plant and return on investment, if any, shall be reported as a separate new asset. The discount rate used to compute the present value is SDG&E's incremental borrowing rate. As of December 19, 2017, SDG&E's SONGS Regulatory Assets are equal to $151 million.
- **SONGS Revenue Requirement**:[59] The total amount of revenue required to recover SONGS Costs and associated income and property taxes (including the effect of deferred taxes), including a return on those investments and

[57] *Id.* at Section 1.29.

[58] *Id.* at Section 1.30.

[59] *Id.* at Section 1.31.

depreciation expenses determined in accordance with the 2014 Settlement Agreement.

- **STAMA**:[60] Either Utility's SONGS Technical Assistance Memorandum Account. SCE's STAMA was established on July 17, 2013, through Advice Letter 2922-E. SDG&E's STAMA was established on July 17, 2013, through Advice Letter 2502-E.

- **Cessation of Certain Collections**:

Section 3.2 of the 2018 Settlement Agreement provides that the Utilities "will cease collecting in rates the revenue requirement associated with all costs and amounts authorized to be recovered under the existing 2014 Agreement."[61] This cessation of collections will occur on what the 2018 Settlement Agreement defines as the "Cessation Date."[62] The Cessation Date occurs when the combined remaining balance of the SONGS regulatory assets of the Utilities equals $775 million (excluding deferred tax assets[63]).

The Cessation Date depends on whether the Commission approves SCE's request in A.16-04-001 to apply $71.555 million in Department of Energy (DOE) proceeds to reduce the SONGS Regulatory Asset. If the Commission adopts

[60] *Id.* at Section 1.32.

[61] 2018 Settlement Agreement at Section 3.2(a).

[62] See definition of Cessation Date at Section 1.8 of 2018 Settlement Agreement .

[63] Section 3.2(b) of the 2018 Settlement Agreement states "[t]he deferred tax asset recorded by SCE, which is estimated to be $23 million as of the Cessation Date, is in addition to the SONGS Costs and also will not be recovered in rates."

SCE's request the Cessation Date is December 19, 2017.[64] If the Commission does not adopt SCE's request the Cessation Date is April 21, 2018.[65]

The Utilities SONGS Revenue Requirement from December 19, 2017 through February 1, 2022 is estimated at $873 million in nominal dollars.[66]

- **Prior Collections**:

Rates collected prior to the Cessation Date will be retained by the Utilities.[67] Under the 2018 Settlement Agreement there will be no changes to SCE Advice Letters 3367-E and 3139-E, and SDG&E Advice Letters 2859-E and 2672-E.[68] This provision allows the Utilities to retain the amounts set out in these Advice Letters to offset SONGS Litigation Costs, in addition to 5% of the negative balance in the Nuclear Electric Insurance Limited (NEIL) Outage Memorandum Subaccount consistent with Section 4.11(c)(ii) of the 2014 Settlement Agreement. The Utilities also retain the amounts received from MHI as part of the award issued on March 13, 2017 by the International Chamber of Commerce International Court of Arbitration in Case No. 19784/AGF/RD (ICC Arbitration), with the exception of the SDG&E ratepayer credit as shown in Table 1 of SDG&E Advice Letter 3127-E. Previous credits to ratepayers, approximately $5 million, will be retained by ratepayers.[69]

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[64] On this date, SCE's regulatory assets will equal $624 million (excluding deferred tax assets) and SDG&E's regulatory assets will equal $151 (excluding deferred tax assets). See 2018 Settlement Agreement at section 1.8.

[65] On this date SCE's regulatory assets will equal $636 million (excluding deferred tax assets) and SDG&E's regulatory assets will equal $139 million. See 2018 Settlement Agreement at section 1.8.

[66] 2018 Joint Motion at 7.

[67] 2018 Settlement Agreement at Section 3.2(c).

[68] *Id.* at Section 3.2(d)

[69] *Id.* at Section 3.2(d).

- **Nuclear Fuel Investment**:

The Utilities, under the 2018 Settlement Agreement will retain all proceeds from the sale of nuclear fuel. The Utilities would not recover Nuclear Fuel Investment (NFI) in rates after the Cessation Date.[70] After review of the proposed 2018 Settlement Agreement as presented by the 2018 Settling Parties, the assigned Commissioner and ALJ requested additional information as to the NFI provisions of the 2018 Settlement Agreement.[71] The 2018 Settling Parties provided the additional information requested in the Joint Stipulation.[72]

The 2018 Settling Parties provided information on how much of the $593 million NFI has been recovered through rates to date, including the amounts attributable to capital and rate of return. In Table 1: SONGS Nuclear Fuel Investment the 2018 Settling Parties provide details as to the amounts collected in rates towards the NFI from February 1, 2012, through February 28, 2018. Table 1 also provides information as to the regulatory assets balances without consideration of the 2018 Settlement Agreement. The 2018 Settling Parties also provide a Reconciliation Table that accounts for certain adjustments.[73] Table 2 shows a beginning Nuclear Fuel Regulatory Asset of $486.9 million (February 2012) with a subtotal balance as of February 28, 2018 of $179.6 million for SCE;[74]

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[70] *Id*. at section 3.2(e).

[71] Assigned Commissioner and Administrative Law Judge's Ruling on Party Filings Submitted on February 15, 2018 and Additional Information to be Provided by Parties issued March 22, 2018 at 11.

[72] April 27th Joint Stipulation at 3-10.

[73] April 27th Joint Stipulation, Table 2: Reconciliation Table at 5.

[74] Customer Collection as of February 28, 2018 for the Nuclear Fuel Regulatory Asset as to SCE total $289.6 million.

and a Nuclear Regulatory Asset of $120.9 million (February 2012) with a subtotal balance as of February 28, 2018 of $46.6 million for SDG&E.[75]

The costs for the NFI include, but are not limited to, costs incurred in order to store the NFI pending sale and costs incurred in order to render the nuclear fuel saleable.[76] After the Cessation Date the Utilities will not seek recovery for any and all costs related to the NFI. Any amounts recovered in rates after the Cessation Date will be refunded to customers of the respective Utilities. The Utilities will retain the proceeds from the future sales of the NFI.[77]

- **Nuclear Decommissioning**:

The 2018 Settlement Agreement does not impact the Nuclear Decommissioning Trusts, non-SONGS costs, or SONGS-related costs that were not authorized in the 2014 Settlement Agreement.[78] Non-Utility parties to the 2018 Settlement Agreement reserve the right to oppose proposals for recovery in future Commission proceedings for decommissioning costs and certain SONGS-related costs. Non-utility parties also reserve the right to propose treatment for future proceeds from spent fuel litigation with DOE.[79]

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[75] Customer Collection as of February 28, 2018 for the Nuclear Fuel Regulatory Asset as to SDG&E total $73.4 million.

[76] Joint Submission of SCE, SDG&E, TURN, ORA, FOE, CCUE of Amended Settlement Agreement in Compliance with Assigned Commissioner and Administrative Law Judges' Ruling Ex. B (2014 Settlement Agreement) §2.18.

[77] The 2014 Settlement Agreement states that ratepayers would be credited for the proceeds of any future sales of the NFI minus 5% of the sales that would be retained by the Utilities. Any additional monetary benefit to ratepayers that results from cessation of recovery in rates as of the Cessation Date would be offset by SCE's retention of sale price of the nuclear fuel.

[78] 2018 Settlement Agreement at Section 3.2(f).

[79] *Id.* at Section 3.5(e) and (f).

- **MHI Arbitration**:

Pursuant to the 2014 Settlement Agreement, the Utilities would credit customers 50% of any net recovery from MHI (after deduction of legal fees).[80] MHI recovery refers to recoveries that were anticipated from litigation before the ICC Arbitration on claims filed by the Utilities against MHI regarding the failure of the replacement steam generators that MHI supplied to SONGS.[81] The 2018

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[80] Section 4.11 of the 2014 Settlement Agreement set out a procedure where the Utilities record MHI litigation costs and recoveries in their MNLMAs, and a procedure for distributing litigation recoveries to ratepayers. The Joint Parties explain how litigation costs and recoveries were tracked in accordance with the 2014 Settlement Agreement at 20 fn. 41.

> Litigation costs are recorded as positive entries and litigation recoveries as negative entries. Section 4.11(b) [of the 2014 Settlement Agreement] provides that, if an MNLMA contains a negative balance on the last day of any calendar year-i.e., if the recorded litigation recoveries from MHI exceeded the recorded litigation costs for that year-then the Utilities distribute to ratepayers their portion of the net balance as determined by the sharing formula in Section 4.11(c) of the 2014 Settlement Agreement. In that event, the MNLMA resets to zero. If, on the other hand, an MNLMA contains a positive balance on the last day of any calendar year-i.e., if the recorded litigation costs exceeded the recorded litigation recoveries- then the Utilities carry that balance over to the following year without making any distribution to ratepayers.

The amounts recorded are set forth in Table 6 at 21 and Table 7 at 22 of the April 27th Joint Stipulation.

[81] SCE reported in its Form 8-K United States Securities and Exchange Commission dated March 13, 2017 that:

> [t]he arbitration tribunal, in a 2-1 decision, found MHI liable for breach of contract but rejected other claims. The tribunal found that damages were subject to contractual limitations on liability. Accordingly, the tribunal awarded the claimants $125 (SCE's share
>
> $98 million) in damages, in addition to $45 million previously paid by MHI (SCE's share $35 million). In addition, the tribunal ordered the claimants to pay MHI $58 million for legal costs (SCE's share $45 million). The tribunal rejected MHI"s counterclaims. The resulting net recovery to SCE is approximately $52 million.

Also see Form 8-K United States Securities and Exchange Commission, reported by SDG&E dated March 13, 2017. SDG&E reports that the damage award when offset for the legal costs awarded is approximately $66.9 million for the SONGS co-owners. SDG&E's portion of the damage award is $25 million that is reduced by the award to MHI by approximately $11.6 million with a net amount of $13.4 million to SDG&E.

Settlement Agreement has no further recovery sharing between Ratepayers and the Utilities. Section 3.2(d) of the 2018 Agreement modifies Section 4.11 of the 2014 Settlement Agreement in that the Utilities are to retain all amounts received from MHI in 2017 except the amount SDG&E credited ratepayers as set forth in Advice Letter 3127-E and previous credits to customers of approximately $5 million.

Upon review of the proposed 2018 Settlement Agreement the assigned Commissioner and ALJ required additional information to assess this provision and issued a ruling with a number of questions requesting that the parties clarify the amounts recovered, credited, and retained as to the MHI litigation. The ruling also requested additional information as to whether the Utilities would be responsible for any remaining litigation costs, and whether any of the MHI proceeds that have already been credited would be transferred back to the Utilities.[82]

The April 27th Joint Stipulation includes two tables[83] setting out the amounts recorded in the Utilities Mitsubishi Net Litigation Memorandum Accounts (MNLMA) and the amounts distributed to customers at the end of 2014 and 2017. In addition to the tables set forth in the April 27th Joint Stipulation, the 2018 Settling Parties confirm that SCE and SDG&E have credited customers $4.029 million and $1.246 million, respectively, in 2014 from amounts received by MHI in 2012 and that SDG&E credited ratepayers an additional $0.393 million in 2017 from amounts received from MHI as a result of the ICC Arbitration decision. The April 27th Joint Stipulation confirms that "the Utilities will not

[82] April 27th Joint Stipulation at 20-25.

[83] Table 6: 2014 MNLMA at 21 of the April 27th Joint Stipulation; and Table 7: 2017 MNLMA at 22 of the April 27th Joint Stipulation.

include the Utilities' or MHI's legal costs associated with the MHI arbitration in their historical costs in future General Rate Cases."[84] The amounts previously credited to ratepayers will not be returned to the Utilities.[85]

- **NEIL Outage Memorandum Subaccount:**

The Utilities will retain amounts reported in Advice Letters to offset SONGS litigation costs as well as 5% of the NEIL Outage Memorandum Subaccount balance.[86]

- **Implementation of Rates**:

Section 3.3(a) of the 2018 Settlement Agreement requires the Utilities, within 45 days of Commission approval, to file Tier 2 Advice Letters that detail the rate changes resulting from the 2018 Settlement Agreement. The Utilities will refund any overcollections to ratepayers collected after the Cessation Date.[87]

- **Greenhouse Gas Research Contributions and Program:**

The $25 million contribution to the University of California (UC) contained in the 2014 Settlement Agreement has been eliminated by Section 3.4 of the 2018 Settlement Agreement.[88] In lieu of the funding targeted to UC in the 2014 Settlement Agreement, Section 3.4 provides for a shareholder funded grant to California State University (CSU) of $12.5 million ($2 million annually for five years from SCE, and $500,000 annually for five years from SDG&E).[89] The funds

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[84] April 27th Joint Stipulation at 24.

[85] *Id.* at 25.

[86] 2018 Settlement Agreement Section 3.2(d).

[87] *Id.* at Section 3.3(c).

[88] Section 3.4(h)of the 2018 Settlement Agreement states, "…campuses of the University of California shall not be eligible to participate in the competitive grant proposal process described in Section 3.4(b) of this Agreement or otherwise receive any funds pursuant to Section 3.4 of this Agreement or Section 4.16 of the 2014 Agreement."

[89] 2018 Settlement Agreement at Section 3.4(a).

are to be specifically allocated to CSU campuses located in Southern California through a competitive grant proposal process.[90]

The grant proposals are to "focus on development of new technologies, methodologies and/or design modifications to reduce or avoid GHG emissions and/or to mitigate the effects of GHG emissions, as well as research on the integration of renewable resources in rural and/or disadvantaged communities."[91]

- **Other Terms:**

The 2018 Settlement Agreement provides that there will be no adjustments in rates after the Cessation Date for costs incurred for SONGS non-operation, including foregone sales.[92] After the Cessation Date ratepayers will not pay "any amounts for property taxes, financing of the regulatory assets, or M&S, and for such periods no disallowances, adjustments, credits or offsets of any kind shall be made to rates."[93]

The 2018 Settlement Agreement does not allow for adjustments as to "any amounts that the Utilities claimed, or could have claimed, but did not receive from NEIL and/or MHI."[94]

The 2018 Settlement Agreement maintains the structure of the 2014 Settlement Agreement as to capital structure.[95] The 2018 Settlement Agreement also allows the Utilities to "exclude from their ratemaking capital structure the

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[90] 2018 Settlement Agreement at Section 3.4(b).

[91] Id. at Section 3.4(b).

[92] Id. at Section 3.5(a).

[93] 2018 Joint Motion at 8 referencing Section 3.5(c) of the 2018 Settlement Agreement.

[94] 2018 Settlement Agreement at Section 3.5(d).

[95] Id. at Section 3.6.

after-tax charge to equity resulting from the implementation of this Agreement."[96]

Pursuant to Section 3.8 of the 2018 Settlement Agreement the Utilities will make requests to close certain regulatory accounts within 45 days after approval of the agreement.[97] Additionally, Section 3.7 of the 2018 Settlement Agreement states:

> The PICA, or any amended and/or successor mechanism adopted by the Commission, shall include any additional credits provided in this Agreement in accordance with the SONGS DA Ratemaking Consensus Protocol, to ensure that bundled service and departing load (i.e., direct access, community aggregation, and community choice aggregation) customers receive equitable and symmetrical benefits.[98]
>
> The 2018 Settlement Agreement also states that, "[e]xcept as expressly provided in this Agreement, the terms and conditions of the 2014 Agreement remain in full force and effect.[99]

- **Other Agreements:**

The 2018 Settlement Agreement references two (2) additional agreements which are defined under Section I. Definitions as follows:

  - **Federal Court Agreement:** the agreement among SCE, Citizens Oversight (of which CDSO is a "project"), Ruth Henricks et al., dated January 30, 2018, to effectuate the dismissal with prejudice and conclusively resolve the actions styled as *Citizens Oversight,*

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[96] *Id*. at Section 3.6(a).

[97] These accounts include the Utilities MNLMAs, NFCIMAs, NNLMAs, SONGSOMAs and STAMAs; additionally the Utilities will request to close their CFBAs. See section 3.8 of the 2018 Settlement Agreement.

[98] 2018 Settlement Agreement at Section 3.7.

[99] *Id*. at Section 3.10.

Inc. et al. v CPUC, et al., No 15-55762 (9th Cir. 2015) and *Citizens Oversight, Inc. et al. v California Public Utilities Commission, et al.*, No. 3:14-cv-02703 (S.D. Cal. 2014)[100]

- **Utility Shareholder Agreement**: The agreement between SCE and SDG&E (and their respective parent companies), dated January 10, 2018, which allocates responsibility for the financial provision of the 2018 Settlement Agreement between SCE shareholders and SDG&E shareholders.[101]

The 2018 Settling Parties specifically note in the Joint Motion that the Federal Court Agreement "is not being submitted to the Commission pursuant to the instant motion but will be publicly filed with the Ninth Circuit."[102] The Utility Shareholder Agreement allocates responsibility for the financial provisions of the 2018 Settlement Agreement between the Utilities shareholders.[103]

The 2018 Settling Parties have moved for the Commission to approve the 2018 Settlement Agreement, affirming that the 2018 Settlement Agreement "resolves all disputed issues and eliminates the need for further litigation."[104] The 2018 Settlement Agreement has been presented by the 2018 Settling Parties as an integrated package. The 2018 Settling Parties have reiterated in more than

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[100] *Id.* at Section 1.14.

[101] *Id*. at Section 1.34.

[102] 2018 Joint Motion at 9; the Assigned Commissioner and Administrative Law Judge issued a ruling directing SCE, Henricks, and CDSO to file a motion requesting that the Federal Court Agreement be submitted into the evidentiary record of the proceeding. SCE filed the motion making the request on February 15, 2018 as directed. The Federal Court Agreement was received into the record as SCE-58 by ruling issued on March 22, 2018.

[103] The Utilities were directed to file a motion requesting that the Utility Shareholder Agreement be submitted into the evidentiary record of the proceeding. On February 15, 2018 the Utilities filed the motion as directed. The Utility Shareholder Agreement was received into the record as Exhibit Joint Utilities-1 by ruling issued on March 22, 2018.

[104] 2018 Joint Motion at 15; see also *id.* at 2, 9, 10.

one filing that the 2018 Settlement Agreement is to be reviewed in its entirety and that "modifying any one provision would upset the balance of interests and compromises that the 2018 Settling Parties, after thirteen months of effort, were able to achieve."[105]

3.2. Procedural Developments After the Submission of the 2018 Settlement Agreement

On February 6, 2018, the Assigned Commissioner and ALJ issued a Joint Ruling Granting in Part and Denying in Part the Joint Motion of the 2018 Settling Parties (February 6th Joint Ruling). The February 6th Joint Ruling informed the parties that additional information was required to assess whether the proposed 2018 Settlement Agreement meets the requirements of Rule 12. The 2018 Settling Parties were directed to provide a comparison of the terms of the 2014 Settlement Agreement approved by the Commission in D.14-11-040 with the terms of the proposed 2018 Settlement Agreement submitted to the Commission on January 30, 2018; and the litigation positions of each of the 2018 Settling Parties before entering into the proposed 2018 Settlement Agreement. The 2018 Settling Parties were also directed to provide a redline version of the 2014 Settlement Agreement that incorporated the proposed modifications set out in the 2018 Settlement Agreement.[106]

On March 2, 2018, the 2018 Settling Parties submitted a Joint Response to the February 6th Joint Ruling (March 2nd Joint Response).[107] The March 2nd Joint

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[105] *Id.* at 15.

[106] See February 6th Ruling at 10.

[107] Joint Response to the February 6, 2018 Joint Ruling of Assigned Commissioner and Administrative Law Judge Granting in Part and Denying Part the Joint Motion to Stay Proceedings dated March 2, 2018.

Response included a Comparison Exhibit;[108] charts supporting the Comparison Exhibits;[109] charts showing the division of financial responsibility for SONGS costs between shareholders and customers;[110] and a version of the 2014 Settlement Agreement marked to identify terms and conditions modified by the 2018 Settlement Agreement.[111] On April 27, 2018 the 2018 Settling Parties also provided additional support for the proposed 2018 Settlement Agreement in a Joint Stipulation (April 27th Joint Stipulation) that provided responses to additional questions presented by the Assigned Commissioner and ALJ in a Joint Ruling on March 22, 2018.[112]

All of the 2018 Settling Parties, except Public Watchdogs, support the proposed 2018 Settlement Agreement and "urge the Commission to proceed expeditiously to prepare a proposed decision approving the proposed 2018 Settlement Agreement without change."[113]

The proposed 2018 Settlement Agreement has been submitted by the 2018 Settling Parties as an integrated package. The 2018 Settling Parties have agreed to the proposed 2018 Settlement Agreement as a whole, as opposed to agreeing to specific elements of the proposed 2018 Settlement Agreement. The Assigned Commissioner and ALJ however raised potential concerns regarding the proposed 2018 Settlement Agreement: 1) the Federal Court Agreement; and

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[108] March 2nd Joint Response at Appendix A.

[109] *Id.* at Appendix B.

[110] *Id.* at Appendix C.

[111] *Id.* at Appendix D.

[112] Assigned Commissioner and Administrative Law Judge's Ruling on Party Filings Submitted on February 15, 2108 and Additional Information to be Provided by Parties dated March 22, 2018.

[113] April 27th Joint Case Management Statement at 1.

2) Section 3.4 – Greenhouse Gas Research Contributions and Program (the GHG Program) during the April 4, 2018 status conference. The parties submitted briefing on the issues concerning the Federal Court Agreement and provided additional information concerning the GHG Program via the April 27th Joint Stipulation.

We have carefully considered the complete record including the information presented by the 2018 Settling Parties since submission of the proposed 2018 Settlement Agreement on January 30, 2018.

The 2018 Settlement Agreement "has the effect of modifying certain terms and conditions of the 2014 Agreement, as illustrated in Appendix D, the 2018 Agreement is a separate agreement, not a restatement of the 2014 Agreement."[114] The 2018 Settling Parties represent that the provisions in the 2018 Settlement Agreement supersede the provisions of the 2014 Settlement Agreement.

4. Discussion

Pursuant to Rule 12.1(d), the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. As we stated in the December 13, 2016 Joint Ruling, "[t]he Commission policy favoring Settlements supports many beneficial goals, including the reduction of litigation expenses, the conservation of limited resources, and the reduction of risk to the parties that litigation will produce unacceptable results."[115]

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[114] March 2nd Joint Response at 5; also see Appendix D to same.

[115] December 13, 2016 Joint Ruling of Assigned Commissioner and Assigned Administrative Law Judge Directing Parties to Provide Additional Recommendations for Further Procedural Action and Substantive Modifications to D.14-11-040.

The Commission's present task in this proceeding is to reassess a settlement agreement involving roughly $5.5 billion of costs that have been allocated between ratepayers and the Utilities' shareholders in a decision adopted four years ago. These costs are the result of the failed SGRP that was to be used and useful to ratepayers at least through 2022.[116]

The 2018 Settling Parties argue that the 2018 Settlement Agreement is "tantamount to an all-party settlement[117] and as such should be afforded a presumption of reasonableness."[118] The 2018 Settling Parties argue that they "represent a wide range of interests and are all of the parties who have actively and materially engaged in this proceeding since 2014."[119] Public Watchdogs submitted a motion for party status and opposed the proposed 2018 Settlement Agreement. On March 22, 2018 we granted limited party status to Public Watchdogs to address one issue related to the Federal Court Agreement.[120] Therefore we do not consider the 2018 Settlement Agreement to be an all-party settlement.

We do recognize and commend the 2018 Settling Parties for working diligently to reach a proposed settlement. We also recognize that the parties in support of the 2018 Settlement Agreement include, among others, all parties that have been active and materially engaged in the proceeding since 2014, including

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[116] At the time the SGRP was approved SONGS was licensed by the Nuclear Regulatory Commission (NRC) to operate through 2022, see D.05-12-040 at 5.

[117] We note that Public Watchdogs was granted limited party status to address one issues after the Joint Motion was filed. We therefore do have at least one party that is opposed to the 2018 Settlement Agreement.

[118] 2018 Joint Motion at 10.

[119] Id. at 11.

[120] We granted Public Watchdogs limited party status for the sole purpose of addressing a legal issue through briefing. The briefing has been completed with the parties Opening Briefs filed on April 10, 2018 and Reply Briefs filed on April 20, 2018.

parties that were adamantly opposed to the adoption of the 2014 Settlement Agreement. We recognize that the parties to the 2018 Settlement Agreement represent a wide and diverse range of parties that include the Utilities and ratepayer advocates; including advocates that represent direct access customers, residential, commercial, and industrial ratepayers, as well as departing load and bundled customers, a labor organization, a public university, an individual citizen, and a non-profit community based organization. We agree that the 2018 Settling Parties represent a wide range of affected interest and significant compromises have been made to reach the comprehensive settlement under consideration here.

The 2018 Settling Parties state that the 2018 Settlement Agreement is consistent with all applicable law and prior Commission decisions. The 2018 Settling Parties assert that the 2018 Settlement Agreement would not violate any legal standards or prior decisions of the Commission as to the rate recovery adjustments that would modify the recovery set out in the 2014 Settlement Agreement. The rates reflected in the 2018 Settlement Agreement would significantly decrease the anticipated ratepayer costs for the premature closure of SONGS, compared to the 2014 Settlement Agreement. The Utilities would cease collection of SONGS closure costs after the Cessation Date, when the combined remaining balance of the SONGS regulatory assets of the Utilities equals $775 million (excluding deferred tax assets), saving ratepayers collectively 100s of millions of dollars. Another major modification to the 2014 Settlement Agreement is the Nuclear Fuel Investment (NFI) provision which provides the Utilities will not recover amounts for the nuclear fuel balance after the Cessation Date, but will retain all amounts received from the future sale of the NFI. Thus, ratepayers would forgo any future credits or refunds for the NFI; however, we

believe that the immediate cessation of collection in rates as to the revenue requirement associated with the amounts authorized to be recovered under the 2014 Settlement Agreement provides immediate and significant benefits to ratepayers, as opposed to a potential future offset from the sale of the NFI.

Under the 2014 Settlement Agreement customers paid roughly 56% of the $5.5 billion SONGS closure costs, the Utilities paid roughly 27%, and 17% of the costs were covered from other accounts such as NEIL, Nuclear Decommissioning Trusts, and DOE Credits.[121] Under the 2018 Settlement Agreement customers pay 40% of the costs, the Utilities pay 43% of the costs, and the 17% from other accounts remains the same. We find that the rates that would be implemented pursuant to the proposed 2018 Settlement Agreement are just and reasonable. We also do not find any applicable statute, rule or prior Commission decision in conflict with the 2018 Settlement Agreement as modified by this decision.

The 2018 Settling Parties argue that the 2018 Settlement Agreement is reasonable in light of the whole record. This decision proposes a modification to the proposed 2018 Settlement Agreement that would allow the Commission to find the proposed 2018 Settlement Agreement acceptable and consistent with Rule 12.1(d). The proposed modification is to reject the proposed GHG Program set out at Section 3.4 of the 2018 Settlement Agreement, and to affirm the intent of this section to eliminate the UC GHG Program set forth at section 4.16 of the 2014 Settlement Agreement.[122]

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[121] We note that the nuclear decommissioning trusts are funded by ratepayer dollars.

[122] This decision also eliminates the GHG Program set forth in the 2014 Settlement Agreement at section 4.16 adopted in D.14-11-040.

4.1. Key Modifications of the 2018 Settlement Agreement to the 2014 Settlement Agreement

The important modifications to the 2014 Settlement Agreement proposed in the 2018 Settlement Agreement are summarized above. The most significant modification is that the Utilities will cease collection in rates of the costs associated with the premature closure of SONGS when the remaining investment balance of the SONGS regulatory assets equal $775 million (excluding deferred tax assets). The Cessation Date is either December 19, 2017 or April 21, 2018 depending on how the Commission resolves A.16-04-001.[123] Any over collections are refunded to customers. This means that upon the Commission's approval of the 2018 Revised Settlement Agreement ratepayers will have paid their share of the SONGS closure costs in full.[124] The responsibility for costs of the premature SONGS closure will have shifted from the 2014 Settlement Agreement, where customers bore 56% of the responsibility, to 40% under the 2018 Settlement Agreement. The Utilities retain all amounts collected before the Cessation Date, and no adjustments, credits, refunds, or charges will occur after the Cessation Date.

On April 4, 2018 at a PHC held in San Francisco we commended the 2018 Settling Parties for their work in reaching an agreement on how to resolve this proceeding, and reiterated the Commission's policy to encourage parties to resolve disputed issues by settlement consistent with the requirements of Rule 12. We also reiterated that we will only adopt a settlement agreement that is reasonable in light of the whole record, consistent with the law, and in the public

[123] A.16-04-001 seeks a Commission finding that will allow SCE to apply DOE proceeds to reduce SCE's SONGS Regulatory Asset.

[124] The 2018 Settlement Agreement does not impact decommissioning costs funded through the NDTs (which are currently fully funded).

interest, as set forth in Rule 12.1(d). During the April 4, 2018 PHC, the ALJ identified two areas of concern with the proposed 2018 Settlement Agreement: 1) the collateral Federal Court Agreement; and 2) the GHG Program. The parties were required to brief specific issues pertaining to the Federal Court Agreement, and provide additional information in response to specific questions concerning the GHG Program in either testimony or through a stipulation. We discuss both of these issues below.

4.2. Federal Court Agreement

On February 6, 2018 the Assigned Commissioner and ALJ directed SCE, Henricks, and CDSO to serve and file a motion to enter the Federal Court Agreement into the evidentiary record of this proceeding no later than February 15, 2018.[125] The Federal Court Agreement is specifically referenced and defined in the 2018 Settlement Agreement. Initially the 2018 Settling Parties did not submit the Federal Court Agreement into the record of this proceeding. The 2018 Joint Motion stated that the Federal Court Agreement "is not being submitted to the Commission pursuant to the instant motion.…"[126] As the ALJ and Assigned Commissioner stated in their February 6th Joint Ruling "Rule 12.1 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.'"[127]

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[125] See February 6th Joint Ruling. SCE timely filed the Motion that was directed in the February 6th Ruling. Henricks and CDSO filed an objection to the February 6th Ruling on February 15, 2018. See Henricks and CDSO Response in Objection to Joint Ruling of Assigned Commissioner and Administrative Law Judge Filed 5 (sic) February 2018. We accepted the Federal Court Agreement into the record by ruling dated March 22, 2018 as Exhibit SCE-58.

[126] 2018 Joint Motion at 9.

[127] February 6th Joint Ruling at 5-6.

Because the Federal Court Agreement is referenced in the 2018 Settlement Agreement, we consider its implications prior to issuing a decision on the proposed 2018 Settlement Agreement.

The Federal Court Agreement[128] concerns the Federal Court Actions. In the Federal Court Actions, CDSO, Henricks, and the other plaintiffs/appellants named SCE and the Commission as defendants/appellees. The Federal Court Agreement is an agreement only between SCE, CDSO (through Citizens Oversight), Henricks[129] and six (6) additional individuals[130] concerning resolution of the Federal Court Actions. The terms of the Federal Court Agreement declare it would "effectuate the dismissal with prejudice and conclusively resolve"[131] the pending Federal Court Actions against both defendants/appellees SCE and the Commission if the Commission adopts the 2018 Settlement Agreement. The Commission is not a party to the Federal Court Agreement, but is a defendant in the Federal Court Actions. This agreement to dismiss the Federal Court Actions with prejudice against both SCE and the Commission, including certain provisions concerning attorney's fees,[132] is contingent upon our adopting the 2018 Settlement Agreement here.

On February 28, 2018 Public Watchdogs filed a motion for party status (as set forth above). One of the issues raised in Public Watchdogs' Motion centered

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[128] 2018 Settlement Agreement at Section 1.14.

[129] Henricks and CDSO are parties to this proceeding and have submitted notices of intent to claim intervenor compensation early on in the proceeding. See CDSO Notice of Intent (NOI) filed on February 7, 2013 and Henricks NOI filed on February 7, 2013.

[130] These six (6) individuals are Nicole Murray Ramirez, Neil Lynch, Hugh Moore, David Keeler, Francis Karl Holtzman, and Roger Johnson. These individuals are not parties to this administrative proceeding.

[131] 2018 Settlement Agreement at Section 1.14 and 2018 Joint Motion at 9.

[132] Exhibit SCE-58 Federal Court Agreement section 3.3.

on whether these provisions for attorneys' fees undermined the Commission's legal authority and process. Public Watchdogs asserted:

> This questionable $5.4 million payout sets a precedent for utilities to issue large pay-offs to its legitimate opponents in rate cases which could threaten the entire purpose of intervenor compensation. In this particular case, it creates a perverse incentive for the utilities to buy the cooperation of intervenors outside the court.[133]

This issue could not have been raised prior to submission of the 2018 Settlement Agreement. The collateral agreement reached in January of this year by certain parties in the Federal Court Actions in conjunction with the 2018 Settlement Agreement did not exist prior to January 30, 2018.

On March 22, 2018, the Assigned Commissioner and ALJ ruled that the Federal Court Agreement was relevant here, specifically the attorneys' fees provisions required further consideration, and granted Public Watchdogs limited party status for the sole purpose of briefing four (4) issues identified in the Joint Ruling (March 22nd Joint Ruling).[134] The issues set forth in the March 22nd Joint Ruling addressed potential impacts to the Commission's intervenor compensation program[135] and settlement process. The parties submitted briefs

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[133] Motion for Party Status of Public Watchdogs dated February 28, 2018 at 6.

[134] Joint Ruling of Assigned Commissioner and Administrative Law Judge Granting Limited Party Status to Public Watchdogs dated March 22, 2018 at 6-7.

[135] Pub. Util. Code sections 1801-1812 set forth the statutory authority for the Commission's Intervenor Compensation Program. Section 1801 states that:

> [t]he purpose of this article is to provide compensation for reasonable advocates fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any proceeding of the commission.

Section 1801.3 sets out the intention of the Legislature, this section includes the following language at subsection (d):

(footnote continued on next page)

and responses on April 13, 2018 and reply briefs on April 20, 2018 on these issues.

Public Watchdogs argues that due to the attorneys' fees payment to resolve and dismiss the Federal Court Actions, the 2018 Settlement Agreement is unreasonable in light of the whole record, is inconsistent with the law, and violates the public interest.[136] Public Watchdogs also asserts that there is a conflict of interest created by the Federal Court Agreement as to three of the parties: SCE, Henricks, and CDSO. Public Watchdogs in response to the issues presented in the March 22nd Ruling also recommends that the Commission "make a rule that prohibits regulated utilities from settling with intervenors outside the Commission's intervenor compensation process."

Public Watchdogs argues that "potentially bloated attorney fees and cost directly from SCE to preferred intervenors would create a precedent that undermines the integrity of the Commission settlement process….and the intervenor compensation program generally."[137] Public Watchdogs point out that

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(footnote continued from previous)

> [It is the intent of the Legislature that:] Intervenors be compensated for making a substantial contribution to proceedings of the commission, **as determined by the commission** in its orders and decisions, regardless of whether a settlement agreement is reached.

Section 1802 sets forth defined terms for this article. Section 1802 (a) states:

> [As used in this article] "Compensation" means payment for all or part, **as determined by the commission**, or reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining **judicial review** if any. (emphasis added)

[136] Opening Brief of Public Watchdogs Regarding Issues Identified in the Joint Ruling of Assigned Commissioner and Administrative Law Judge Granting Limited Party Status to Public Watchdogs dated April 13, 2018 at 4.

[137] *Id*. at 6.

the intervenors receiving attorneys' fees here have refused to comply with basic Commission process, that these intervenors would be paid before any other parties seeking intervenor compensation, and that the Federal Court Agreement creates an advantage that could set a precedent for other parties that hope to receive large attorney fees payments through obstructionist behavior.
Public Watchdogs also argues that the Federal Court Agreement constitutes a "side deal" between the three parties. Public Watchdogs asserts this "side deal" which provides for a substantial payment to select parties "outside the purview of the Commission impugns the integrity of the Commission's intervenor compensation program."[138]

On April 13, 2018, a subset of the 2018 Settling Parties filed a Joint Response of A4NR, CLECA, CSU, CDSO, DACC, Henricks, SDG&E, SCE, and WEM (2018 Settling Parties 1) to the Joint Ruling of Assigned Commissioner and Administrative Law Judge Granting Limited Party Status to Public Watchdogs. These parties set forth three main arguments: 1) the federal court is the appropriate forum to conduct any necessary review of and to address any objections to the attorneys' fees provision of the Federal Court Agreement; 2) the attorneys' fees provision is not inconsistent with the law, rules, and precedent on intervenor compensation; and 3) the revised OII settlement does not provide a basis for changes to the intervenor compensation program or the review of proposed settlements under Rule 12.1.

The 2018 Settling Parties 1 first argument is premised on the Federal Court Actions being a class action law suit. We note that the District Court dismissed

[138] *Id.* at 7.

the complaint for lack of subject matter jurisdiction and did not certify a class in the Federal Court Actions.

The 2018 Settling Parties 1 also argue that the Federal Court Agreement includes terms and conditions that recognize the Federal Court has authority to review and consider objections as to the attorneys' fees provision. The Settling Parties 1 confirms that the attorneys' fees payment will be paid by SCE shareholders and not its ratepayers. Given the Federal Court has jurisdiction to assess the attorneys' fees provisions and the funds used to pay the fees are shareholder dollars, 2018 Settling Parties 1 argue that the separate Federal Court Agreement should not be a factor in the Commission's consideration of whether the 2018 Settlement Agreement meets the requirements of Rule 12.1.[139]

The 2018 Settling Parties 1 argue that "the Federal Court Agreement is not inconsistent with the statute authorizing the Commission's intervenor compensation program, the Commission's rules, or the Commission's precedents."[140] The same parties argue that the Commission has allowed other intervenors to be paid for work by outside sources so long as the intervenors do not also seek compensation through the Intervenor Compensation program for the work that the outside sources covered.[141] These parties then assert that although the circumstances here are different, the result is the same.[142]

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[139] 2018 Settling Parties 1 Response at 6.

[140] *Id* at 6-8.

[141] *Id* at 7.

[142] *Id* at 7-8. The 2018 Settling Parties 1 also argue that nine other settling parties participated fully in the negotiations regarding the settlement of this proceeding and also entered into the 2018 Settlement Agreement with knowledge of the Federal Court Agreement. The 2018 Settling Parties 1 also state that they do not have agreement on recommendations regarding changes to the intervenor compensation program or the Commission's assessment of proposed settlements under Rule 12 as these issues are beyond the scope of the proceeding.

A different subset of parties to the 2018 Settlement Agreement, TURN, A4NR, and WEM (2018 Settling Parties 2), filed an Opening Brief on April 13, 2018. Each of these parties is a regular intervenor before the Commission that regularly seeks compensation through the Commission's intervenor compensation program. These parties state, "[o]ur organizations do not negotiate fee awards with the utilities as part of a resolution of disputes over substantive issues before the Commission. All of our fee awards are subject to Commission review and approval."[143]

The 2018 Settling Parties 2 state that they take no position on the reasonableness of the attorneys' fees provision in the Federal Court Agreement as they are not parties to the Federal Court Agreement or the Federal Court Actions. They assert that the Federal Court Agreement does not undermine the 2018 Settlement Agreement, settlement process, or intervenor compensation program. These parties argue that the 2018 Settlement Agreement is a separate agreement from the Federal Court Agreement, and nothing in the 2018 Settlement Agreement requires the Commission to find the attorneys' fees in the Federal Court Agreement reasonable given the attorneys' fees are paid with shareholder dollars and no intervenor compensation will be sought through the Commission process if such award is provided under the Federal Court Agreement.[144]

The crux of the 2018 Settling Parties 2 argument is that a wide range of multiple parties negotiated and entered into the 2018 Settlement Agreement. They argue that only two of multiple parties entered into the separate Federal

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[143] 2018 Settling Parties 2 Opening Brief at 1.

[144] Joint Parties 2 at 2.

Court Agreement that provides for attorneys' fees to these two parties, not to any other intervenors. These parties request that the Commission recognize that the support for the 2018 Settlement Agreement by TURN, A4NR, and WEM is based on the premise that the negotiated settlement pending before the Commission "is very much in the public interest and provides meaningful rate relief to customers."[145]

The 2018 Settling Parties 2 argue that the adoption of the 2018 Settlement Agreement does not create a precedent as to the intervenor compensation program as the Federal Court Agreement is separate from the 2018 Settlement Agreement: adoption of the 2018 Settlement Agreement is not contingent up the approval of the Federal Court Agreement. TURN, A4NR, and WEM do not believe that any revisions should be considered to the settlement process or the intervenor compensation program going forward.[146]

ORA does not believe that the Federal Court Agreement attorneys' fees provisions undermine the integrity of the Commission's settlement process or the intervenor compensation program.[147] ORA states that settlements are not generally precedential.[148] ORA does not believe that the circumstances presented here provide a basis to reassess the Commission's settlement process or intervenor compensation program. ORA agrees that the attorneys' fees set out in

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[145] 2018 Settling Parties 2 Opening Brief at 2.

[146] SCE as a signatory to the Opening Brief of 2018 Settling Parties 1 affirms that to the extent attorneys' fees are paid pursuant to the Federal Court Agreement, the fees will be paid from shareholder dollars and such payments will not be included in historical costs in a future General Rate Case. See 2018 Settling Parties 1 Opening Brief at 5 and 2018 Settling Parties 2 Opening Brief at 4.

[147] ORA Response to March 22nd Ruling at 1.

[148] *Id.* at 2.

the Federal Court Agreement should be paid by shareholders and such payments should not be included in SCE's historical costs in General Rate Cases.[149]

As the 2018 Settling Parties 1 state, the circumstances presented are different; however, the result is not the same insofar as upholding the public policies of the intervenor compensation program.

Public Watchdogs states that the statutory provisions and rules that govern intervenor compensation here are turned on their head as the Federal Court Agreement creates a perverse incentive for intervenors to seek out opportunities to litigate ratemaking matters outside of the Commission process, even before a decision is made by the Commission. We share this concern and are also concerned that utilities may be incented to make large payments to intervenors to settle or dismiss litigation.

The Assigned Commissioner and ALJ expressed their concerns regarding the Federal Court Agreement's attorneys' fees provisions during the April 4, 2018 PHC. It is concerning that a regulated utility would agree to pay attorney's fees of a Commission intervenor(s) conditioned on 1) the Commission adoption of a settlement agreement in a Commission proceeding, to which the intervenor is a signatory, and 2) the federal court dismissal of related federal litigation. This is particularly concerning where the plaintiffs in the federal litigation filed notices of intent to claim intervenor compensation through the Commission process prior to the filing of the Federal litigation.

Intervenor compensation requests are handled on a separate track from the substantive issues in a proceeding and should not be bundled together with or in this case linked in a contingent relationship to the resolution of those substantive

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[149] *Id.*at 2.

issues. Intervenors in our proceedings are compensated only if they make substantial contributions to our decisions as determined by the Commission, not by private agreement between regulated utilities and select parties. Deviation from this legislative framework decouples the payment of compensation from a finding that a party made a substantial contribution to the proceeding which raises concerns that have public interest implications.

We have seen a pattern in recent cases where the parties have entered into collateral agreements that provide certain benefits in one area that are contingent upon the Commission adopting a settlement in a related or underlying matter. Although we do not find a technical violation of our settlement rules, we do find a violation of the public policy objectives of the Commission's settlement process. To address this concern and prevent the circumvention of the Commission's settlement rules in future proceedings, we find a Commission rulemaking should reevaluate the Commission's settlement process, as well as the Commission's intervenor compensation program.

We have carefully considered the parties' briefing, the whole record, and the applicable law. Despite the concerns identified regarding the Federal Court Agreement, we recognize that the Federal Court Agreement itself is not before us for review or approval. Our review of the 2018 Settlement Agreement under Rule 12 and the California Public Utilities Code does not require us to make findings regarding the separate Federal Court Agreement, the Federal Court Actions, or the impact of the Federal Court Agreement on the Commission's intervenor compensation program.[150]

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[150] This decision does not waive or concede any right the Commission, as a defendant/appellee in the Federal Court Actions, has to oppose the Federal Court Agreement, the attorneys' fees

(footnote continued on next page)

The Federal Court Agreement has been submitted to the federal court and the federal courts have full authority to address any objections or concerns raised by the attorneys' fee provisions (or other provisions) of the Federal Court Agreement.

4.3. Greenhouse Gas Research Contributions and Program

The 2018 Settlement Agreement provides for a new shareholder-funded grant program: Greenhouse Gas Research Contributions and Program (GHG Program). The Utilities would fund the program in the amount of $12.5 million ($2 million annually for five years from SCE, and $500,000 annually for five years from SDG&E). The funding would be provided to campuses and research institutes of CSU located in Southern California.[151] We find the GHG Program to be inconsistent with the public interest for the reasons discussed below.

Prior to issuance of the September 5, 2014, Modification Ruling, the 2014 Settlement Agreement had not included a GHG reduction program. The 2014 Settling Parties submitted a Joint Response to the Modification Ruling stating that they did not believe this provision was necessary for the agreement to meet the standard set out in Rule 12.1(d)[152]

A4NR in its comments on the 2014 Settlement Agreement stated that it did not believe the mitigation set out in development of the UC program was sufficient to offset the GHG emissions from replacement energy sources that resulted from the premature closure of SONGS. A4NR believed the increased

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(footnote continued from previous)

payments, or take any position it deems appropriate in the pending Federal litigation as to the Federal Court Agreement.

[151] 2018 Settlement Agreement of section 3.4.

[152] September 19, 2014 2014 Settling Parties Response to Modification ruling at 1.

additional GHG emissions was closer to an annual cost of $700 million. A4NR "express[ed] disappointment with the Ruling's timid consideration of the shutdown's impact."[153]

After the *ex parte* communications at issue in D.15-12-016 (discussed above) were disclosed, parties raised concerns about inclusion of the UC GHG Program in the 2014 Settlement Agreement. ORA and TURN recommended that rather than provide the $25 million to UC for the GHG Program, the shareholder funds should be used to provide a $25 million refund to customers.[154] The Utilities stated that they would defer to the Commission as to whether this program remained in the settlement.[155]

CSU took the position in its filings that the $25 million should be divided equally between UC and CSU. CSU asserted that its exclusion from the program would be against the public interest. CSU stated in its Initial Brief dated July 15, 2016 that "…UC is a national leader in environmental research of the kind contemplated to be undertaken in the GHG R&R Program, and the participation of UC in the program will enhance its effectiveness and results."[156] In October of 2017 CSU again reiterated that the research funding should "be allocated to the

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[153] A4NR comments on Assigned Commissioner and Administrative Law Judges' Ruling Requesting Settling Parties to Adopt Modifications to Proposed Settlement Agreement dated September 15, 2014.

[154] TURN Proposal for Moving Forward with Investigation filed on August 15, 2017 and TURN, CLECA, and DACC Status Conference Statement filed on October 30, 2017. Also see ORA filing regarding Meet and Confer Results and Recommendations filed on August 15, 2017 and ORA Status Conference Statement filed on October 30, 2017.

[155] SCE Status Report and Further Recommendations filed on August 15, 2017 and SCE Status Conference Statement filed on October 30, 2017. Also see SDG&E filing regarding Meet and Confer Sessions and Procedural and Substantive Recommendations filed on August 15, 2017 and SDG&E Status Conference statement filed on October 30, 2017.

[156] CSU Initial Brief at 11.

UC and CSU systems equitably" with some of the funding "dedicated to Ethics in Government research."[157]

The $12.5 million shareholder grant exclusively for CSU was presented for the first time in the 2018 Settlement Agreement. The assigned Commissioner and ALJ subsequently issued a ruling on March 22, 2018 requesting additional information regarding this provision, and also raised concerns regarding inclusion of this provision in the settlement during the April 4, 2018 PHC. [158]

We do not find information presented by the parties in their subsequent filings to be sufficient to support the Commission authorizing a new and non-competitive program where funds are directed exclusively to one institution.

The 2018 Settling Parties assert that the "GHG Program is lawful and funded entirely by shareholders of the Utilities, not by ratepayers,"[159] and t that the program is appropriate to include in the 2018 Settlement Agreement for three reasons.

First, the 2018 Settling Parties assert that the GHG Program provision was negotiated at arm's length and therefore should only be considered by the Commission "insofar as it reviews those provisions in the course of determining whether the proposed 2018 Settlement Agreement as a whole satisfies the

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[157] Status Conference issue Statement of CSU dated October 30, 2017 at 2-3.

[158] RT: PHC April 4, 2018 at 165:2-23, President Picker stated:

> I watched very closely the Energy Commission's PEER and EPIC research programs which are competitive and represent a body of research that helps to meet the state's energy goals. So I'm not sure that I find that it's productive to have separate programs that are differentiated by different institutions as opposed to that kind of a complete look at what the research needs are. …it really ought to follow on the more orderly processes and competitive processes that are set by the California Energy Commission.

[159] Redacted Joint Stipulation Between [list parties] Regarding Undisputed Facts in Support of the Proposed Settlement Agreement dated April 27, 2018 at 10-11.

requirements of Rule 12.1(d)." Second, the 2018 Settling Parties argue that the GHG Program has a nexus to the closure of SONGS Units 2 and 3, citing to D.14-11-040.[160] Third, the Settling Parties assert that despite the history of a similar inclusion of the program in the 2014 Settlement Agreement, the currently proposed GHG Program meets the standards of Rule 12 by changing the research partner, here CSU, any concerns regarding the prior *ex parte* contacts should be irrelevant as CSU was not involved with that situation, and this is not the program that was advocated by former President Peevey in the prior unnoticed *ex parte* communications.

Reduction of GHG emissions is a laudable goal. We also recognize that the State of California has adopted a broad policy and regulatory framework to address the reduction of GHG emissions across multiple state agencies. The Commission has adopted many programs, including the Electric Program Investment Charge (EPIC) research program to focus on this effort (A.17-04-028 et al.). The Commission has also found that its Integrated Resource Planning proceeding (R.16-02-007) "is better equipped to make determination[s]" regarding replacement procurement issues and the avoidance of increased GHG emissions from the closure of nuclear facilities in California.[161] These proceedings also include a broad range of stakeholders as parties. These stakeholders are not parties in this proceeding and have not weighed in on how best to design this program to meet the intended goal.

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[160] D.14-11-040 at 119-22.

[161] See D.18-01-022 at 13: "[T]he question of the GHG impact of Diablo Canyon's retirement [SONGS premature closure] should be addressed in the Commission's Integrated Resource Planning (IRP) proceeding"; Also see same at 21-22.

We do not believe Section 3.4 of the 2018 Settlement Agreement meets the requirements of Rule 12.1(d). We agree with the policy objective of reducing GHG; however, we believe that other Commission proceedings would be more appropriate as the forum to vet a proposed program and policies for reducing GHG emissions. California's GHG reduction goals are best addressed through the Commission's overall implementation of statewide climate action goals. These goals are more directly addressed in other proceedings such as the EPIC proceeding and the IRP proceeding referenced above. SCE shareholders are free to contribute an additional $12.5 million to the EPIC program which is based on a competitive process. CSU may make its contributions to research regarding GHG emissions reduction through competing in the EPIC program administered by the California Energy Commission. Further, there is nothing in the record to indicate that the payment to CSU would have been made independently of this proceeding. We also find that nothing in this decision prevents the Utilities from voluntarily donating shareholder funds to further research in GHG emission reduction. The Utilities do not need the Commission to authorize such voluntary donations, particularly if the funding is coming from a predetermined pool of funds dedicated to charitable giving. Here the Utilities assert that whether this program is adopted or not, the amount of philanthropic funding issued by the Utilities will remain the same.[162]

This proceeding was reopened due to the unreported *ex parte* communications between President Peevey and SCE executives regarding

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[162] See Reply Comments of Southern California Edison Company on the Proposed Decision filed on July 17, 2018; and Reply Comments of San Diego Gas & Electric Company on the Proposed Decision filed on July 17, 2018.

potential settlement provisions, including the UC GHG Program provisions which were not advocated by any party in the proceeding. Here it is unclear whether this was a term negotiated at arm's length or a provision that makes payment to one particular party in order to have all active parties sign on to the agreement, or for the reasons discussed above how such a limited program will serve the public interest.

To approve a settlement, we must find the settlement is in the public's interest. The information presented by the parties does not support Commission authorization of this new non-competitive program, where funds are directed to a single institution. We find that a program with such limited competition is not in the public interest. If the Utilities wish to provide additional funds for research and development in this area they should file a separate application or voluntarily donate funds for this purpose: CSU may seek research funding through the EPIC program in order to make a contribution in research and development to reduce GHG emissions, or as stated above SCE shareholders should donate the additional funding to the EPIC program.

Today's decision modifies the terms and conditions of the 2018 Settlement Agreement by deleting the GHG Program described in Section 3.4. We do not approve the GHG Program described in Section 3.4 of the 2018 Settlement Agreement or the GHG Program described in the 2014 Settlement Agreement.[163]

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[163] Section 3.4 of the 2018 Settlement Agreement is deleted and, in its place, the following language is inserted as a modified Section 3.4:

(a) Section 4.16 Greenhouse Gas (GHG) Research of the 2014 Settlement Agreement is no longer in effect and the terms and conditions of section 4.16 of the settlement agreement adopted in D.14-11-040 are hereby no longer in effect thus removing the GHG Research Program that directed $25 million to the University of California.

On July 11, 2016, SCE and SDG&E submitted two advice letters, SCE AL 3403-E and SDG&E AL 2919-E, pertaining to the specific projects proposed for the GHG Program by UC. These two advice letters were subsequently entered into the evidentiary record of this investigative proceeding for disposition. Consistent with this decision, SCE and SDG&E should now withdraw these advice letters.

4.4. Rule 12

Rule 12 governs the Commission's settlement process. There are nine (9) parties to the 2018 Settlement Agreement; many of these parties represent consumer groups. The 2018 Revised Settlement Agreement provides for significant additional benefits to ratepayers and provides a balanced compromise between the Utilities and ratepayers concerning cost recovery for the premature closure of SONGS Units 2 and 3 (as discussed above).[164] We find that there is broad support for the agreement by a wide range of parties.

It has been almost six years since this proceeding was instituted, almost four (4) years since the adoption of the first settlement, and two (2) years since the proceeding was reopened. Ratepayers are entitled to closure on this matter. The Commission has sufficient information to determine that the 2018 Revised Settlement Agreement meets the criteria set forth in Rule 12.1(d).

We do not believe that holding hearings on the provision that we have not adopted would be fruitful or productive, especially since we already provided the parties significant opportunity to address the GHG Program in briefing, responses to rulings, testimony/stipulation of facts, and other party filings. We

[164] Also see D.05-12-040 as to the parties' position regarding costs for closure of SONGS had the SGRP not been authorized, which would have resulted in closure of SONGS in approximately 2009.

also do not believe it would be fruitful to provide parties additional time to renegotiate the settlement, because the one provision that we find unacceptable is not a matter that we might find acceptable under different terms.

5. Procedural Steps to Accept or Oppose the Modification to the 2018 Settlement Agreement

Rule 12.4(c) states that when a settlement is not in the public interest, the Commission may propose modifications of the settlement to the parties. The 2018 Settling Parties have ten (10) days from the Commission's adoption of this decision to file and serve on the service list in this proceeding a notice accepting the proposed modification to the 2018 Settlement Agreement (2018 Revised Settlement Agreement) that eliminates both the GHG Program set forth at Section 3.4 of the 2018 Settlement Agreement and the GHG Program set forth at section 4.16 of the 2014 Settlement Agreement. The 2018 Revised Settlement Agreement becomes effective upon filing and service of such notice. If parties do not file a notice accepting the modification presented in this decision, the assigned ALJ is to issue a ruling scheduling evidentiary hearings on the outstanding issues.

We recognize that it is in the public interest to resolve this proceeding as soon as possible. We therefore provided the 2018 Settling Parties an opportunity to accept the modification proposed here prior to adoption of this decision. No motion by the 2018 Settling Parties has been filed to date. If the 2018 Settling Parties, or a significant sub-set of these parties, chooses to accept the proposed modification set out in the 2018 Revised Settlement Agreement after adoption of this decision by the Commission, they are to follow the process set forth above. Adoption of the 2018 Revised Settlement Agreement will result in cessation of

cost recovery in rates for the premature closure of SONGS Units 2 and 3, as well as allow for refunds of rates collected from the Cessation Date.

6. Categorization and Need for Hearing

The Commission preliminarily categorized this OII as ratesetting as defined in Rule 1.3(a)(e) and anticipated that this proceeding would require evidentiary hearings. The assigned Commissioner's scoping ruling affirmed the preliminary categorization of this proceeding as ratesetting and the need for hearings. This determination has not changed throughout the proceeding.

7. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on July 12, 2018 by the 2018 Settling Parties, Public Watchdogs, separate comments by CSU (in addition to joining the 2018 Settling Parties comments), and reply comments were filed on July 17, 2017 by the 2018 Settling Parties (except for ORA, which did not join in the joint reply comments), ORA, TURN and WEM (TURN/WEM), SCE and SDG&E. SCE and SDG&E filed individual responses to address the comments filed by TURN/WEM.

- *GHG Program*

The 2018 Settling Parties ask the Commission to adopt the 2018 Settlement Agreement as proposed with no modifications. They argue that the GHG Program set out at Section 3.4 of the 2018 Settlement Agreement is in the public interest, and that because shareholder funds will be used to fund the program it will not undermine other GHG emission reduction programs.

CSU filed individual comments specifically to advocate for maintaining Section 3.4 as proposed. CSU asserts the following arguments in support of the GHG Program: 1) grant eligibility, CSU is not just any institution; 2) grants will be awarded competitively among CSU Southern California campuses; 3) the GHG Program will benefit the public interest; 4) the GHG Program resulted from arm's length negotiations; and 5) the GHG program will not impose costs on ratepayers or duplicate other research.

CSU's comments focus on its credentials as a potential recipient of program funds. CSU describes itself the largest public institution in the United States. CSU notes that it only intervened after becoming aware of the *ex parte* communications concerning the UC GHG Program included in the 2014 Settlement Agreement. CSU argues that it was unfairly disadvantaged by not having knowledge of the program prior to adoption of the 2014 Settlement Agreement, and that the initial $25 million should be divided between UC and CSU.

In support of retaining Section 3.4 of the 2018 Settlement Agreement, CSU comments, "Ironically, the $25 million GHG research grant program under the 2014 Settlement Agreement, which was added at the Commission's request, was also directed exclusively to one institution- the University of California (UC)."[165] This, however, is no justification for perpetuating a research grant program with such problematic origins, and we decline to do so. Further, CSU does not acknowledge that the GHG Program itself was not supported by any of the initial 2014 Settling Parties. In fact, the 2014 Settling Parties provided comments stating that the GHG Program was not necessary but would agree to the

[165] Opening Comments of CSU on Proposed Decision at 3.

modification to have the 2014 Settlement Agreement approved. The basis for how the program was inserted into the settlement process cannot be ignored regardless of whether the beneficiary has changed from UC to CSU.

CSU argues that the GHG Program is in the public interest. However, it fails to explain how this program promotes reduction of GHG emissions in a way that is not already addressed by overall state policy, the EPIC program and the IRP proceeding. California has increased and expanded its efforts to address climate change and to reduce GHG emissions over the last four years and has done so in a way to prevent duplication or waste, fraud, and abuse. The scope of many Commission energy proceedings includes issues that address GHG emission reduction.

There is nothing in this decision that is contrary to California or the Commission's goals of reducing GHG emissions. That said, the record does not provide sufficient evidence to show that CSU offers any unique contribution to GHG emission reduction research (in fact CSU argues that UC could equally provide such contributions). The EPIC program provides for a competitive process to seek funding for GHG emission reduction. CSU could seek funding through this and other programs. We cannot conclude that a program with such problematic origins is in the public interest.

CSU states that the PD includes "language that effectively prohibits SCE and SDG&E from voluntarily contributing shareholder funds to CSU for GHG research." CSU misstates our decision. There is nothing in this decision that prevents SCE or SDG&E "from voluntarily contributing shareholder funds to CSU for GHG research." SCE and SDG&E do not need the Commission's approval to voluntarily donate funds to CSU for GHG research and are welcome to do so. The Commission does not need to participate or approve of

shareholder voluntary donations. This is particularly true where the Commission has no direct oversight of the program.

Although CSU argues that the program will not impose costs on ratepayers or duplicate research efforts, there will be incremental impacts. SCE and SDG&E will be using ratepayer funded personnel to administer the program. This means that personnel funded by ratepayers will have to divert some time to this program taking time away from other ratepayer funded programs.

CSU also assert that the Commission is "prohibiting" the Utilities from "voluntarily donating" funds to CSU for GHG research. The Commission is not prohibiting the Utilities from making a voluntary donation to CSU for GHG emission reduction research. We are merely declining to authorize or enforce such program as part of this settlement agreement.

The parties reply comments highlight a disagreement among the settling parties as to where the shareholder funds for the GHG Program will come from. TURN/WEM assert that the $12.5 million for the GHG Program is intended to be an incremental increase to existing shareholder charitable spending. The Utilities assert that the funding for section 4.16 of the 2014 Settlement and 3.4 of the 2018 Settlement was always intended to come from the shareholders existing philanthropic budget. SCE states in its reply comments that, "[i]f section 3.4 of the Proposed Settlement were removed, the amount contributed by SCE shareholders to philanthropy would not change." SDG&E concurs with SCE, stating that "the relevant sections of those agreements provide that shareholder funds for GHG research would be part of SCE's and SDG&E's charitable-giving programs." This means that the $12.5 million that funds the GHG Program will result in $12.5 million less in utility donations to other charitable causes. These

comments show there is no meeting of the minds among the settling parties as to whether the shareholder funds are incremental or part of an existing charitable giving program. There is an insufficient record to address this issue, and we will not presume the parties intent when entering into the 2018 Settlement Agreement. For all the reasons set forth in this decision we affirm the proposed modification to Section 3.4.

- *Federal Court Agreement*

Public Watchdog asserts several arguments in opposition to the proposed 2018 Settlement Agreement. Most of these arguments center on the Federal Court Action and the attorneys' fee provisions of the Federal Court Agreement. Public Watchdogs asserts that the Commission in approving the 2018 Settlement would also be approving the Federal Court Agreement.

We disagree with this premise and as stated in this decision the Federal Court Agreement is not before us for review or approval. The Federal Court Agreement has been submitted to the federal court, and the plaintiffs/appellants in the Federal Court Actions and SCE acknowledge that the federal court has authority to review the Federal Court Agreement. As stated above, nothing in this decision cedes or waives the Commission's right to challenge the Federal Court Agreement or specifically the attorneys' fee provisions in federal court.

As with the Federal Court Agreement, the issues pertaining to the Johnson Act are squarely before the federal court. The Commission is not approving an out of court settlement as to the Federal Court Actions. The Commission is using its independent judgement to assess the settlement and any rates authorized under this decision. Additionally, the Commission is not a party to the Federal Court Agreement and has not entered into negotiations or any settlement with parties to the Federal Court Action.

- *Proceeding Record*

Public Watchdogs also asserts that facts omitted from the record make the 2018 Settlement unreasonable in light of the whole record. The Joint Reply Comments on the Proposed Decision and ORA's Reply Comments assert that such comments are procedurally improper as Public Watchdogs was granted only limited party status to address specific issues concerning the Federal Court Agreement. These parties also argue that Public Watchdogs assertions are unsupported by citations to the record which is required by Rule 14.3(c).

We agree with the 2018 Settling Parties', that Public Watchdogs comments regarding omitted facts go beyond the limited party status granted. However, we did authorize Public Watchdogs to provide public comment on other issues and will address the comments here. We agree with the 2018 Settling Parties reply comments in that Public Watchdogs fails to cite to any portion of the record supporting its position.

We also note that the Commission decisions vary widely as to what investment cost recovery is or is not authorized once a plant is no longer used and useful. The proposed settlement agreement with the proposed modification reflects a reasonable resolution to this long, complex, and controversial proceeding. A resolution that avoids continued litigation and provides a significant economic benefit to ratepayers is in the public interest.

As to the final issue raised by Public Watchdogs, there is no evidence that the Commission, the assigned ALJ, or the assigned Commissioner are the subject of a criminal investigation. The Commission has the authority and responsibility to address the issues presented here and bring this proceeding to a conclusion.

This case reflects a unique circumstance, one that we hope will not be repeated. The issues presented are complex and overlap with proceedings that

are related but outside the Commission's jurisdiction. We again commend the parties for diligently working to reach a settlement. The resolution reached by the parties appears to be reasonable and fair generally. However, while the Federal Court Agreement is one of the two aspects of the 2018 Settlement that raise concerns, the Federal Court Agreement is not before us for approval, and the Commission will address its concerns through the Federal Court Action.

The Commission finds it is not in the public interest to approve the GHG Program set out at Section 3.4. Therefore, this decision approves the proposed 2018 Settlement Agreement subject to the modification set forth in the 2018 Revised Settlement Agreement. If the parties or a sub-set of the parties find the modification acceptable, they are directed to file a joint notice. To the extent that a sufficient sub-set of the settling parties accept the 2018 Revised Settlement Agreement, it will go into effect upon filing of the notice.

No substantive changes have been made to the proposed decision. However, we have conformed Section 5 to be consistent with the procedural steps to accept or oppose the proposed modification as set forth in the 2018 Revised Settlement Agreement to this decision.

8. Assignment of Proceeding

President Michael Picker is the assigned Commissioner and Darcie L. Houck is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SONGS is owned by SCE, SDG&E, and the City of Riverside.
2. SONGS Units 2 and 3 were taken offline in January 2012 due to defective replacement steam generators.
3. SONGS Units 2 and 3 were permanently shut down in June of 2013.

4. The Commission issued this investigation on October 25, 2012 to examine the rates, operations, practices, services and facilities of SCE and SDG&E associated with SONGS Unit 2 and 3.

5. The Utilities initially sought roughly $5.5 billion in recovery for the premature closure of SONGS Units 2 and 3.

6. SCE, SDG&E, TURN, ORA, CUE, and FOE filed a Motion for Adoption of Settlement Agreement in this proceeding on April 3, 2014.

7. The Commission issued D.14-11-040 on November 25, 2014 which adopted a modified settlement agreement in this proceeding allocating costs for the premature closure of SONGS Units 2 and 3 between ratepayers and utility shareholders.

8. On December 8, 2015 the Commission issued D.15-12-016 affirming SCE violated Rule 8.4 by failing to report, before or after, *ex parte* communications which occurred between SCE executive(s) and a Commissioner. This decision also affirmed that SCE twice violated rule 1.1 as a result of acts and omissions of SCE and employees which misled the Commission, showed disrespect for the Commission's Rules, and undermined public confidence in the agency.

9. D.15-12-016 ordered SCE to pay a penalty of $16,740,000.

10. On December 18, 2014 Henricks and CDSO filed an Application for Rehearing of D.14-11-040.

11. On April 27, 2015 A4NR filed a PFM of D.14-11-040 requesting that the Commission set aside D.14-11-040, adopt the Phase 1 PD, issue an order to prepare a Phase 2 PD, and direct parties to file recommendations on how to conclude the proceeding. A4NR also filed an Amendment to PFM of D.14-11-040 on May 26, 2015.

12. On August 11, 2015 ORA filed a PFM of D.14-11-040 stating that it agreed with TURN's recommendation that ratepayers could receive a better outcome through litigation of the proceeding, and that if the Commission overturned D.14-11-040 the Phase 1 PD should be adopted, a Phase 2 PD should be prepared, and a PHC set for Phase 3 to establish a schedule.

13. On May 9, 2016 the then assigned Commissioner and ALJ issued a Joint Ruling reopening the record of the proceeding.

14. On December 13, 2016 the then assigned Commissioner and ALJ issued a Joint Ruling directing the parties to meet and confer to determine whether an amended settlement agreement could be reached.

15. On May 26, 2017 the ALJ issued a ruling extending the meet and confer time to August 15, 2017.

16. On August 15, 2017 the parties notified the Commission that the outstanding issues in the proceeding had not been resolved and no settlement among the parties reached.

17. On October 10, 2017 the Assigned Commissioner and ALJ issued a ruling setting a status conference for November 7, 2017 and identified anticipated issues for evidentiary hearings to be held in 2018.

18. On November 7, 2017 a status conference was held in the Commission's Los Angeles office to address procedural issues, schedule, and the set evidentiary hearings.

19. On January 6, 2018 the Assigned Commissioner and ALJ issued a ruling clarifying the scope for evidentiary hearings to be held on the remaining issues that would resolve the proceeding.

20. On January 30, 2018, the 2018 Settling Parties entered into a settlement agreement and filed a motion requesting the Commission adopt the 2018 Settlement Agreement.

21. Pursuant to the 2018 Settlement Agreement, the Utilities stop collecting SONGS cost in rates when the remaining investment balance is $775 million. The date that the Utilities stop collecting SONGS cost in rates is the Cessation Date. The Cessation Date is defined in the 2018 Settlement Agreement and estimated to be December 19, 2017 or April 21, 2018 depending on how the Commission resolves A.16-04-001.

22. The Utilities retain all amounts collected before the Cessation Date.

23. The Utilities will refund or credit ratepayers all amounts collected after the Cessation Date through adoption and implementation of the 2018 Settlement Agreement as modified if executed and filed with the Commission.

24. The Utilities will not recover nuclear fuel costs in rates after the Cessation Date pursuant to the 2018 Revised Settlement.

25. The Utilities will retain all amounts received from the future sale of the nuclear fuel investment pursuant to the 2018 Revised Settlement Agreement.

26. The 2018 Revised Settlement Agreement does not affect decommissioning activities or costs addressed in the nuclear decommissioning cost triennial proceeding.

27. The Federal Court Agreement raises concerns that may be addressed in Federal Court. We do not consider, approve, or find the Federal Court Agreement reasonable; however, we do not believe this agreement prevents us from finding the 2018 Revised Settlement Agreement reasonable.

28. The 2018 Revised Settlement Agreement significantly improves ratepayers position as to responsibility for costs associated with the premature

closure of SONGS Units 2 and 3. Under the 2014 Settlement Agreement ratepayers bore 56% and Utilities Shareholders bore 27% of the costs for the premature closure. Under the 2018 Settlement Agreement as modified ratepayers bear 40% of these costs and the Utilities Shareholders bear 43%.

29. The record does not support adoption of Section 3.4 of the 2018 Settlement Agreement, which provides funding to CSU for GHG emission reduction research, by the Commission.

30. The 2018 Settling Parties have not provided support justifying Commission authorization of the proposed non-competitive GHG Program set forth at Section 3.4 of the 2018 Settlement Agreement, nor have the parties demonstrated that the program is in the public interest.

31. TURN and WEM believe the funding proposed for the GHG Program should be incremental funding in addition to the Utilities existing philanthropic programs.

32. The Utilities believe that the $12.5 million for the GHG Program is to be funded through existing philanthropic programs with no incremental increase in such funding required by the 2018 Settlement Agreement.

33. After the *ex parte* communications related to the SONGS Units 2 and 3 closure became known, parties raised concerns regarding the inclusion of the UC Program as a modification to the Proposed 2014 Settlement Agreement.

34. The Commission has adopted many programs, including the Electric Program Investment Charge research program (A.17-04-028 et al.) that address reduction of GHG emissions through research and development of new technologies.

35. The Commission stated its preference in D.18-01-022 that issues concerning replacement procurement and the avoidance of increased GHG

emissions from closure of nuclear facilities should be dealt with in an integrated manner through the Integrated Resource Planning proceeding R.16-02-007.

36. Section 4.16 of the 2014 Settlement Agreement is not supported by the record or in the public interest.

37. The remaining provisions, other than the GHG Program set forth at Section 3.4, of the proposed 2018 Settlement Agreement are supported by the record in the proceeding and adoption of these provisions is in the public interest.

38. The revised rate recovery for the premature closure of SONGS Units 2 and 3 set forth in the 2018 Revised Settlement Agreement is supported by the record, reasonable, and in the public interest.

39. The 2018 Settling Parties have reached a reasonable compromise as to all of the outstanding issues in the proceeding through the provisions of the 2018 Revised Settlement Agreement.

40. Commission approval of the 2018 Revised Settlement Agreement will provide resolution of contested issues, and will result in significant savings in time, resources, and expense for all the parties, the Commission and the ratepayers.

41. The 2018 Revised Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest.

42. Advice Letters SCE 3403-E and SDG&E 2919-E, filed on July 11, 2016, were entered into the evidentiary record of this investigative proceeding for disposition.

43. The Federal Court Agreement submitted by SCE for admission into the evidentiary record through a motion filed on February 15, 2018; and was marked

as exhibit SCE-58 and admitted into the record through a ruling issued on March 22, 2018.

44. The Utility Shareholder Agreement submitted jointly by the Utilities through a motion on February 15, 2018 was marked as exhibit Joint Utilities-1 and accepted into the evidentiary record through a ruling issued on March 22, 2108.

45. SCE has affirmed that SCE shareholders shall pay any attorneys' fees pursuant to Federal Court Agreement, and such payments shall not be included for recovery from ratepayers in filings.

Conclusions of Law

1. Pursuant to Rule 12.1(d), the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

2. The 2018 Revised Settlement Agreement is reasonable in light of the record, consistent with the law, and in the public interest.

3. Section 3.4 of the 2018 Settlement Agreement and Section 4.16 of the 2014 Settlement Agreement are inconsistent with the public interest and should be modified to eliminate the terms and conditions set out at Section 4.16 of the 2014 Settlement Agreement and Section 3.4 of the 2018 Settlement Agreement should be modified consistent with 2018 Revised Settlement Agreement.

4. The 2018 Revised Settlement Agreement reflects a reasonable compromise among the 2018 Settling Parties.

5. The revised proposed cost recovery set forth in the 2018 Revised Settlement Agreement for the premature closure of SONGS Units 2 and 3 is reasonable.

6. It is not reasonable for the Commission to adopt the 2018 Settlement Agreement if it includes the terms and conditions set out at Section 3.4 of the

2018 Settlement Agreement as there is no support for this provision in the record, and it is not in the public interest.

7. It is reasonable for the Commission to adopt the 2018 Revised Settlement Agreement to this decision.

8. The parties that have entered into the 2018 Settlement Agreement fairly reflect the affected interests.

9. No term of the 2018 Revised Settlement Agreement contravenes statutory provisions or prior Commission decisions.

10. Issues concerning greenhouse gas emission reduction research and development should be addressed in the Integrated Resource Planning Proceeding (R.16-02-007 and any successive proceeding) proceeding.

11. Development of a competitive research program that addresses GHG emission reductions should be part of a proceeding that includes all interested stakeholders, such as the EPIC and related proceedings.

12. The 2018 Revised Settlement Agreement is reasonable in light of the record, is consistent with the law, and in the public interest.

13. The 2018 Revised Settlement Agreement fully resolves and settles all disputed issues in this OII.

14. The Commission may develop GHG emissions reduction policy in the Integrated Resource Planning proceeding.

15. The Commission may open a proceeding to reassess the Commission's rules and policies concerning settlement agreements.

16. The Commission may open a proceeding to reassess the Commission's rules and policies regarding intervenor compensation.

17. Ratepayers should not pay for any attorneys' fees that may be paid pursuant to the Federal Court Agreement.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between Southern California Edison Company (U-338-E), San Diego Gas & Electric Company (U 902 E), the Alliance for Nuclear Responsibility (A4NR), the California Large Energy Consumers Association, California State University, Citizens Oversight dba Coalition to Decommission San Onofre, the Coalition of California Utility Employees, the Direct Access Customer Coalition, Ruth Henricks, the Office of Ratepayer Advocates, The Utility Reform Network, and Women's Energy Matters, is approved as modified herein by Ordering Paragraph 2.

2. In order for the 2018 Settlement Agreement to be approved, the Greenhouse Gas Program set forth at Section 3.4 of the 2018 Settlement Agreement must be eliminated and replaced with the following new Section 3.4:

   (a) Section 4.16 Greenhouse Gas (GHG) Research of the 2014 Settlement Agreement is no longer in effect and the terms and conditions of section 4.16 of the settlement agreement adopted in D.14-11-040 are hereby no longer in effect thus removing the GHG Research Program that directed $25 million to the University of California.

3. If the modification set out in Ordering Paragraph 2 above is accepted the parties (or significant sub-set of the parties) shall file and serve a notice within ten (10) days from the date the Commission adopts this decision stating such acceptance of the modification.

4. The Settlement Agreement as modified by Ordering Paragraph 2 will become effective upon filing of the notice.

5. Once the acceptance of the Settlement Agreement as modified by Ordering Paragraph 2 becomes final consistent with Ordering Paragraphs 3 and 4, all

outstanding matters concerning cost recovery for the premature closure of the San Onofre Generating Station Units 2 and 3 are resolved.

6. Southern California Edison Company's (SCE) Motion to File Documents Under Seal filed on April 27, 2018 is granted. The documents filed under seal shall be maintained by the Commission for three years after the decision is no longer subject to rehearing or appeal. After three years the Commission will either destroy or return the documents to SCE.

7. All pending motions that have not been ruled upon at the time this decision is adopted are deemed denied.

8. Exhibit SCE-58 and Exhibit Joint Utilities-1 are affirmed as accepted into the evidentiary record of the proceeding.

9. All rulings made after issuance of Decision 14-11-040 by the assigned Administrative Law Judge or assigned Commissioner are affirmed.

10. Investigation 12-10-013, Application 13-01-016, Application 13-03-005, Application 13-03-013, and Application 13-03-014 shall remain open. If the parties do not accept the modification to the Settlement Agreement set out in Ordering Paragraph 2, then, the assigned Administrative Law Judge is directed to issue a ruling scheduling evidentiary hearings on the underlying issues in this Order Instituting Investigation 12-10-013.

11. Within 10 days of the effective date of this decision, Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) shall withdraw advice letters SCE AL 3403-E and SDG&E AL 2919-E proposing greenhouse gas projects with the University of California.

12. Upon the Settlement Agreement as modified by Ordering Paragraph 2 becoming effective, Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) shall stop reporting the monthly (SCE) and

quarterly (SDG&E) expenditures related to San Onofre Nuclear Generating Station Units 2 and 3 that had been required by D.14-11-040.

13. Within sixty (60) days of the effective date of the Settlement Agreement as modified by Ordering Paragraph 2, Southern California Edison Company and San Diego Gas & Electric Company shall file and serve in this proceeding a final accounting of the San Onofre Nuclear Generating Station Units 2 and 3 expenditures, including any credits or refunds to customers.

14. If attorneys' fees are paid pursuant to the Agreement to Resolve *Citizens Oversight, Inc. et al. v. CPUC et al.*, No. 15-55762 (9th Cir. 2015) and *Citizens Oversight, Inc., et al. v. California Public Utilities Commission, et al.*, No. 3:14-cv-02703 (S.D. Cal. 2014), dated January 30, 2018 (Federal Court Agreement) such attorneys' fees are to be paid by Southern California Edison (SCE) shareholders and such payments shall not be included for recovery from ratepayers.

15. This order is effective today.

Dated July 26, 2018, at Sacramento, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners