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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's)
Own Motion into the Rates, Operations, Practices,) Investigation 12-10-013
Services and Facilities of Southern California Edison) (Filed October 25, 2012
Company and San Diego Gas and Electric Company) Irvine, CA)
Associated with the San Onofre Nuclear Generating)
Station Units 2 and 3.

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

**COMMENTS OF
THE COALITION TO DECOMMISSION SAN ONOFRE
ON THE PROPOSED DECISION IN PHASE 1**

December 9, 2013

Coalition to Decommission San Onofre
A Project of Citizens Oversight, Inc.

Martha Sullivan, Organizer
Raymond Lutz, National Coordinator/Citizens Oversight, Inc.
2354 Carmel Valley Rd.
Del Mar, CA 92014
858/945-6273
marthasullivan@mac.com

Summary of Recommended Changes to the Proposed Decision

1. Disallow 80% of SCE's Base-Routine O&M for the whole of June-December 2012, or \$93.5 million, with \$23.4 million allowed..... 6

2. Find that it was NOT reasonable for SCE to move fuel back into the U2 core in late February of 2012, authorize 80% of the U2 Refueling Outage costs (\$36.1 million), and disallow 20% (\$9.2 million) 7

3. Disallow 56% of SCE's Capital Expenditures for 2012, or \$93.9 million, with \$73.7 million allowed..... 8

4. Find and Conclude that Emergency Planning zones were established in California based upon site-specific studies conducted by the Office of Emergency Services (now Cal-EMA) and the Department of Health Services, as mandated by the Legislature in 1979.¹ This is codified in Government Code Section 8610.3..... 8

5. Find and Conclude that there is abundant legislative mandate for the Commission, as the State regulator of SCE and SDG&E, to ensure that they are effectively coordinating with state and local governments in maintaining nuclear powerplant public education information..... 8

6. Direct the Energy Division Director to solicit the input for an effective public information and education program from the California Emergency Management Agency, the California Department of Public Health, and county/city/school districts, community-based organizations and the public within 50 miles of San Onofre via public meetings..... 9

7. Order the establishment and funding of the San Onofre Decommissioning Citizens Oversight Panel proposed by CDSO in its testimony in A.12-12-012/013, Exhibit CDSO-20..... 9

Appendix 1 sets forth proposed Findings of Fact and Conclusions of Law, as prescribed by Commission Rule 14.3.

Table of Authorities

California Government Code Section 8610.3 8

California Health and Safety Code Sections 114650-114685 8

¹ Exhibit CDSO-9 was excerpted from <http://www.cdph.ca.gov/HealthInfo/environhealth/Documents/NERP/NERP.pdf>

I. Introduction

In accordance with the Chief Administrative Law Judge's (ALJ) Notice of November 19, 2013, and the Commission's Rule 14.3, the Coalition to Decommission San Onofre (CDSO) hereby submits its Comments on the Proposed Decision in Phase 1 of this Investigation into the Outage at the San Onofre Nuclear Generating Station (SONGS, or "San Onofre").

CDSO is a grassroots project of Citizens Oversight, Inc., a 501(c)(3) public benefit corporation which encourages increased engagement by the public in the operation of their local, state and federal government to reduce waste, fraud and abuse by public officials. Citizens Oversight DBA Coalition to Decommission San Onofre is unique in its localized, on-the-ground volunteer participation which affords ready consultation with local elected officials and community members regarding the varied impacts of SONGS, as well as the implications of this Investigation. Citizens Oversight, based in San Diego and Orange Counties, has no office in the S.F. Bay Area; therefore effective participation in the CPUC's decision-making process requires additional time, travel and communications expenses. We lack the ratepayer-funded facilities and resources of Southern California Edison, San Diego Gas & Electric and the Commission and we are new Intervenors at the Commission. Our communities in Orange and San Diego Counties most impacted by the SONGS and its admittedly defective nuclear reactors depend upon us – unpaid community members who also have to tend to our businesses/jobs, kids, elderly parents – to represent them in this proceeding as well as in the U.S. Nuclear Regulatory Commission's (NRC) decision-making process for the operation, and now decommissioning, of this defective nuclear power plant. Our neighbors and the media increasingly call upon us with questions about San Onofre, and a large amount of our time is demanded by essential briefings of our elected representatives at the local, state and Federal levels.

With this first Proposed Decision in the Commission's Investigation into the San Onofre outage of 2012-2013, CDSO commends the ALJs' conclusions in agreement with our position articulated in this Investigation over the past year:

However, we find [Southern California Edison] SCE to be single-minded about its restart plan, and slow to understand the technical challenges and regulatory timeframe required to implement it. SCE's decision to apply resources to a restart plan was the result of an unsound decision-making process, primarily because SCE did not consider cost effectiveness or alternatives such as putting Unit 2 into preservation mode, or realistically assess the regulatory hurdles blocking a reasonably foreseeable restart. (Proposed Decision at pp. 3-4)

We are especially gratified that the Proposed Decision adopts the date we targeted in our Phase 1 Opening Brief² as pivotal:

The decision establishes May 7, 2012 as the date by which SCE knew, or should have known, that the new type of tube wear linked to the tube leak in Unit 3 was also present, to a lesser degree, in Unit 2. Therefore, Unit 2 and Unit 3 would not likely return to normal operations in the short-term.

Based upon these findings, the Proposed Decision calls for the first refund to the ratepayers of SCE and San Diego Gas & Electric (SDG&E) due to the unplanned outage of the twin nuclear reactors at the San Onofre Nuclear Generating Station, of \$94 Million. This preliminary refund primarily reflects the over-collection of funds from ratepayers in 2012 that were previously authorized by the Commission for normal operations associated with generating electricity. While CDSO welcomes the Proposed Decision's embrace of its position that SCE made unsound decisions at the expense of its own and SDG&E ratepayers at least starting on May 7, 2012, we consider the amount of this first refund to be overly conservative based upon the record cited in the Proposed Decision itself.

II. 2012 O&M Expenditures

CDSO accepts the PD's deferral of \$122 Million O&M spent by SCE in 2012 on the defective replacement steam generators to Phase 3 in this investigation, although we have advocated all year that the reasonableness and prudence of SCE's actions and expenditures in replacing the four steam generators in the San Onofre reactors in 2004-2011 are central to this Investigation.

However, CDSO believes that the Commission must be more aggressive in disallowing O&M expenditures by SCE after May 7, 2012, and give RATEPAYERS the benefit of the doubt, rather than SCE and SDG&E shareholders.

In published statements following the publication of this Proposed Decision, SCE's Senior Vice President and Chief Nuclear Officer, Peter Dietrich, questioned the PD's criticism of SCE maintaining normal staffing of the San Onofre plant after May 7, 2012.³ What SCE, and particularly Mr. Dietrich, continue to disregard is that the Commission is constitutionally chartered to determine what are **reasonable costs for the captive ratepayers of the SCE and SDG&E monopoly utilities to bear**. SCE and its shareholders, along with those of minority partner SDG&E, must bear the consequences of SCE management's decisions. As clearly stated in the Proposed Decision, and as CDSO revealed

² <http://www.copswiki.org/w/pub/Common/M1365/I1210013CDSOPhase1Brief.pdf>: Finding 2 , at p. 6.

³ E.g., <http://www.oregister.com/articles/edison-538031-proposed-decision.html>

in our cross-examination of SCE witnesses and argued in our Briefs in Phase 1:

“A decision-making process which does not consider alternative actions, cost effectiveness, or the ratepayer’s perspective is not reasonable or prudent.” (At p. 36.)

Ratepayers are DUE MORE RELIEF based upon the Proposed Decision’s findings that SCE used an unsound decision-making process in 2012 to respond to the failure of the replacement steam generators, and that SCE’s recorded Base-Routine O&M is excessive after May of 2012 (at p. 46).

Due to SCE’s willful and persistent obstruction of this Investigation, the PD describes the record as “not sufficiently detailed for (the) Commission to try to reconstruct what portion of post-May Base O&M is not reasonably associated with the minimum activities which would have been incurred if SCE had not pursued its decision to restart U2, and both units moved into preservation mode.” It therefore proposes “a gradually increasing reduction to Base-Routine O&M ... beginning in June.” (At p. 46.) The PD goes on to state that the resulting amount “approximately conforms with **SCE’s unsupported estimate that about one-third of SCE’s Base-Routine O&M is necessary** to maintain safe conditions and full regulatory compliance in a permanent shutdown mode.” (Emphasis added, at p. 47.)

SCE stubbornly refused during cross-examination in Phase 1 by multiple parties and the ALJs to identify which plant systems and operations are necessary to maintain safe conditions and full regulatory compliance in shutdown mode – much less even admit that the defective nuclear reactors WERE IN shutdown mode as defined by the NRC, until forced to do so under CDSO cross-examination citing the NRC-authorized Technical Specifications for San Onofre. ⁴

However, in Phase 2 of this Investigation, SCE tried to do just that – identify which plant systems and operations are necessary to maintain safe conditions and full regulatory compliance in permanent shutdown mode – albeit in a highly subjective and undocumented manner.

In CDSO’s Phase 2 Opening Brief, we offer a more rigorously tested estimate for what portion of San Onofre is required to maintain safe conditions and full regulatory compliance in permanent shutdown mode: 7.5%.⁵

4 CDSO Opening Brief in Phase 1, I.12-10-013, et al, at p. 16.

5 http://www.copswiki.org/w/pub/Common/M1390/CDSO-Phase2-Brief_v10.pdf, at pp. 22-25.

Using the PD's reference to "SCE's unsupported estimate that about one-third of SCE's Base-Routine O&M is necessary to maintain safe conditions and full regulatory compliance in a permanent shutdown mode." as an upper bound and CDSO's more rigorously tested estimated of 7.5% as a lower bound: **CDSO recommends that the Commission adopt an average of these two: 20%; and disallow 80% of SCE's Base-Routine O&M for the whole of June-December 2012, or \$93.5 million, with \$23.4 million allowed.**⁶

As argued in CDSO's Phase 1 Opening Brief, "SCE should NOT be rewarded for stonewalling the Commission"⁷ and RATEPAYERS, not SCE and SDG&E shareholders, should be given the benefit of any doubt.

This is particularly necessary given that in addition to \$122 Million in Steam Generator Incremental Costs identified by SCE for 2012, the Proposed Decision also defers to Phase 3 whether SCE and SDG&E will be allowed to recover hundreds of millions in costs associated with power purchases necessary to replace the electricity not generated by San Onofre. This Proposed Decision adopts a methodology for calculating what these "replacement power costs" are, and orders SCE and SDG&E to file new cost estimates using this methodology following the final decision in Phase 1 of this Investigation.

III. 2012 Capital Expenditures

The PD finds to be reasonable SCE's decision to place new fuel in the U2 core more than three weeks after the leak in the U3 steam generator with the same design as U2's, and after U2 steam generator inspections revealed a startling number of indications of unusual and unexpected wear, including the identification on February 5, 2012, of retainer bar wear in U2.

The PD seems to accept SCE's argument that it wouldn't have been cost-effective to suspend the U2 refueling since contractors for this purpose were onsite. However, once more, there was NO cost-effectiveness analysis performed of these costs vs. the longer-term costs of moving fuel back into U2, as CDSO's cross-examination of SCE Witness Perez revealed:

"So in that scenario, if the fuel is not used, then we would put it into the pool and then eventually dry storage. And that would be a ratepayer incurred cost."⁸

6 Using figures in PD Appendix E.

7 At p. 15.

8 At Transcript p. 374.

The cost of the U2 Refueling Outage (RFO) authorized in the PD is \$45.1 million; the value of the fuel moved into the core appears to be \$121 million, as cited by the PD⁹, and SCE persistently testified in Phase 1 cross-examination that it would not be re-sellable after insertion into the core. Add to this lost value the additional costs associated with moving this unusable fuel into the spent fuel pool and then dry storage, noting that 1) the San Onofre spent fuel pools are already at 2x their design capacity, per the California Energy Commission¹⁰; and 2) each dry cask costs about \$1 million. It is abundantly clear that **SCE's rush to restart U2 cost ratepayers conservatively three times the total cost of the U2 RFO**, with the multiplier being higher based upon the partial cost associated with prudently suspending the U2 RFO before moving the fuel back into the core.

CDSO recommends that the Commission find that it was NOT reasonable for SCE to move fuel back into the U2 core in late February of 2012 and that it authorize 80% of the U2 Refueling Outage costs (\$36.1 million), and disallow 20% (\$9.2 million).

As for 2012 Capital Expenditures other than the U2 RFO, CDSO recommends a treatment similar to that recommended for 2012 Base O&M Expenditures after May. The PD reduces this amount by 20% "to reflect what the Utilities' internal experts determined were not necessary to safely maintain SONGS during the 2012 outage, in compliance with applicable federal and state regulations."¹¹

Once more, SCE's estimate is highly subjective and not supported by any sourced documentation. It flies in the face of SCE witnesses' stubborn refusal in Phase 1 cross-examination by multiple parties and the ALJs to identify those systems and operations required to safely maintain San Onofre during the 2012 outage, in compliance with federal and state regulations. As referenced in the foregoing discussion of Base O&M Expenditures, in CDSO's Phase 2 Opening Brief, we offered a more rigorously tested estimate for what portion of San Onofre is required to maintain safe conditions and full regulatory compliance in permanent shutdown mode: 7.5%.¹²

9 At p. 73.

10 June 19, 2013, IEPR Workshop, 2011 IEPR Reporting.

11 At p. 58.

12 http://www.copswiki.org/w/pub/Common/M1390/CDSO-Phase2-Brief_v10.pdf, at pp. 22-25.

Using the PD's reference to "SCE's position that over 80% of the 2012 capital expenditures were necessary to maintain the units in a safe and secure condition, or to meet federal and state regulatory requirements"¹³ as an upper bound and CDSO's more rigorously tested estimate of 7.5% as a lower bound: **CDSO recommends that the Commission adopt an average of these two: 44%; and disallow 56% of SCE's Capital Expenditures for 2012, or \$93.9 million, with \$73.7 million allowed.**¹⁴

IV. Community Outreach and Education

The Proposed Decision notes that CDSO "argues that SCE's Community Outreach and Education costs are not reasonable because SCE does not comply with state law requiring a 35-mile radius for its public education zone" (at p. 25), and subsequently orders "SCE to expand its public education about SONGS and the future decommissioning ... to 50 miles for the immediate future." (At p. 70.) In doing so, the Proposed Decision incorrectly states that "The Emergency Planning zones are established by the federal government" (at p. 70); as referenced earlier in the Proposed Decision, CDSO presented evidence during the Phase 1 hearings via Exhibit CDSO-9 that these zones were established in California based upon site-specific studies conducted by the Office of Emergency Services (now Cal-EMA) and the Department of Health Services, as mandated by the Legislature in 1979.¹⁵ This is codified in Government Code Section 8610.3.

California's Radiation Protection Act, codified in Health and Safety Code Sections 114650-114685 clearly "requires the development and maintenance of a nuclear powerplant emergency response program by state and local governments **based on** federal and state criteria."¹⁶ (Emphasis added.) It also designates the California Emergency Management Agency (nee Office of Emergency Services) as "the focal point for coordinating nuclear powerplant emergency preparedness activities with local governments, other state agencies, federal agencies, and other organizations."¹⁷ It also requires utilities to "Coordinate with state and local governments in maintaining nuclear powerplant public education information."¹⁸ The PD's Finding of Fact 46 does acknowledge that "The requirements for emergency preparedness followed by SCE, and other operators of commercial nuclear plants in the United States, are established by the NRC, Federal Emergency Management Agency (FEMA), and

13 At p. 55.

14 Using 2012 total recorded capital expenditures of \$167.6 million at PD p. 58.

15 Exhibit CDSO-9 was excerpted from <http://www.cdph.ca.gov/HealthInfo/environhealth/Documents/NERP/NERP.pdf>

16 HSC Section 114655(a)(1)

17 HSC Section 114660(b)(1)

18 HSC Section 114680(c)(4)

certain state agencies.” But even this broad reference to state government jurisdiction is not reflected in the body of the PD.

Contrary to the Proposed Decision's conclusion that “there is insufficient evidence in the record for the Commission to intervene in the multi-jurisdictional emergency planning in place” (at p. 70), there is abundant legislative mandate for the Commission, as the State regulator of SCE and SDG&E, to ensure that they are effectively coordinating with state and local governments in maintaining nuclear powerplant public education information. The “Citizens Oversight Panel” proposed by CDSO in A.12-12-012/013¹⁹ would be an excellent vehicle to facilitate this coordination and to develop an effective public information and education program as intended by State law.

Instead of the “Information-only Filing” per GO 96-B by SCE to propose an expanded public information and education program within 90 days of the Final Decision prescribed by the Proposed Decision (at p. 70), **CDSO recommends that the Commission:**

A. Direct the Energy Division to expressly solicit input for an effective public information and education program within 120 days of this decision, from the California Emergency Management Agency, the California Department of Public Health, and counties, cities, school and community college districts, community-based organizations and the public within 50 miles of San Onofre, via:

- 1) At least two public workshops conducted in Orange and San Diego Counties which are also webcast; and**
- 2) Written comments during a minimum 45-day period.**

B. Establish and fund a San Onofre Decommissioning Citizens Oversight Panel similar to that proposed by CDSO in its testimony in A.12-12-012/013, Exhibit CDSO-20.²⁰

SCE has made it abundantly clear that it cannot be relied upon to consider perspectives other than its own self-interest.

¹⁹ <http://www.copswiki.org/w/pub/Common/M1386/A1212013-CDSO-ReplyTestimonyFIN.pdf>, at pp. 9-11 and Appendix B.

²⁰ Ibid.

V. Conclusion

A summary of our recommendations for the Commission's Decision in Phase 1 of this Investigation is provided at the beginning of these Comments. *Appendix 1 sets forth proposed Findings of Fact and Conclusions of Law, as prescribed by Commission Rule 14.3.*

Respectfully submitted,

MARTHA SULLIVAN

RAYMOND LUTZ

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_____/S/_____

Coalition to Decommission San Onofre
2354 Carmel Valley Rd.
Del Mar, CA 92014
858/945-6273
marthasullivan@mac.com

Coalition to Decommission San Onofre
Project of Citizens Oversight, Inc.
771 Jamacha Rd, #148
El Cajon, CA 92020
619/820-5321
raylutz@citizenoversight.org

Dated: December 9, 2013

**APPENDIX 1:
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Proposed Findings of Fact

32. In order to reasonably account for O&M costs incurred as a result of SCE's not well-considered decision to maintain all, or nearly all, operating staff through the end of 2012 and its refusal to identify which plant systems and operations are necessary to maintain safe conditions and full regulatory compliance in shutdown mode, O&M costs recoverable in rates should decrease 80% beginning in June 2012.
46. The requirements for emergency preparedness followed by SCE, and other operators of commercial nuclear plants in the United States, are established by the NRC, Federal Emergency Management Agency (FEMA); and in California, by the California Emergency Management Agency and the California Department of Public Health.
56. SCE's decision to place new fuel in the U2 core during U2 Cycle 17 RFO was not reasonable.

Proposed Conclusions of Law

1. Subject to review in Phase 3 of this Investigation, during January and February, SCE largely acted as a prudent operator of SONGS to detect the U3 leak, identify the source of the leak, inspect all of the U2 and U3 tubes for damage, investigate the causes of excessive and unexpected wear, and to assess whether repair is a reasonable option. Per Finding of Fact No. 56, SCE's decision to place new fuel in the U2 core during U2 Cycle 17 RFO was not prudent.
6. Beginning in June 2012, 80% of O&M shall be reduced and 20% of recorded O&M will remain in rates.
7. The total amount of reasonable 2012 SONGS-related O&M is \$156,945 million, \$233,055 million less than the amount preliminarily authorized in the GRC (\$389.0 million).
9. It is reasonable to apply a 56% reduction to recorded capital expenditures to establish the necessary and reasonable amount to maintain the units in a safe and secure condition, or to meet federal and state regulatory requirements.
10. It is reasonable for ratepayers to receive interest on previously collected SGIR expenses which have not yet been found by the Commission to be reasonable, nor were they preliminarily authorized by the Commission.
11. Approximately \$73.7 million (44%) of 2012 total recorded capital expenditures are reasonable, excluding expenditures related to the U2 RFO.

12. It is reasonable to apply the 56% reduction in approved capital expenditures as a proxy for excess capital projects moved to rate base in 2012, to remove this amount from the rate base, and the associated revenue requirement is determined to be unreasonable for 2012.

16. The Commission's interim finding that SDG&E's internal SONGS-related costs are reasonable does not preclude the Commission's subsequent review of SGRP and SGIR costs from the final review to come.

17. Emergency Planning zones, including a 35-mile-radius Public Education zone, were established in California based upon site-specific studies conducted by the Office of Emergency Services (now Cal-EMA) and the Department of Health Services, as mandated by the Legislature in 1979.²¹ This is codified in Government Code Section 8610.3.

18. To fully comply with State law, It is reasonable for this Commission to consult with other State agencies designed by State law to coordinate California's Nuclear Emergency Response Planning as well as local jurisdictions, community based organizations and the public within the 50-mile radius surrounding SONGS to develop and effective public information and education program during the transition to decommissioning activities.

20. The utilities should be authorized to recover 80% their actual, reasonably incurred costs for the U2 Cycle 17 RFO of \$36.1 million (100% share).

21. The utilities should be required to refund to ratepayers any amount previously collected for 2012 RFOs beyond the authorized \$36.1 million.

21 Exhibit CDSO-9 was excerpted from <http://www.cdph.ca.gov/HealthInfo/environhealth/Documents/NERP/NERP.pdf>