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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.	Investigation 12-10-013 (Filed October 25, 2012)
And Related Matters.	Application 13-01-016 Application 13-03-005 Application 13-03-013 Application 13-03-014

COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E), THE UTILITY REFORM NETWORK, THE OFFICE OF RATEPAYER ADVOCATES, FRIENDS OF THE EARTH, AND THE COALITION OF CALIFORNIA UTILITY EMPLOYEES ON THE PROPOSED DECISION

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Dated: October 29, 2014

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Southern California Edison Company ("SCE"), San Diego Gas & Electric Company ("SDG&E"), the Office of Ratepayer Advocates ("ORA"),[1] The Utility Reform Network ("TURN"), Friends of the Earth ("FOE"), and the Coalition of California Utility Employees ("CUE") (collectively, the "Settling Parties") provide these comments on the Proposed Decision ("PD").

The Settling Parties support the PD and urge the Commission to adopt it on November 20, 2014. The Settling Parties recommend certain modifications to the PD as reflected in the redlined PD attached hereto as Exhibit A. In general, these proposals reflect technical or typographical corrections. In these comments, the Settling Parties explain the basis for the most salient of these recommended changes.

I. THE DISCUSSION OF THE PCIA SHOULD BE MODIFIED

The PD's discussion of the treatment of replacement power costs under the Consensus Protocol is incorrect and should be modified.[2] The Power Charge Indifference Adjustment ("PCIA") is traditionally administered prospectively. Under that traditional approach, while replacement power costs would not be reflected in the PCIA for Direct Access ("DA") customers, DA customers also would not receive the benefit of the retroactive reduction in SONGS revenue requirement resulting from the settlement. The Consensus Protocol addresses this issue by creating a symmetrical treatment of both categories of cost: the PCIA will be

[1] Although ORA was known as the Division of Ratepayer Advocates for most of this proceeding, these Comments refer to it as "ORA" throughout.

[2] PD, p. 128. The Commission adopted the DA Customer Ratemaking Consensus Protocol for the San Onofre Nuclear Generating Station ("SONGS") Outages and Retirement (i.e., the Consensus Protocol) in D. 14-05-003.

adjusted retroactively to reflect the impact of the settlement on SONGS costs, and in exchange the PCIA will reflect the same replacement power costs as bundled service customers pay.

The Settling Parties recognize, however, that the record in this proceeding is incomplete regarding the implementation of the Consensus Protocol and this proceeding is not necessarily the appropriate forum to decide any issues surrounding the Consensus Protocol. Therefore, the Settling Parties recommend that the Commission modify the PD to delete the two sentences on page 128 that follow footnote 316 and state instead: "We do not resolve that disagreement here, but will address the issue as necessary in connection with subsequent filings in other proceedings by the Utilities to update the PCIA." The Settling Parties further recommend that the Commission delete the last sentence in Ordering Paragraph ("OP") 3c and state instead: "The Utilities shall use the Consensus Protocol adopted in Decision 14-05-003 to calculate the Power Charge Indifference Amount for Direct Access customers."

II. THE DISCUSSION OF IMPLEMENTATION SHOULD BE MODIFIED

The Settling Parties recommend limited modifications to the conclusions of law and ordering paragraphs in order to facilitate the prompt and accurate implementation of the settlement. The PD directs the Utilities to file an application for review of 2014 recorded SONGS operations and maintenance and non-operations and maintenance expenses within 60 days of the effective date of the decision.[3] The Utilities will not have complete accounting data for 2014 expenses until late in the first quarter or early in the second quarter of 2015. Accordingly, the Utilities recommend that the Commission either (a) extend the date for filing the application to May 1, 2015, or (b) acknowledge that the Utilities will need to file an update to their applications after the final accounting date for 2014 is available.

[3] PD, OP 4.

The PD further directs the Utilities to maintain the SONGS Memorandum Account ("SONGSMA") and SONGS Balancing Account ("SONGSBA") open through the end of 2014 in order to support their applications for reasonableness review of those costs.[4] The Settling Parties recommend that the Commission revise this language to provide for the Utilities to keep SONGSMA and SONGSBA open until the Commission issues a decision on the applications for reasonableness review of 2014 expenses (or until such other date as the Commission may order). In addition, the Settling Parties recommend that SCE and SDG&E should maintain their respective SONGS Outage Memorandum Account ("SONGSOMA") until the Commission issues a decision on the applications for reasonableness review of 2014 expenses (or until such other date as the Commission may order).[5]

The Commission should revise OP 3 to clarify the timing of rate changes. In SCE's case, there will be two rate changes: a reduction in base rates to reflect the lower revenue requirement for SONGS resulting from the settlement, and a reduction in the Energy Resource Recovery Account ("ERRA") balance. Both of these changes will be supported by the Tier 2 advice letter that SCE will submit as soon as possible following the effective date of the decision approving the settlement. The Tier 2 advice letter will set forth the calculations of the revenue requirements, and will be subject to Commission review as provided in OP 3(b).[6] At or about

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[4] PD, COL 12, 13.

[5] The SONGSOMA is a separate account from the SCE SONGSMA and SDG&E SONGSBA. The SCE SONGSMA was created pursuant to its 2012 General Rate Case Decision, D.12-11-051 at FOF 13, COL 10, & OPs 10-11. The SDG&E SONGSBA was created in 2006 pursuant D.06-11-026 as a two-way balancing account for Operations and Maintenance costs billed to SDG&E by SCE, and most recently re-authorized by D.13-05-010 at COL 8. By contrast, the SONGSOMA was created pursuant to OP4(a) of I.12-10-013.

[6] Section 6.1 of the Amended Settlement states that the tariffs will be "subject to a finding of compliance by the Energy Division." It was never the Settling Parties' intention to limit the Commission's ability to review the accuracy of the implementing advice letters. Settling Parties expressly agree that the
(footnote continued)

the same time, SCE will file a Tier 1 advice letter to transmit revised tariffs, in compliance with OP 3(a).

If the Commission is unable to complete its review of SCE's advice letters by December 31, 2014, the Commission should permit SCE to implement the reduction in base rates as of January 1, 2015, subject to refund if the Commission subsequently determines that the advice letters do not accurately calculate the settlement revenue requirement. The change in SONGS-related base rates will be implemented through a separate advice letter, to be filed in late December, which will consolidate all authorized revenue requirement changes that are to be effective in rates on January 1, 2015.

The second rate adjustment resulting from the settlement will be the credit to the ERRA undercollection balance. This credit will be reflected in rates when SCE's ERRA rates are next adjusted. The timing of this rate adjustment depends on the date the Commission issues a decision on SCE's 2015 ERRA forecast application (A. 14-06-011). It is likely that the new ERRA rates will go into effect after January 1, 2015, and the credit from the settlement will be applied at that time.

The Commission should also revise OP 3 to address SDG&E-specific rate timing implementation issues. SDG&E adjusts its electric rates annually on January 1. SDG&E must receive several approvals to effectuate a timely rate adjustment. Pursuant to the terms of the settlement, the effect on SDG&E's revenue requirement and the resulting rates flows from SDG&E's Non-Fuel Generation Balancing Account ("NGBA"). The NGBA applies to SDG&E's bundled service customers and provides recovery of approved electric generation non-

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Commission has "authority to seek additional documentation of calculations in the Revised Tariff Sheets described in ¶ 6.1," PD, p. 127, and expressly agree to the language in OPs 3(a), 3(d), and 3(e).

fuel costs not being recovered by another component of SDG&E's electric rates. In order to effectuate the revenue requirement adjustment resulting from the settlement on January 1, 2015, SDG&E first files, and receives approval, of its annual NGBA advice letter. Then SDG&E consolidates the rate schedule resulting from the approved NGBA advice letter into its annual Consolidated Filing to implement January 1 Electric Rates advice letter ("Consolidated Filing"), which consolidates the electric rate adjustments authorized by the CPUC and filed at the Federal Energy Regulatory Commission ("FERC") through advice letters or decisions and contains the rate schedules that are the impact from each advice letter filing and decision. SDG&E files the Consolidated Filing at the end of December and, as a Tier 1 advice letter, it is deemed approved upon filing, with rates effective January 1st.

In order for the NGBA advice letter, a Tier 2 advice letter with a 30-day approval period, and its rate schedules to be consolidated into the Consolidated Filing to Implement January 1, 2015 Electric Rates, SDG&E must file its NGBA advice letter no later than November 21, 2014, to allow time for staff review and approval prior to filing the Consolidated Filing. Conscious of the fact that the Commission might not approve the PD at the November 20, 2014, business meeting – which would prevent SDG&E from making a timely NGBA advice letter filing – SDG&E has proposed additional language for OP 3. SDG&E's Tier 2 NGBA Advice Letter will be subject to Commission requirements and review as provided in OP 3(b).

In the event that the proposed decision is approved by the Commission after November 20, 2014, the new OP 3(d) would allow SDG&E to file its NGBA advice letter on November 21, 2014, inclusive of the estimated revenue requirements resulting from the settlement and recorded amounts as of October 31, 2014. This would allow SDG&E to reflect the rate adjustments resulting from the settlement in its Consolidated Filing to Implement

January 1, 2015 Electric Rates. In the event that the NGBA advice letter is not approved, or is modified, the proposed language would require SDG&E to true up its electric rates accordingly.

SDG&E will also file a Tier 2 advice letter to identify the transfers to ERRA to adjust the ERRA balance pursuant to sections 4.12 and 4.13. This Tier 2 advice letter will be subject to Commission requirements and review as provided in OP 3(b). SDG&E intends to file this Tier 2 advice letter shortly after the effective date of the decision.[7]

III. ADDITIONAL, TECHNICAL CHANGES SHOULD BE MADE

As reflected in the redlined PD attached hereto as Exhibit A, the Settling Parties recommend the following technical changes to the PD:[8]

Page No.	***Proposed Change***
Page 2	Consistent with the changes proposed to the table on p. 32 (see below), the figure for refunds and credits should be corrected to $1.45 billion. The difference between the present value revenue requirement of the Utilities' litigation position ($4,732.9 million) and the corrected settlement ($3,284.5 million) is $1,448.4 million, which rounds to $1.45 billion.
Page 5	The statement that approximately $1 billion in non-SGRP investment in Base Plant will be recovered should be clarified. For SCE, the sum of estimated Base Plant ($622 million [Recital 3.37]) and estimated CWIP ($153 million Cancelled CWIP and $302 million Completed CWIP [Recitals 3.40, 3.41]) is $1,077 million, which is approximately $1 billion. However, because CWIP is defined as a separate category from Base Plant, the phrase "Base Plant" should be removed from the sentence in question on p. 5. The PD also should clarify that these figures refer only to SCE. SDG&E's Base Plant is estimated at $165.6 million (Recital 3.37), and its CWIP balances are not estimated in the settlement.
Page 6	The statement that SCE will "refund" approximately $99 million in incremental inspection and repair costs is incorrect. Because these incremental expenses exceed the O&M provisionally authorized in the GRC, SCE has not recovered

[7] Following the effective date of the Decision, SDG&E will also file a Tier 1 advice letter to transmit revised tariffs, in compliance with OP 3(a).

[8] Additional proposed corrections of typographical errors and the like are included in the redlined PD attached as Exhibit A but not summarized in this table.

Page No.	*Proposed Change*
	these costs in rates. Accordingly, the PD should be corrected to state that SCE "will not recover" the $99 million in rates.
Page 6	The statement that SDG&E will refund $5.1 million is incorrect. There is no such provision in the settlement.
Page 6	The litigation sharing applies to net recoveries after deducting litigation costs. The PD's statement that the sharing applies after "[e]xcluding" litigation costs is potentially confusing. For clarity, the PD should state: "After deducting litigation costs,"
Page 7	The statement that the utilities began collecting SGRP costs after the units went online is not entirely accurate. In accordance with D. 05-12-040, the utilities began collecting 20% of the estimated costs of removal and disposal of the original steam generators in 2006, before the replacement steam generators went into service (*see* SCE-6, p. 14); those removal and disposal activities were part of the cost of the Steam Generator Replacement Project. However, the PD is correct that the utilities began to recover the costs of the replacement steam generators after they went into service. Therefore, the reference on page 7 should be to "RSG costs" rather than "SGRP costs."
Page 8	The statement that the AIT "did not permit SCE to restart the RSGs" is not accurate. The AIT did not issue any directive with respect to restart. Separate from the AIT, the NRC issued a Confirmatory Action Letter, which confirmed SCE's agreement not to restart the units until SCE had completed certain actions and obtained NRC concurrence to restart.
Page 10	The statement that the cause of the tube-to-tube wear was "Fluid Elastic Instability (FEI) or in-plane vibration arising from thermal flow" should be modified. FEI and in-plane vibration are not alternative explanations; in-plane vibration resulted from FEI. Moreover, the extent to which FEI resulted in out-of-plane vibration is an issue in the arbitration with Mitsubishi, and the Commission should not address it at this time. Consistent with the statement on p. 86, the PD should state that the cause of TTW was FEI.
Page 25	The statement in the last row of the table that Completed CWIP will be amortized over 10 years is incorrect. Per section 4.8(a)(ii)(C), the amortization period for Completed CWIP starts on the earlier of the date the asset is placed into service or the Effective Date, and ends on February 1, 2022. For assets that go into service after February 1, 2012, the amortization period will be less than 10 years.
Page 25	The statement in the last row of the table that Completed CWIP will earn "AFUDC until 1/31/2012 then same as base plant" is technically incorrect. Per section 4.8(a)(ii)(A)(2), Completed CWIP earns AFUDC until it is placed into service, but the AFUDC rate changes after 1/31/12. Prior to that date, the AFUDC rate is the authorized AFUDC rate; after 1/31/12, the AFUDC rate is the same as the rate for Base Plant. The Utilities earn a return (as distinguished from accumulation of AFUDC) on Completed CWIP only during the amortization

Page No.	*Proposed Change*
	period, as set forth in section 4.8(a)(ii)(C).
Page 32	The figure $3,317.5 in the table should be corrected to $3,284.5, which is the sum of the figures in the column. The figures in this table represent SCE's and SDG&E's shares, as set forth in SCE-56 and SDG&E-23, and do not represent 100% share (the City of Riverside is not included).
Page 72	The references to $3.299 billion and $1.409 billion are correct, insofar as they refer to the estimates attached to the motion for settlement approval. To maintain consistency with the table on p. 32, however, the Commission may wish to note that these figures were subsequently updated in SCE-56 and SDG&E-23.
Page 88	The table should be corrected to reflect the revisions set forth in SCE's February 28, 2013, monthly report: Regulatory – After Outage was updated to $6,401, and Other should be corrected to $13,319. In addition, the table should be corrected to reflect SDG&E's 2012 and 2013 year end amounts recorded for certain expenses, as provided in SDG&E's 2014 Q2 OMA report on October 2, 2014. The totals also should be corrected.
Page 90	The statement that the NRC "accepted" the decision to shut down SONGS is incorrect. The licensee notifies the NRC of the decision to shut down, but the NRC does not approve or accept that decision.
Page 94	The statement that the Utilities will keep 5% of the proceeds of the sale of nuclear fuel, "net of costs for storing and preparing the fuel for sale" should be clarified. Section 2.18 defines Net Fuel Proceeds (to which the 5% incentive payment applies, *see* section 4.7(a)) as sale proceeds, "net of costs incurred . . . in order to sell such nuclear fuel, including but not limited to" costs of storage and costs to render the fuel salable. There are other costs as well, such as transportation costs, broker and consultant fees, and associated legal fees. While the agreement (rather than the PD's summary) would control, the PD should be modified to make it more complete and accurate.
Page 98	The statement that SCE's share of Base Plant was $622 million and SDG&E's share was $165.6 million "including CWIP" is incorrect. Per section 3.37, the cited figures exclude CWIP.
Page 99	The statement that A4NR argues for disallowance of pre-2012 SGRP costs is not supported by the cited reference, and does not appear to have been a position asserted by A4NR.
Page 126	Per sections 4.5(a), 4.6(a), 4.6(c), 4.8(a)(i)(C), 4.8(a), 4.9(j), 4.10(a), 4.10(b), 4.12, and 4.13, costs will not be computed as of the Effective Date, but as of the last day of the month prior to the Effective Date.

IV. CONCLUSION

The Settling Parties recommend that the Commission correct and modify the PD as explained herein and in Exhibit A. The Settling Parties further request that the Commission vote to adopt the PD as so modified at its November 20, 2014, meeting.

Respectfully Submitted,

Date: October 29, 2014

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Exhibit A

Decision **PROPOSED DECISION OF ALJS' DARLING & DUDNEY**
(Mailed 10/9/14)

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)
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PROPOSED DECISION APPROVING SETTLEMENT AGREEMENT AS AMENDED AND RESTATED BY SETTLING PARTIES

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ORA's Participation Does Not Violate § 309.5

PROPOSED DECISION APPROVING SETTLEMENT AGREEMENT AS AMENDED AND RESTATED BY SETTLING PARTIES

Summary

This decision approves a settlement agreement between Southern California Edison Company (SCE)and San Diego Gas & Electric Company (SDG&E) (collectively, the Utilities) and four other settling parties which provides resolution of rate recovery issues related to the premature shut down of San Onofre Nuclear Generating Station (SONGS), following a steam generator tube leak on January 31, 2012. The original settlement agreement was amended and restated (Amended Agreement), *inter alia*, to provide that SCE and SDG&E shall each equally share net litigation proceeds from Mitsubishi Heavy Industries between their respective ratepayers and shareholders, and to improve Commission oversight of utility implementation of the settlement, particularly as to development of the revised rates.

The primary result of the settlement is ratepayer refunds and credits of approximately ~~$1.3~~ $1.45 billion. The Utilities must also stop further collection of the Steam Generator Replacement Project (SGRP) costs in rates, return all SGRP costs collected after January 31, 2012 to ratepayers, and accept a substantially lower return on other prematurely retired SONGS assets.

Ratepayers will still pay approximately $3.3 billion in costs over ten years (2012-2022), including costs of power the Utilities purchased for its customers after the outage, and recovery of the undepreciated net investment in SONGS assets (*e.g.*, Base Plant), excluding the failed SGRP.

However, instead of the usual authorized rate of return, the settlement reduces shareholders return on SONGS investments to less than three percent.

The effect is ratepayers save approximately $420 million over the ten-year depreciation period.

After a leak was detected in a new Unit 3 replacement steam generator (RSG) on January 31, 2012, neither SONGS reactor unit (Units 2 and 3) generated electricity for ratepayers.[1] In June 2013, SCE decided to permanently shut down both units. The Utilities initially asked to keep several different categories of expenses, both unusual and routine, collected from ratepayers in 2012 and thereafter.

SCE and SDG&E both have an ownership interest in SONGS.[2] The Commission filed this Order Instituting Investigation (OII) on October 25, 2012, commencing an investigation into the SONGS shut down. The OII was consolidated with our deferred general rate reviews of 2012 SONGS-related expenses for each utility[3] and the reasonableness review of each utility's recorded costs for replacing four steam generators at SONGS.[4] The Utilities and other parties provided substantial testimony, evidence, and argument during the proceedings to date, including claims by some that SCE bore fault in the design of the RSGs.

Although hearings were held for early phases of the OII, no final decisions have been adopted by the Commission in the consolidated proceedings.

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[1] Unit 2 was non-operational in January 2012 due to a scheduled refueling outage.

[2] Edison is the majority owner and the operator of the SONGS facility; The City of Riverside also holds a fractional ownership share.

[3] (Application (A.) 13-01-016 (Edison);

13-03-005 [4] A. ~~13-04-013~~; 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.

interest. The ruling identified our public interest concerns with some provisions, including a failure to address "external" consequences of the shutdown, *i. e.*, increases to greenhouse gases due to power purchases from non-nuclear sources. The Settling Parties accepted the changes and submitted the Amended Agreement.[6]

Based on the entirety of the record established to date, and after thorough consideration of the Settling Parties' arguments, the opposition by Opposing Parties, and other parties' comments, we determine that the modified settlement, is a reasonable, efficient and timely resolution of this investigation. Although more parties have since voiced support, it is not an all-party settlement.

The settlement establishes ratemaking treatment for the different expense categories, primarily by establishing February 1, 2012 as the key date for reducing ratepayer costs and calculation of refunds.

Significant features of the settlement include the following:

- As of February 1, 2012: (1) ratepayers stop paying for the Utilities' ~~SCE's~~ investment in the shutdown RSGs; (2) SGRP capital-related revenue collected thereafter is refunded to ratepayers; and (3) depreciation of approximately $100 million previously collected, when the RSGs produced electricity, is retained by the utilities;
- As of February 1, 2012, approximately $1 billion of SCE's non-SGRP investment in ~~the~~ SONGS ~~plant (Base Plant)~~ is removed from rate base and recovered at a reduced rate of return (less than 3% through 2014) and over an extended (10-year) amortization period; the net difference is estimated to be a reduction to the Utilities of approximately $419 million~~;~~ , present value;

[6] Joint Submission of Amended Settlement Agreement September 24, 2014.

- For 2012, SCE will keep $389 million for Operations and Maintenance (O&M) expenses and ~~refund approximately $99 million~~ spent in excess of the amount provisionally authorized in its 2012 General Rate Case (GRC). ~~SDG&E will refund $5.1 million;~~

will not collect in rates approximately $99 million

- The Utilities recover all costs for power purchased from January 1, 2012 until after the settlement is adopted.
- A sharing formula allocates between ratepayers and shareholders any recovery from insurance[7] or claims against Mitsubishi. ~~Excluding litigation costs~~, as modified, the ratepayers and shareholders will share 50%/50% in all recovery from the pending multi-billion arbitration claim by the Utilities against Mitsubishi.

After deducting litigation costs

- Refunds due to ratepayers will be credited to each utility's under-collected Energy Resource Recovery Account balance upon adoption of the settlement by the Commission to reduce otherwise approved rate increases.
- Directs the Utilities to develop a multi-year project associated with the University of California (UC) or UC-affiliated entities, funded by shareholder dollars, to spur immediate, practical, technical development of devices, methodologies, and processes to reduce emissions at existing and future California power plants tasked to replace the lost SONGS generation.

In this decision we address, and are unpersuaded by the arguments by Opposing Parties urging the Commission not to adopt the settlement. Several other parties, namely California Large Energy Consumers Association, Alliance for Retail Markets/Direct Access Coalition, Joint Minority Parties, and World Business Academy have subsequently voiced general or conditional support (*e.g.*, with implementation advice) for the proposal.

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[7] Nuclear Energy Insurance Limited.

In sum, the Commission is satisfied that the amended and restated settlement will result in just and reasonable rates, is consistent with the law, reasonable in light of the whole record, and in the public interest.

1. Background

In Decision (D.) 05-12-040, the Commission authorized replacement of the four steam generators at the San Onofre Nuclear Generating Station (SONGS) Units 2 (U2) and 3 (U3), to be followed by a reasonableness review of the project costs after completion. The Commission provided a conditional presumption of reasonableness for the Steam Generator Replacement Project (SGRP) expenses, if actual total costs did not exceed the adopted estimate of ~~$689~~ $680 million (in $2004).[7A] However, the Commission reserved the option to undertake a reasonableness review of costs, even if within the accepted cost cap.[8] To what extent ratepayers are responsible for the costs of the SGRP is at issue in this proceeding.

Southern California Edison Company (SCE) contracted with Mitsubishi Heavy Industries (Mitsubishi) for the design and manufacture of the Replacement Steam Generators (RSG). U2 went online in January 2010 with its new RSGs, and U3 followed in January 2011. On January 10, 2012, U2 was taken out of service for a scheduled Refueling Outage (RFO) and expected to return to service on March 5, 2012. U3 was taken offline on January 31, 2012, after station operators detected a radiation leak in a steam generator tube. Evidence of similar types of excess vibration wear were found in the tubes of both the U2 and U3 RSGs, although less advanced in U2. The Utilities began recovering associated ~~SGRP~~ RSG costs in rates after each unit went online.

[7A] In D. 11-05-035, we reduced the $680 million to $670.8 million to reflect changes in the project's scope.

[8] D.05-12-040 at Ordering Paragraph (OP) 11, as modified by D.11-05-035.

The NRC issued a Confirmatory Action Letter, which confirmed SCE's agreement not to restart the units until SCE had completed certain actions and obtained NRC concurrence to restart.

In February 2012, the United States Nuclear Regulatory Commission (NRC)[9] sent an inspection team to examine the RSG tube damage and SCE's response. ~~response, but did not permit SCE to restart the RSGs.~~[10] The team found SCE's plant operators responded to the January 31 tube leak "in accordance with procedures and in a manner that protected public health and safety. Plant safety systems ~~also~~ worked as expected during the event."[11] Nonetheless, SCE was faced with a set of decisions including how much time and money to spend figuring out what went wrong, whether it was feasible to fix the RSGs to NRC specifications, and how to manage reliability of electrical service during the extended outages.

During and after 2012, SCE recorded expenses for various SONGS-related actions including inspection, analysis, and repair activities related to the RSGs, as well as for continuing operations and some previously planned capital projects. In June 2012, SCE began preliminary work to put U3 into Preservation Mode.[12] SDG&E, as a minority owner, was billed by SCE for its share of SONGS-related expenses. SCE and San Diego Gas & Electric (SDG&E) (collectively Utilities) have also had to purchase power to replace power lost due to the SONGS

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[9] *Arizona v. United States*, 132 S. Ct. 2492, 2501 (Radiological safety represents an arena of preemption that "Congress, acting within its proper authority, has determined must be regulated by its exclusive ~~governance.…"~~ governance.")

[10] NRC Confirmatory Action Letter (March 27, 2012); OII Attachment A.

[11] SONGS--NRC Augmented Inspection Team Report 05000361/20122007 and 05000362/20122007 (June 18, 2012) (AIT Report) at Executive Summary; *available at* http://pbadupws.nrc.gov/docs/ML1218/ML12188A748.pdf

[12] SCE-10 at Q4 (Preservation Mode is a temporary state of non-operation where the nuclear fuel is removed).

outages. To the extent these purchases have been more costly than the price of the lost power, ratepayers have borne the consequential expense.

Although SCE submitted a plan to NRC in October 2012 to restart the units, neither U2 nor U3 generated electricity again. Instead, the NRC eventually referred SCE's proposed restart plan[13] to the Atomic Safety Licensing Board (ASLB) which concluded SCE would need to obtain a license amendment, a potentially lengthy process.[14] On June 7, 2013, SCE announced it would not seek to restart either SONGS unit.

During 2012, both SCE and SDG&E had pending general rate cases (GRC) wherein each utility included forecasts for test year 2012 SONGS-related expenses which assumed a fully operational generation facility. The Commission declined to give final approval to either utility's estimated SONGS-related expenses in the GRCs, due to the non-operation of both units after January 2012. Instead, the Commission deferred final reasonableness review of that portion of revenue requirement to this investigation, to be instead based on actual 2012 expenses in light of the changed circumstances.[15] The Utilities have already collected the majority of their 2012 and 2013 SONGS-related expenses in rates, subject to refund. Rate recovery of these expenses and for excess power purchases is at issue here.

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[13] SCE Response to NRC Confirmatory Action Letter (October 3, 2012), *available* at http://pbadupws.nrc.gov/docs/ML1335/ML13357A058.pdf

[14] ASLB Memorandum and order, Henricks' Request for Official Notice (Motion #1) (May 8, 2014), Attachment 3. (May 13, 2013)

[15] Each utility was permitted to collect an amount up to the preliminarily approved amounts, pending review in applications to be filed and consolidated with the OII.

In addition, Public Utilities Code[16] Section (§) 455.5(a) grants the Commission discretion to remove from rates the value of any portion of an electric generation facility which remains out of service for nine or more consecutive months, along with "related" expenses. This proceeding concerns what portion of the SONGS plant the Commission could remove from rate base and when. Parties differed as to whether all plant value and costs at SONGS should be removed from rates as no longer "used and useful,"[17] or whether some portions of the plant (*e.g.*, cooling systems, toxic control-related structures and systems, storage of spent nuclear fuel) and related expenses (*e.g.*, security, personnel) are still necessary and, therefore, recoverable from ratepayers.

Some parties contend that if SCE acted imprudently in managing the design of the RSGs, then ratepayers have no responsibility to pay for any costs at SONGS after January 31, 2012 (and perhaps before).

SCE,[18] the NRC,[19] and Mitsubishi[20] have all undertaken studies to determine the cause of the excess tube-to-tube wear (TTW) in the RSGs. Although responsibility for the problem is disputed, there is apparent agreement that the cause of the unexpected TTW was due to Fluid Elastic Instability (FEI) ~~or in plane vibration arising from thermal flow~~. The AIT Report found that both the U2 and U3 SGs were susceptible:

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16 Unless otherwise indicated, all references to code sections refer to the Pub. Util. Code.

17 § 454.8

18 SCE-04 at 82 (On April 23, 2012, SCE issued U2 tube wear Root Cause Analysis (RCA) which identified the cause of TTW as Fluid Elastic Instability (FEI)).

19 Investigation (I.) 12-10-013 OII Attachment A, AIT Report. Oct. 12, 2012

20 Mitsubishi Root Cause Analysis (~~June 12, 2012~~) at http://pbadupws.nrc.gov/docs/ML1306/ML13065A097.pdf.

> "…the NRC team concluded that both units' steam generators were of similar design with similar thermal hydraulic conditions and configurations. **Therefore, SONGS Unit 2 steam generators are also susceptible to this phenomenon (emphasis added).**"[21]

The RSGs include some differences from the design of the original steam generators (OSGs). These differences have sparked questions about the nature and purpose of the design changes, and what SCE knew or should have known about the safety implications of the changes. Responsibility for failure to discover the potential for the excess wear, and consequential damages therefrom, are subjects of a pending arbitration claim filed by SCE, since joined by the SONGS co-owners, against Mitsubishi.[22]

Additionally, SCE and SDG&E state they have submitted claims and proofs of loss to Nuclear Energy Insurance Limited (NEIL) to recover a portion of the costs to purchase power to replace that lost from SONGS.[23] It is unclear whether the Utilities are pursuing additional claims under the accidental property damage coverage, arising from facility damage related to the eventual shut down of the SONGS plant.

On November 27, 2013 ~~In December 2013~~, the NRC issued a Notice of Non-Conformance[24] to Mitsubishi based on finding the company did not establish measures for design control interfaces: the output of the thermal-hydraulic code and input to the

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[21] I.12-10-013 OII Attachment A, AIT Report.

[22] International Chamber of Commerce Arbitration (October 16, 2013); *available* at http://songscommunity.com/docs/101613_SCE_RFA_Redacted_Final.pdf.

[23] Joint Motion at 7.

[24] ~~Attachment A.~~ Administrative Law Judges' (ALJs') Ruling on Requests for Official Notices (Sept. 11, 2014) at 4.

flow induced vibration analysis software vibration code were not in accordance with Mitsubishi design requirements.

The NRC also issued a Notice of Violation[25] to SCE which found design control measures were not established to provide for verifying or checking the adequacy of the output of the thermal-hydraulic code and input to the vibration code to be in accordance with NRC requirements.

These Notices have been admitted to the record by ALJ ruling.[26]

2. Procedural History

Pursuant to § 455.5, the Commission issued an Order Instituting Investigation (OII) on October 25, 2012, initiating a multi-part investigation into the actions and expenses of Utilities associated with the extended outage at SONGS:

> "This investigation will consider the causes of the outages, the utilities' responses, the future of the SONGS units, and the resulting effects on the provision of safe and reliable electric service at just and reasonable rates."[27]

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 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 SGRP approved in D.05-12-040.

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25 ~~Attachment B.~~ *Ibid.*

26 ~~Administrative Law Judges (ALJs) Ruling on Requests for Official Notice (September 11, 2014)~~, Notice of Non-Conformance to Mitsubishi and Notice of Violation to SCE. *Ibid.,* (Nov. 27, 2013) (Dec. 23, 2013)

27 OII at ~~21~~. at 2.

SCE and SDG&E were ordered to separately record all SONGS-related expenses, beginning as of January 1, 2012, into a SONGS memorandum account (SONGSMA),[28] subject to refund, and report the expenses to the Commission on a regular basis.[29] The Commission later confirmed the order in the decision on each utility's GRC application.[30]

outage

(SONGSOMA)

audit

Within the OII, the Commission stated its intention to consolidate other future proceedings to encompass review of the full range of post-outage costs and activities.[31] Subsequently, SCE and SDG&E each filed applications for reasonableness review of 2012 recorded O&M, non-O&M costs, and capital spending,[32] for approval of the totality of the SGRP costs,[33] and for power purchased during 2012, including replacement of power lost due to the outages.[34] In these applications, the Utilities sought full recovery in rates for all of the identified expenses.

The Utilities served Opening Testimony on December 5, 2012, in response to the broad scope of the OII. On December 12, 2012, the ALJ ordered the utilities to provide supplemental testimony, *inter alia*, regarding SONGS: outage history, historic forecast and actual expenses, 2012 treatment of fuel contracts,

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28 SDG&E called its SONGS memorandum account SONGS Balancing Account (SONGSBA).

29 SCE reports to the Commission monthly by Advice Letter (AL) and SDG&E reports by AL quarterly.

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

31 OII at 8. 8-9.

32 A.13-01-016 (SCE), A.13-03-013 (SDG&E).

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

34 A.13-04-001 (SCE), A. 13-34-017 (SDG&E).

13-03-013

SCE files a monthly SONGSOMA report and SDG&E files a quarterly SONGSOMA report pursuant to a January 28, 2014 Scoping Memo and Ruling of Assigned Commissioner and ALJ Determining the Scopt, Schedule, and Need for Hearing in Phase 1 of this Proceeding at 8.

I. 12-10-013 at pp. 10-13 & OP 4. The SONGSOMA is different than SCE's SONGS Memorandum Account (SONGSMA), which was authorized in SCE's 2012 GRC decision "to track 100% of [Operations and Maintenance cost]; 100% of cost savings from personnel reductions; 100% of maintenance and refueling outages, if any; and 100% of capital expenditures." D. 12-11-051 at FOF 13, COL 10, & OPs 10-11. The SONGSOMA is also different than SDG&E's SONGS Balancing Account (SONGSBA), which was created in 2006 pursuant to D. 06-11-026 as a two-way balancing account for Operations and Maintenance costs billed to SDG&E by SCE, and most recently re-authorized by D. 13-05-010 at COL 8.

SDG&E, TURN, ORA, FOE, and California Coalition of Utility Employees (CCUE) (collectively, Settling Parties) filed and served a Joint Motion for Adoption of Settlement (Joint Motion). Settling Parties assert the proposed Settlement Agreement (Agreement), if approved, "would resolve all issues in the OII and consolidated proceedings."[45] It is not an all-party settlement, and is strongly opposed by some.

On April 24, 2014, the ALJs issued a ruling that: (1) ordered Settling Parties to post documents supporting or clarifying the Agreement on SCE's SONGS discovery website; (2) ordered Settling Parties to serve supporting testimony by May 1, 2014 to provide clarifying information, and support for certain numbers referenced in the Agreement in response to questions posed by the ALJs in the ruling; (3) scheduled and set the agenda for an evidentiary hearing pursuant to Rule 12.3 to hear material contested issues of fact asserted in the Agreement; and (4) scheduled and set the agenda for a community information meeting near SONGS on June 16, 2014.[46] Settling Parties, jointly and separately, timely served the supplemental testimony.

On May 7, 2014, comments on the Joint Motion were filed by WBA, CDSO, Joint Parties, A4NR, CCUE, CLECA, Arem/DAAC, WEM, and Henricks.[47] On May 14, 2014, the ALJs conducted the evidentiary hearing, took submission of the supplemental testimony, heard sworn oral testimony from Settling Parties and permitted cross-examination of the Settling Parties' witnesses by non-

[45] Joint Motion at 1.

[46] Commissioners Peevey, Florio, and Picker attended the scheduled Community Information Meeting on June 16, 2014 as observers.

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

days later confirming their continued opposition. On September 24, 2014, the Settling Parties filed and served an "Amended and Restated Settlement Agreement" (Amended Agreement) which included the requested modifications.

This proceeding was submitted on September 24, 2014

3. Standard of Review

The Commission's standard of review for this contested settlement pursuant to Rule 12.1(d) is that the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest." The standard of proof is a preponderance of the evidence.[51]

In determining whether a settlement is fair, adequate, and reasonable, the Commission reviews a number of factors. These factors include whether the settlement reflects the risks, expense, complexity, and likely duration of further litigation; whether it fairly and reasonably resolves the disputed issues and conserves public and private resources; and whether the agreed-upon terms fall clearly within the range of possible outcomes had the parties fully litigated the dispute.[52] The Commission also has considered factors such as whether the settlement negotiations were at arm's length, whether the parties were adequately represented, and how far the proceedings had progressed when the parties settled.[53]

Below we review the settlement provisions, and the parties' arguments in support and in opposition.

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[51] D.13-04-012 at 3.

[52] ~~D.1466 CPUC 2d 314, 317 (1996).~~ D.96-05-070, 66 C.P.U.C. 2d 314, 317 (1996).

[53] D.00-11-041 at 6.

CWIP, the recovery period depends on whether or not the project is completed and goes into service. Details are summarized in the following table.

Item	Amortization Period	Rate of Return	Dollar Amount (12/31/2013)	5% Incentive	Notes	References (Agreement Section)
M&S	Same as base plant	Same as base plant	SCE: $99 million; SDG&E: $10.4 million	Yes		4.5, 2.21, 3.39
Nuclear Fuel	Same as base plant	Commercial paper	SCE: $477 million; SDG&E: $115.8 million inventory (excludes cancellation and sales)	Yes, of net proceeds (proceeds less cost of storage, sale, and making fuel saleable), AND of purchase obligations minus cancellation costs	Amount recovered will be existing investment plus cancellation cost, less proceeds from sales	4.6, 4.7, 2.17, 2.18, 2.30, 3.38
CWIP - Cancelled	Same as base plant	AFUDC until 1/31/2012 then same as base plant	SCE: $153 million; SDG&E: unstated	no		4.8, 2.13(a), 3.40
CWIP - Completed	~~10 years after the earlier of project completion or the end of the month of the effective date of this decision~~	~~AFUDC until 1/31/2012 then same as base plant~~	SCE: $302 million; SDG&E unstated	no		4.8, 2.13(b), 3.41

(Agreement ¶ 4.13)

(Agreement ¶ 4.13)

Starting the earlier of the date the asset is placed into service or the effective date of this decision, ending Feb. 1, 2022.

AFUDC until amortization begins. AFUDC rate = authorized until 1/31/2012, and same as return on Base Plant thereafter. During amortization, return same as Base Plant.

e. Replacement Power

¶4.10 allows the Utilities to recover all "replacement power costs" associated with the non-operation of SONGS and amortize these costs in rates by December 31, 2015.

f. Third Party Recoveries

As modified by the Amended Agreement, ¶4.11 orders each utility to establish two memorandum accounts (or sub-accounts) to track SONGS litigation costs and recoveries[65] from Nuclear Electric Insurance Limited (NEIL) and Mit6subishi. The accounts will track all costs recorded since January 31, 2012. Any positive balance of these accounts (*i.e.* Recoveries in Excess of Costs) will be shared between ratepayers and the Utilities according to ¶4.11 (c). For NEIL recovery: the Utilities' share is 5% and 95% to rate payers in the Outage account; the Utilities' share is 17.5%, with 82.5% to ratepayers in the Other Recoveries account. Ratepayers will receive their share via a credit to each Utility's ERRA account.

The original Agreement provided for a three-tiered allocation of recoveries from Mitsubishi with the Utilities getting a significant majority of the first $1.1 billion. As modified, the ratepayers and Utilities share the net Mitsubishi recoveries equally (50/50).

The first portion of Mitsubishi recoveries will be distributed to balancing accounts of the Utilities: SCE ratepayers' first $282 million will be credited to SCE's Base Revenue Requirement Balancing Account (BRRBA) and SDG&E ratepayers' first $71 million will be credited to SDG&E's Non-Fuel Generation

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[65] *See*: Agreement ¶2.43-2.44 for definitions.

3,284.5

SCE & SDG&E

~~100% Share~~	All values in $ millions			
	TURN Litigation	DRA Litigation	Settlement	Utilities Litigation
PVRR @ 10%	$ 2,692.5	$ 2,542.9	$ ~~3,317.5~~	$ 4,732.9
RSG	$ -	$ 100.9	$ -	$ 917.7
Base Plant	$ 1,127.3	$ 908.9	$ 1,319.4	$ 1,738.5
O&M	$ 900.5	$ 868.5	$ 970.6	$ 1,039.6
Nuclear Fuel	$ 520.0	$ 519.9	$ 477.3	$ 519.9
Replacement Power	$ 144.7	$ 144.7	$ 517.2	$ 517.2

5.1.2. The Agreement is Consistent with the Law

Settling Parties state the terms of the Agreement comply with all applicable statutes and prior Commission decisions, and assert they considered these statutes and decisions during the settlement process.[75] In particular, Settling Parties claim the Agreement is consistent with § 451 and § 455.5.

Section 455.5, authorizes the Commission to remove from rate base the value of portions of a generating facility that has been out of service for nine or more months, along with related expenses. Settling Parties believe the Agreement is consistent with applicable law because the SGRP and SONGS Base Plant are removed from rate base as of February 1, 2012, and $99 million in post-outage RSG inspection and repair costs are disallowed.[76]

Section 451 requires that rates be just and reasonable. Settling Parties, referencing the revenue requirement comparison chart attached to the Joint Motion, claim the terms are just and reasonable because the parties have compromised their positions.

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[75] Joint Motion at 39.

[76] *Id.* at 39-40.

5.1.3. The Agreement is in the Public Interest

The Commission has previously determined that a settlement meets the "public interest" criterion if it "commands broad support among participants fairly reflective of the affected interests"and "does not contain terms which contravene statutory provisions or prior Commission decisions."[77] Settling Parties cite the fact they are comprised of both utilities, two "prominent ratepayer advocate groups in Commission practice, a global network of environmental activists, and a labor group representing hundreds of affected SONGS employees;" these parties all participated in the OII prior to the Agreement.[78] ORA and TURN were especially active in all phases of the consolidated proceedings to date. Settling Parties emphasize that all signatories to the Agreement have stated it is a reasonable compromise of their respective positions.

Settling Parties argue the public interest is also served by settlement of the entire OII because, if adopted, it avoids the cost of further litigation and frees up Commission resources for other proceedings.[79] They view the potential Phase 3 as extremely time-consuming and complex litigation, potentially taking a year or two, delaying refunds, and generating discovery ~~for up to a ten year period~~ relating to a 10 year period and thousands more pages of largely technical testimony. Instead, Settling Parties contend the Agreement provides "substantial relief to ratepayers by eliminating the need for more litigation and freeing the Commission and other parties to ratepayers"

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[77] Joint Motion at 40 [citing *e.g.*, D.10-06-015 at 11-12].

[78] *Id.* at 40.

[79] *Id.* at 41.

concentrate limited resources on other pressing energy-related matters, including meeting Southern California's energy needs in the near future.[80]

5.2. Other parties

With one exception (CLECA), parties who did not join the Agreement, are basically divided between: (1) those who do not generally oppose the settlement, but prefer some modifications, and (2) those who oppose the Agreement and prefer the Commission undertake Phase 3 to confirm SCE's fault for approval of the RSG design, as well as explore a variety of other questions each seeks to have answered. One party, Henricks, alleges there must be "collusion" among the Utilities, Settling Parties, Commissioners, and the ALJs for a settlement to occur at this time which would obviate the need for a Phase 3 inquiry into the RSG design decisions.

5.2.1. Parties Not Opposed to the Settlement Agreement

5.2.1.1. CLECA

CLECA, who became a party in time to weigh in on the Agreement, offers essentially unqualified support, finding it "reasonable and balanced between ratepayer and shareholder ~~shareholder and ratepayer~~ interests" including a reasonable "bottom line."[81] They agree with Settling Parties that the Commission has historically supported qualifying settlements in order to reduce the litigation burden on parties and the Commission.[82]

In addition, CLECA appreciates the diversity of Settling Parties, including utilities, ratepayer advocates, environmental, and labor parties. Of significance

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[80] *Id.* at ~~42.~~ 41-42.

[81] CLECA OC at 1.

[82] *Id.* At 2.

Therefore, they recommend the Commission specifically direct the Utilities to: 1) utilize the provisions of the Consensus Protocol when implementing the rate adjustments associated with the Settlement; and 2) omit the short-term SONGS replacement costs from any Total Portfolio Costs.

5.2.1.3. Joint Parties

Joint Parties were generally supportive of the Agreement, finding it "reasonable and fair" and the result of "protracted and difficult negotiations."[86] Joint Parties are very supportive of the Commission's modifications and believe they are in the public interest and are consistent with long-standing precedents favoring settlements, including settlements where the hearings have not been completed.[87] However, they seek a modification related to community outreach and education efforts in service areas near SONGS, an issue advanced by Joint Parties throughout Phase 1 of the consolidated OII proceedings.

Joint Parties reiterate their request that SCE be required to expand its public education about SONGS and the future decommissioning, beyond the 20 -mile designated public education zone to 50 miles.[88] In addition, they ask the Commission to "be particularly sensitive to pockets of alternative language users and coordinate with community based organizations to ensure wide distribution of public information and availability of emergency planning information."[89]

Second, Joint Parties were initially concerned that current third party recovery provisions were not structured to properly incentivize the recovery of

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[86] Joint Parties OC at 2.

[87] Joint Parties' Comments on Modification Ruling at ~~2.~~ 1.

[88] Joint Parties OC at ~~3.~~ 2-3.

[89] ~~*Ibid.*~~ *Id.* at 3.

funds from Mitsubishi and NEIL. However, the modifications to ratepayer share of the recoveries seems to abate that objection.[90]

5.2.1.4. World Business Academy (WBA)

WBA generally supports the Agreement, but voices a few concerns. WBA initiated settlement discussions with SCE in February 2012 when its President[91] requested a meeting with SCE representatives to present WBA's "Settlement Principles," a set of nine concepts which WBA viewed as the basis for a fair and equitable settlement. According to WBA, the proposed Agreement in large part reflects these settlement principles.[92]

These principles include:

- SCE should not collect money for power not delivered by SONGS;
- SCE should be able to recover the actual costs of power purchased to replace lost SONGS output;
- Ratepayers should not pay the costs of amortizing undepreciated value of SONGS base plant after June 7, 2013;
- SCE should be allowed to keep SGRP costs recovered in rates through January 31, 2012;
- SCE should be allowed to retain recorded labor costs through June 7, 2013, and associated with gradual lay-off for 90 days thereafter; and
- Ratepayers should pay for CWIP plant upgrades to extent equipment or systems were put into service before January 31, 2102 and incurred by June 7, 2013.

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[90] Joint Parties' Comments on Modification Ruling ~~at 3~~.

[91] WBA's President is Rinaldo S. Brutoco.

[92] WBA OC at 3.

Although the Agreement does not achieve all of WBA's objectives in the OII, WBA believes the Agreement will resolve key issues of dispute between parties and bring a "much-needed resolution of the contested claims" when adopted in a final form.[93] Nonetheless, WBA asks the Commission to carefully consider issues raised by non-settling parties. To improve transparency, WBA also suggests it would be in the best interests of ratepayers to provide a table in this decision which clearly illustrates the components of the proposed refund to ratepayers.[94]

Additionally, WBA identifies what it calls "overly-broad or unnecessary language" which it suggests be deleted from the Agreement because such language may not be fully supported by the record. Three examples are provided: (1) delete the word "unexpected" from ¶3.8, which states, in part, that the tube wear (discovered in February 2012) "caused unexpected and extensive property damage to" ~~U2~~ U3 RSGs; (2) delete ¶3.9 which refers to inspections in February and March 2012 of U3 RSGs and similarly states the tube-to-tube wear "caused unexpected and extensive property damage….;" and (3) delete all but the first sentence of ¶3.23 (describes SCE's grievances with Mitsubishi's performance.)[95]

5.2.2. Parties Opposed to the Settlement Agreement

5.2.2.1. Alliance for Nuclear Responsibility

The modifications adopted by the Settling Parties did not alter A4NR's

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[93] *Id.* at 1.

[94] WBA OC at 2.

[95] *Id.* at 2-3.

Particular to the proposed settlement, A4NR argues it is untimely and does not meet the criteria necessary for Commission approval.[99] A4NR's premise is that the NRC citation issued to SCE for failure to properly supervise Mitsubishi's design of the RSGs "places ~~SCE~~ Edison at the head of the chain of causation."[100] A4NR characterizes SCE's decision to not contest the NRC citation as an admission of imprudence of its regulatory duty as the operator to "retain responsibility for the quality assurance program."[101] Thus, A4NR concludes that SCE is factually unable to meet the reasonable manager standard for an operator.

A4NR contends the Agreement is unduly expansive and pre-emptive of issues the Commission should consider as "core priorities" (*e.g.*, review of purchased power costs, SCE violations of NRC regulations, increased emissions).[102] Instead, the Agreement ignores these issues, "absolves ~~SCE~~ Edison management of culpability for ~~an~~ its admitted violation of NRC regulations concerning design control, and ignores the large majority of multi-billion dollar consequences that flowed from that violation."[103] Moreover, A4NR is troubled by statements made by some at SCE or its parent company, Edison International, which imply the terms of the settlement will have nominal impact on SCE's earnings.[104]

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99 A4NR Opening Comments (OC) at 1.

100 *Id.* at 2; *See*, Ruling Taking official Notice of Documents and Ruling on Various Motions (September 11, 2014) at 4.

101 ~~A4NR OB at 5.~~ A4NR OC at 3.

102 *Id.* at 7-12.

103 *Id* at 15.

104 *Id.* at 17-21.

Lastly, A4NR views the implied use of nuclear decommissioning trust funds for certain CWIP and 2014 expenses to be misguided, premature, and likely in violation of California's Nuclear Facility Decommissioning Act of 1985.[108]

5.2.2.2. Women's Energy Matters (WEM)

WEM opposes the Agreement and asserts it does not meet the criteria for Commission approval. Instead, WEM recommends the Commission order large refunds of funds collected in 2012-2013, and continue with Phase 3.[109] The modifications adopted by the Settling Parties did not alter WEM's disapproval of the Agreement.[110]

First, WEM argues the Agreement is not reasonable in light of the whole record because it does not reflect the entire record, as evidenced by omission of any reference to expanded community outreach addressed in Phase 1. In addition, because the Agreement settles the contested OII, WEM contends it "diminishes" the contributions of other, non-settling parties, which WEM concludes is *per se* ~~"~~unreasonable.[111]

WEM's contention the Agreement is inconsistent with the law is primarily based on its view that when ORA became a settling party, it violated its duty to ratepayers under § 309.5. Section 309.5 establishes the Office of Ratepayer Advocates (ORA) "to represent and advocate on behalf of the interests of public utility customers.... ~~[T]~~he goal of the ~~division~~ office shall be to obtain the lowest

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[108] *Id.* at ~~56.~~ 53-58.

[109] WEM OC at 6.

[110] WEM Comments on Modification Ruling.

[111] WEM OC at 5.

possible rate for service consistent with reliable and safe service levels." In WEM's view, ORA moved too far from its litigation position of rejecting cost-of-service ratemaking for SONGS, including seeking disallowance of all SGRP inspection and repair costs, reduced recovery with zero rate of return on Base Plant, reduced 2012-2013 O&M, and capping replacement power costs in June 2013.[112]

Lastly, WEM argues the Agreement is not in the public interest because it stops the investigation before review of the SGRP. The Commission "promised" the public an investigation" when it opened the OII, claims WEM, and the resulting Agreement prevents the public from knowing whether SCE was imprudent in connection with the SGRP.[113] WEM disagrees with TURN's view that removing the SGRP costs is a "proxy" for finding some sort of imprudence because a finding of imprudence or negligence could lead to the disallowance of additional costs (*e.g.*, post-outage O&M, CWIP).[114]

In related arguments, WEM opposes the terms of third party recovery as not beneficial for ratepayers, in part due to the low portion of recovery on the first $900 million. By ignoring the issues of SCE's "contributory negligence," WEM thinks the Agreement does not accurately reflect that recovery is "unlikely."[115] Moreover, adverse to the public's interest, the Agreement strips Commission oversight of both the reasonableness of any settlement or charged costs, including attorneys' fees.

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[112] *Ibid.*

[113] WEM OC at 1-3.

[114] WEM Reply Comments (RC) at 2.

[115] WEM OC at 4

5.2.2.3. Coalition to Decommission San Onofre

The modifications adopted by the Settling Parties did not alter CDSO's disapproval of the settlement.[116] CDSO's Comments were instead a restatement of its views opposing the proposed settlement.

During this proceeding, CDSO has favored immediate refunds of SONGS expenses collected in rates, and opposed ratepayer funding of any post-outage SONGS-related costs, except costs required to maintain safety-related components of the plant, as defined by the NRC.[117] Underlying CDSO's position is its allegation that SCE "deliberately misrepresented the SGRP to the NRC, the Commission, and the public, and knew the moment it discovered tube wear during the U2 RFO, that repairs were imprudent.[118]

In Phase 2, CDSO argued for removal of nearly all SONGS plant from rate base, both SGRP and Base Plant, as of November 1 at the latest, if not the first day of outage when the plant became no longer "used and useful" due to lack of generation.[119] These assets should be considered abandoned and, CDSO argues, shareholders should recover nothing after the outage.[120] "Nuclear Waste Operations" (NWO) assets as described by CDSO, constitute the primary exception to plant which may remain "used and useful" post-outage.[121] CDSO claimed these assets are approximately 7.5% of total base plant, or about

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116 CDSO Comments on Modification Ruling.

117 CDSO Phase 1 OB at 4.

118 *Id.* ~~at 5.~~ 3.

119 CDSO Phase 2 OB at 12.

120 *Id* at 32.

121 *Id* at 22, 27.

- Materials & Supplies – the 5% recovery to SCE for salvage revenues is not an effective incentive to maximize return; refunds should not be delayed for salvage operations;
- Nuclear Fuel Inventory - disallow the portion for fuel loaded into U2 in February 2012 as part of the scheduled RFO because SCE should have known U2 would not return to service;
- Replacement Power – inappropriate for ratepayers to pay for replacement power if SCE gets any return on base plant assets; no recovery for "foregone sales;"
- Base O&M – same as CWIP: only NWO-related costs should be recovered post-outage (approximately $93 million);[126]
- SGIR O&M – disallow it all; and
- Third Party recoveries –change provision because it is poor policy to hinge refunds on uncertain future returns from legal proceedings between SCE and its insurers and Mitsubishi; if assume no recovery of remaining investment in Base Plant and zero return, then utilities should keep 100% of recoveries.[127]

In its comments, CDSO focused on supporting neither recovery of, nor return on, investment in SGRP and the consequential "abandoned" Base Plant. CDSO included a summary interpretation of several previous Commission decisions wherein all, or portions of, plant ceased to function due to regulatory changes, changed conditions, or where a failure occurred and fault was disputed between the utility and a contractor.[128] CDSO relied on these previous decisions to assert that (1) even where a utility was not imprudent, the Commission

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[126] *Id.* at 39.

[127] *Id.* at 40.

[128] 18 ~~PUC2d~~ 700 (Application of PG&E re Helms Pumped Storage Project, filed April 6, 1982). C.P.U.C. 2d

authorized zero return on remaining investment;[129] and (2) where the Commission found SCE's unreasonable and imprudent acts contributed to an accident at Mohave Generating Station, all costs resulting from the pipe rupture were disallowed from rate recovery.[130]

Another linchpin of CDSO's position, is that SCE's decision to not seek a license amendment from the NRC, was error and imprudent. This is clear, argues CDSO, because SCE must have known there were vibration problems with the design in 2005-2006, but did not make corrections due to a decision to avoid the time and expense of a license amendment.[131] Therefore, CDSO argued that, absent a phase 3, the Commission must conclude that SCE's imprudence lead to the failure of the RSGs, and act accordingly.

Lastly, CDSO cites the lack of Phase 3 as fatal to the Commission's ability to evaluate the proposed settlement as reasonable in light of the whole record.[132] CDSO argues it is in the public interest to identify, in Phase 3, which executives made the decision to approve RSG design changes and to not seek a license amendment from the NRC.[133] CDSO placed significant weight on the limitations of SCE's witness[134] at the hearing on the proposed settlement. The witness was unable to cite to the record to identify SCE employees who were involved in the

C.P.U.C.

[129] 18 ~~CUC~~ 2d 592 (Humboldt Bay Power Plant); 47 CPUC 2d 143 (Geysers 15).

[130] D.94-03-048, rehearing denied D. 94-07-067 (July 20, 1994).

[131] CDSO OC at 25-26.

[132] CDSO RC at 9.

[133] *Id.* at 9-10.

[134] President Ron Litzinger.

conduct by SCE in deploying the RSGs. She argues that SCE officials "knowingly violated ~~an NRC~~ [an NRC] statutory safety requirement in place to avoid the very failure of the steam generators as occurred."[142] Based on inferences drawn primarily from a Mitsubishi document, Henricks concludes that SCE was required by the NRC to seek a license before proceeding with the RSG design.[143] Because SCE did not seek a license amendment, as she alleges was required by the NRC, then SCE is "presumptively negligent." Therefore, Henricks concludes the Commission cannot adopt the proposed settlement because it would impose unjust and unreasonable rates in violation of § 451.[144]

Henricks also argues the proposed settlement does not meet the requirements for approval in Rule 12.1. The failure to complete the investigation into the extent SCE was responsible for the design errors, is not in the public interest, and results in an incomplete record, insufficient to determine whether the Agreement is reasonable in light of the whole record.[145]

5.3. Settling Parties' Reply Comments

5.3.1. Joint Settling Parties:

Settling Parties re-assert the Agreement should be adopted because it complies with Rule 12.1(d). Moreover, the majority of comments support the

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[142] Henricks Objection at 9.

10 [143] ~~50~~ C.F.R. 50.59 requires a license of a nuclear power plant to seek a license amendment for certain changes to substantial equipment.

[144] Henricks Reply Comments (RC) at 2.

[145] Henricks RC at 8-9.

Agreement and the comments in opposition do not "undermine the fairness of the overall end-result" of the Agreement.[146]

5.3.1.1. Agreement is Consistent With The Law

WEM, A4NR, CDSO and Henricks oppose the settlement as inconsistent with the law because of claims they were denied an opportunity to participate in settlement negotiations, that adoption of the Agreement before Phase 3 is completed is improper, or that allowing utilities to collect O&M expenses after January 31, 2012 violates the Public Utilities Code. Settling Parties assert these comments reflect a misapprehension of the Commission's settlement rules and the Code. [147]

Settling Parties dispute allegations by CDSO and Henricks that the settlement negotiations were "secret," non-inclusive, and a violation of Rule 12.1. Settling Parties contend Commission rules and precedents are "crystal clear" that the Utilities were entitled to negotiate with a limited number of parties.[148] Given that more than 20 parties intervened in the OII, Settling Parties assert negotiations with every party would have been impracticable, particularly when some parties made clear they did not believe a settlement should occur prior to completion of Phase 3. Furthermore, Settling Parties contend ratepayer interests were represented as evidenced by the proposed revenue requirement which is much closer to the litigation positions of TURN and ORA than to that of the Utilities.[149]

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[146] Joint Reply Comments by Settling Parties (Settling Parties' RC) at ~~2.~~ at 1.

[147] Settling Parties' RC at 3-4.

[148] *Id.* at 5-6 [citing D.10-12-035].

[149] *Id.* at ~~6.~~ at 6-7.

which includes provisions for a substantial reduction in recovery of capital investment.[153]

Settling Parties dismiss as baseless Henricks' unsupported allegations of utility-Commission "collusion" and financial benefits to organizations participating in the settlement.[154]

5.3.1.2. Agreement is Reasonable in Light of the Whole Record and in the Public Interest

Opposing parties argue that adoption of the Agreement would be unreasonable in light of the whole record and contrary to the public interest because (1) Phase 3 will never be litigated; and (2) the Agreement could have different terms the non-settling parties deem preferable.

Settling Parties reply that because the Commission's rules and prior decisions encourage cases to be settled, parties must be allowed to settle cases before all relevant issues have been fully litigated. According to Settling Parties, Rule 12.1 does not require that a record be completely developed as to all contested issues, it requires a settlement to be reasonable in light of the developed record.[155] In support, they refer to a settlement over whether Pacific Gas and Electric Company imprudently constructed Diablo Canyon Power Plant where the Commission stated that settlement "necessarily …occurs before the

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[153] *Ibid.*

[154] *Id.* at 7. ; Settling Parties RC at 10

[155] Rule 12.1(d) [citing D.06-02-003 (finding a settlement agreement met the Commission's standards for adoption because the agreement was "reasonable in light of the record developed in this ~~proceeding."~~ proceeding")].

parties are aware of what the precise litigated result would have been after full hearing."[156]

Additionally, the proposed disallowances represent one of the possible outcomes if the Utilities were found to be imprudent in a phase 3, an important indicator of reasonableness.[157] At the May 14, 2014 hearing on the proposed settlement, TURN's witness, William Marcus, testified the proposed disallowances are "~~essentially a proxy~~ for a finding of some ~~kind~~ of imprudence."[158] ORA's witness Mark Pocta testified ~~that "addressing the~~ prudency issue…isn't going to achieve anything further ~~in getting~~ the lowest possible rates for ratepayers. We achieved that in the settlement with regard to ~~RSG issues~~."[159]

Settling Parties contend there is no basis to require an investigation for its own sake as sought by WEM and CDSO to determine whether the utilities behaved improperly; the Commission's duty is to ensure that rates are fair. Because the Agreement imposes substantial disallowances on the Utilities, Settling Parties state the reduced revenue requirement can be evaluated for reasonableness without a record on prudence.[160]

SCE also vigorously contests assertions by A4NR and CDSO that it should be presumed imprudent for failing to obtain a license amendment for the RSGs, by approving Mitsubishi's design, or by not contesting the NRC Notice of

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[156] Id. at 12 [citing D.00-09-034, 2000 WL 1810229 at 10].

[157] Settling Parties' RC at 11.

[158] *Ibid.*; Reporter's Transcript (RT) at 2709.

[159] ~~*Ibid.*~~; RT at 2717- 2718.

[160] Settling Parties' RC at 13.

find the Agreement is directly consistent with prior Commission precedents.[166]

- WBA's proposals to delete certain language are unnecessary and inappropriate because the "General Recitals" portion of the Agreement, "simply provides a high-level overview of relevant background facts for context."[167] The identified references are from the Phase 1 record. The Agreement and supplemental testimony provide the summary information WBA seeks, and any "arrangements" with the federal government regarding spent fuel rod storage is not relevant to the Agreement.[168]
- Proposed reassignment by WEM and A4NR of certain costs from ratepayers to utility shareholders should be rejected because the Commission should not dissect individual provisions (*e.g.*, CWIP) which were settled as part of the numerous trade-offs in the Agreement. A4NR's analysis of CWIP treatment is flawed and inconsistent with treatment of CWIP at a plant undergoing early retirement.[169] The Agreement makes no finding as to when the plant could be considered "inoperable," nor is it bound to reflect the terms of a PD not adopted by the Commission.
    - A4NR cites no record support or Commission precedent for requiring "externalities" (*e.g.*, increased carbon emissions, impacts on wholesale electricity costs, "social costs") to be monetized and converted to a disallowance as a result of a plant shut-down.
    - Neither ~~regulatory reports~~ research reports regarding the potential impact of the Agreement on future income, nor

[166] *Id.* at 26.

[167] *Id.* at 27-28.

[168] *Ibid.*

[169] *Id.* at 30.

5.3.2. SCE

SCE submitted separate Reply Comments to more thoroughly dispute four arguments made by opposing parties: (1) SCE "admitted" that it "violated NRC regulations" and contributed to Mitsubishi's design errors; (2) SCE failed to obtain a necessary license amendment for the design changes in the RSGs; (3) SCE should not recover certain categories of costs; and (4) the Agreement is unreasonable because it does not address indirect effects of the SONGS shutdown.[173]

Of particular significance, SCE maintains that Mitsubishi was responsible for the defects in the RSGs; SCE appropriately relied on Mitsubishi's expertise to design the RSGs, and was unaware of the imbedded flaws in the RSGs at the time they were designed and installed.[174] SCE acknowledges a licensee retains responsibility for the quality assurance program, but asserts the violation cited was minor and SCE did not admit it could have prevented Mitsubishi's errors. SCE argues the Commission would not automatically hold it liable for Mitsubishi's errors, nor construe the NOV as conclusory as to SCE's prudency, culpability, or financial responsibility for the consequences of Mitsubishi's acts or omissions.[175]

In addition, SCE states it sought and obtained all necessary license amendments for the SGRP, as described in publicly available documents.[176]

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[173] SCE Reply Comments at 1-2.

[174] *Id.* at ~~4.~~ 3-4

[175] *Id.* at 5.

[176] *Id.* at 6-7 (The NRC's AIT report concluded "the steam generators major design changes were appropriately reviewed in accordance with 10 C.F.R. 50.59 requirements").

CDSO provided no support for it allegation that SCE rejected design changes to avoid license amendment requirements.

"inaccurate assertions made by the Alliance for Nuclear Responsibility"

5.3.3. SDG&E

SDG&E submitted separate Reply Comments to address "~~inaccurate assertions by A4NR~~" about purported excessive growth of CWIP post-outage.[177] SDG&E claims A4NR misreads the record when it contends SDG&E's CWIP increased from $98.813 million as of January 31, 2012 to $239.886 million by December 31, 2013. Instead, SDG&E-22 identifies a CWIP balance of $110.854 million as of December 31, 2012 and an aggregate total of $129.031 million by December 31, 2013.[178] As of the end of 2013, no SGRP-related CWIP remained in CWIP. Therefore, SDG&E CWIP only increased $30.218 million (31%) post-outage.

6. Due Process Considerations

Henricks and CDSO raised procedural concerns about the process that led to the development of the Agreement, as well as the Commission's process for review of the Motion and Agreement. We find the processes by which the Settling Parties developed the Agreement, submitted it to the Commission, and the Commission considered it, are consistent with Article 12 of our Rules, as well as principles of due process.

We discuss the parties' various due process-related concerns and contentions below.

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[177] SDG&E RC at 1-2.

[178] *Id.* at 2.

6.1. The Settlement Conference

Both Henricks and CDSO argue the Joint Motion is procedurally defective because no settlement conference occurred which conformed with their understanding of Rule 12.1. CDSO "demand[s] that all parties be included" in any settlement.[179] CDSO and Henricks reject DRA and TURN as "hand-picked" ratepayer representatives that violate the rule's (alleged) requirement for utilities to bargain with all parties equally.[180] The core of this complaint is that Settling Parties arrived with a finished document at the noticed settlement conference, thus other parties present had no opportunity to engage in negotiations. Both Henricks and CDSO argue this is an insurmountable defect and a basis for rejection. We disagree.

Rule 12.1(b) provides, in relevant part:

> "Prior to signing any settlement, the settling parties shall convene at least one settlement conference with notice and opportunity to participate provided to all parties for the purpose of discussing settlements in the proceeding. Notice of the date, time, and place shall be served on all parties at least seven (7) days in advance of the conference…."

On March 20, 2014, SCE e-mailed a letter to the ALJs, the Commissioners, and the OII service list, which provided notice that SCE, SDG&E, DRA, and TURN would hold a settlement conference on March 27, 2014, "for the purpose of discussing terms to resolve the OII." No one disputes that a meeting occurred, although attendance is not in our record. CDSO complains that no settling party

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[179] CDSO Support of Henricks' Objection (May 8, 2014) at 2.

[180] CDSO RC at 15 ~~("The March 27, 2014 meeting did not provide parties in the proceeding with equal opportunity to participate");~~ Henricks Comments at 24-25. Rule 12.1 has no requirement that utilities must bargain with all parties "equally."

"[T]he 'settlement conference' on March 27, 2014, did not provide the parties in the proceeding with equal opportunity to participate."

ever solicited information or opinion from it about whether or how to settle the OII. Moreover, CDSO asserts the two-hour meeting was insufficient to do anything other than receive clarification about the pre-determined Agreement. The Agreement was signed on March 27, 2014 by ~~six~~ four parties.

We are not persuaded that due process violations occurred based on the above arguments. The Commission both allows and encourages settlements which meet our standard of review. Our rules recognize that proceedings may have numerous parties, with varying positions and interests, and possibly some have little or no interest in settlement. Thus, Rule 12.1 permits settlements which do not include all parties.

As a practical matter, complicated proceedings, such as the consolidated proceedings in this OII, have myriad issues that may lead to protracted discussions and various trade-offs among negotiators. It is neither prohibited nor unreasonable for parties to undertake negotiations prior to a noticed settlement conference. Participants in a settlement are voluntary and our rules do not require "equal" opportunity for all parties to be included in all stages of negotiations. Thus, a sub-group of parties may engage in negotiations, prior to a settlement conference, and that alone does not render them suspect.

What must minimally occur, based on plain reading of the rule, is that before any settlement agreement is signed, all parties must have notice of, and an opportunity "to participate," in a discussion about settlement. A settlement conference provides the opportunity to learn what the voluntary negotiators have worked out in their view as a fair and reasonable compromise of some or all issues. Parties have an opportunity to discuss it, determine whether they agree with the compromise, or explore whether settlement supporters are interested in accepting modifications or expanding negotiations to gain support of additional

prehearing conference

Rule 12.1(a) limits the time for settlement proposals to "any time after the first ~~PHC~~ and within 30 days after the last day of hearing."[182] According to A4NR, the Agreement is dated "128 days after the Phase 1 Proposed Decision, 197 days after the close of the Phase 2 hearings, 263 days after the close of the Phase 1A hearings, and 344 days after the close of the Phase 1 hearings."[183] A4NR suggests this proposal may defeat the purpose of the timing restrictions, *i.e.*, to preclude attempts to resolve issues before their broad outlines have been defined at a PHC, and to tie efforts to resolve issues more closely to the evidence-gathering stage of a proceeding.

We are not persuaded that the Joint Motion is untimely and conclude the Joint Motion was filed consistent with Rule 12.1. It was filed and served on April 3, 2014, long after the first PHC was held on January 12, 2013. The January 28, 2013 initial scoping memo provided for hearings in a Phase 3 (as yet unscheduled), thus, the Joint Motion was also filed before the last days of hearing.

6.3. The Hearing on the Settlement Agreement

6.3.1. No Prehearing Conference

Henricks' objected to the ruling setting the May 14 evidentiary hearing because, she asserts, Rule 7.2 first required a PHC to be held. She also asserted there was insufficient time to review the underlying facts and circumstances leading to the settlement terms, given months of "secret" settlement negotiations.[184] CDSO supported Henricks' objections.

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[182] *Ibid.*

[183] *Id.* at 8.

[184] Henricks' Objection; CDSO Support of Henricks' Objection ~~(May 8, 2014)~~.

SCE's President[187] regarding results of stock transactions made after the Agreement was announced; and (3) Commission President Michael Peevey, attending as an observer not a witness, did not respond to repeated questions by Henricks' counsel about his purported "collusion" with the Utilities and TURN, despite the fact the questions were ruled outside the scope of the hearing and inappropriate to a non-sworn person.[188]

Henricks criticizes the hearing because she was not permitted to explore SCE's internal analysis of the strengths and weaknesses of its legal position, or SCE's stock price after the settlement was announced, or reported sales of stock by SCE executives at a profit. She also erroneously charges she was prevented from presenting any evidence during cross-examination.

The Ruling Setting Hearing established the conduct of the hearing where Settling Parties had 20 minutes to present the Agreement, and non-settling parties had 75 minutes to examine the witnesses about "the meaning of the language ~~in~~ of the proposed ~~agreement~~ Agreement, and any material contested issue of fact arising from the Agreement."[189] Furthermore, non-settling parties were afforded an opportunity to present evidence or testimony on material contested issues of fact if it was served on all parties five (5) days prior to the hearing. No evidence or testimony was submitted prior to the hearing.

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[187] Ron Litzinger.

[188] Eventually, Peevey responded in part, then affirmed his attendance did not make it appropriate for Henricks' counsel to demand he answer party questions at the settlement hearing.

[189] ALJ Ruling Setting Hearing and Requiring Supplemental Information on Joint Motion (Ruling Setting Hearing) (April 24, 2014) at 4.

proposed settlement is in violation of § 309.5; and (7) allegations by Henricks that the proposed settlement is the product of illegal collusion between the Utilities, one or more Commissioners, one or more ALJs, Commission staff and the non-utility Settling Parties.

The first issue is moot because it was answered in the Assigned Commissioner's and ALJs' Ruling Requesting Modifications of Proposed Settlement Agreement (Ruling re Modifications).[194] The Ruling re Modifications affirmed the Commission's authority to resolve an open investigation, just as for other proceedings, by adoption of a settlement, providing the specific proposal meets the Commission's criteria for approval in Rule 12.1.[195]

We discuss the other issues raised below.

7.1.1. Agreement Is Not Defective Pursuant to Rule 12.1

Both A4NR and Henricks focus on the portion of Rule 12.1 which provides that "Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings."[196] Both raise concerns about the breadth of the proposed settlement, and Henricks claims the Joint Motion is deficient due to insufficient information.

A4NR advises caution because the rule serves to deter parties from "comprehensive problem-solving" which could lead to overreach, missed details,

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[194] Ruling re Modifications (September 5, 2014).

[195] *Id.* at 4.

[196] A4NR OC at ~~7.~~ 7-8.

the Agreement do not exceed the scope of the issues in the consolidated proceedings.[199]

7.1.2. Resulting Rates Will Not Violate §451, §455.5, and §463(a)

If adopted as modified, the resulting customer rates applied would be just and reasonable, and would not violate the legal standards set forth in the Code. According to the Joint Motion, the proposed PVRR of $3.299 billion is approximately $1.409 billion less than the Utilities sought from the Commission, and between $600-$800 million more than either ORA's or TURN's previous litigation positions.[200]

Section 451 requires that rates be just and reasonable. Section 455.5 specifically guides the Commission in the event of a long-term outage.[201] It requires the Commission to open an investigation, and authorizes, but does not require, the Commission to remove from rate base the value of portions of a generating facility that have been out of service for nine or more months, along with related expenses. Section 463(a) authorizes disallowance of expenses arising from a utility's unreasonable error or omission related to the planning, construction, or operation of any portion of plant estimated to cost more than $50 million.

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[199] For 2014 general rates related to SONGS not addressed by the Agreement, we have ordered the Utilities to file applications for reasonableness review of their 2014 recorded costs; *see*, OP 4.

[200] Joint Motion at Attachment ~~A~~. 2. The Utilities subsequently updated these estimates in SCE-56 and SDG&E-23.

[201] § 455.5 (e) also authorizes the Commission to review the effects of an outage lasting less than nine months.

those capital costs from ratepayers.[202] Moreover, A4NR states, SCE failed to establish the Utilities are entitled to treat any CWIP as abandoned plant which would support recovery of investment, albeit without any return.[203]

We do not accept A4NR's broad exclusionary view. A4NR does not distinguish between CWIP projects completed or that entered service after January 31, 2012, but before June 12, 2013, when SCE announced the permanent shutdown. The CWIP category of costs includes projects related to the U2 RFO completed in March 2012, projects scheduled to meet existing regulatory requirements, and other projects arguably necessary for the safety of employees and the public, as presented in Phase 2. Thus, some portion of post-outage CWIP is at issue in these proceedings and we find it is not unjust or unreasonable, *per se*, for the settlement to provide limited rate recovery on CWIP investment.

Similarly, § 455.5 is not mandatory. We agree with Settling Parties that removal of SGRP Plant and SONGS Base Plant from rate base as of February 1, 2012, and disallowance of $99 million in post-outage RSG inspection and repair costs does not violate § 455.5.[204] These issues were the basis of Phase 2 and a substantial record exists as to the net investments in SGRP and Base Plant. Although the proposed exclusions from rate base and reduced returns are not the only possible ratemaking treatment, the proposed treatments are consistent with the requirements of §455.5.

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[202] A4NR excepts decommissioning-related project costs which should be recovered through the Nuclear Decommissioning Trust Funds (NDTF).

[203] A4NR OC at ~~41-42~~ [cite to, *e.g.*, 49 CPUC 2d 218, 221 (a burden of proof decision where the commission offers dicta about the application of §455.5 to replacement power costs)].

[204] *Id.* at 40.

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Lastly, A4NR argues that the three cost categories, comprising the ratepayer allocation under the terms of the Agreement, violate §463(a). Section 463(a) requires the Commission to establish the utility incurred costs as a result of an unreasonable error or omission relating to the planning, construction, or operation of any portion of the SGRP. Despite the persistent allegations of the non-settling parties, the record does not establish that SCE made an "unreasonable error or omission" that resulted in certain expenses. [We do not otherwise opine on the applicability of §463(a) to these proceedings, or to all or portions of non-SGRP costs, *e.g.*, Base Plant.]

Based on the foregoing, the Commission is not persuaded that the proposed settlement terms violate § 451, § 455.5, or § 463(a).

7.1.3. Settlement is Not Inconsistent With Prior Decisions

CDSO relies on past Commission decisions involving removal of non-operating generation plant from rate base, in order to advance its argument that, based on our precedents, the Commission must remove all SGRP Plant and Base Plant from rate base as of January 31, 2012, and provide no return on the undepreciated SONGS investment.[205] We disagree because the decisions are more nuanced than argued and our decisions are not "one-size-fits-all."

CDSO argues the decisions support their view that the appropriate rate treatment here is to remove all SONGS assets from rate base and provide no return on net investment. However, CDSO has selectively extracted text, misstated a ruling, and overstated the implications of the decisions cited.

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[205] CDSO OC at 12-23.

Instead, the decisions present a variety of ratemaking treatments tailored to the circumstances in the record.

Certainly, several of the decisions articulate the core principle that utility plant should be removed from rate base when it is no longer used and useful. The Agreement does not violate that principle. When looking to these decisions for guidance, we keep in mind that the parties herein disagreed as to when the RSGs, and other SONGS assets, became no longer used and useful. In the Geysers decision, the Commission affirmed removal of non-generating plant from rate base and no return on investment as of the time it was known the plant would never operate again.[206] This is a hotly disputed date in these proceedings.

The decision for Humboldt Bay Power Plant has distinguishable facts because Pacific Gas and Electric was allowed to collect its authorized rate of return for years before the Commission ordered removal from rate base and zero return on investment.[207] This was due, in part, to the fact the utility was trying to determine whether it could restart the unit.

Additionally, CDSO misstates the holding of the Hill Street Water Facility (*Hill Street*) decision where the *Hill Street* facility was retired because it could not produce drinkable water. The Commission actually authorized the utility to recover a return on the retired investment equal to the utility's incremental cost of debt.[208] The Commission also extended the amortization period to avoid rate shock.

C.P.U.C. 2d

206 47 ~~Cal. CPUC~~ 143 (1992).

207 18 CPUC 2d 592.

208 D.11-09-~~0176~~ at 8.

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Similarly, the Commission allowed shareholders a return on the coal plant at Mohave for some years after it stopped generation, but before the Commission approved removal from rate base in 2012.

The Commission's decisions regarding SONGS 1 and the Helms Pumped Storage Plant (*Helms*) are also factually distinguishable. Approval of the SONGS 1 settlement is not binding precedent. The SONGS 1 dispute was factually distinct, including that SCE conditionally collected the authorized rate of return for several years while it was only operating intermittently (*e.g.*, one outage was 20 months) and then at substantially reduced capacity. Between 1980 and 1984, SONGS 1 operated at 13% capacity before it was removed from rate base.[209] Notably, in the decision closing the incomplete investigation to review the reasonableness of SCE's management of the SONGS 1 shutdown, the Commission confirmed its authority to adopt a settlement: "The settlement does not resolve the cost-effectiveness issue regarding SONGS 1. The settlement, instead, is a reasonable resolution of various ratemaking and resource planning issues in light of the continuing controversy over SONGS 1 cost-effectiveness."[210]

The *Helms* decision, which relieves ratepayers from certain costs subject to utility claims of third party liability for equipment failure, also has limited impact on our deliberations. In contrast to these proceedings, the Commission concluded in *Helms* that PG&E failed to perform at the appropriate standard of performance, based on findings of unreasonable acts, including that the utility

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[209] D.92-~~038~~-036 at 6.

[210] *Id.* ~~Finding of Fact (OF)~~ 12.
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ignored worksite safety violations, allowed inaccurate bid estimates, disregarded geological data, and failed to carry out required inspections, etc.[211]

Based on the foregoing, we are not persuaded that the proposed settlement, including provisions to allow for a limited rate of return on Base Plant over an extended period, is inconsistent with previous Commission decisions.

7.1.4. NRC Notice of Violation to SCE is Not Determinative of SCE's Imprudence

The four opposing parties, A4NR, WEM, CDSO, and Henricks, urge the Commission to reject the settlement and argue we have a duty to hold a Phase 3 to answer various questions about the SGRP. For example, WEM argues the public has a "right to an investigation," and CDSO argues the common law legal doctrine of "*res ipsa ~~loquiter~~*" applies to establish imprudence.[212] Neither theory is supported. loquitur

SCE replied there is also no legal basis for CDSO's assertions that *res ipsa loquitur* allows this Commission to "presume" imprudence in the OII. In fact, the Commission has expressly held that it "does not consider the doctrine to establish a conclusive presumption" of imprudence.[213]

On the other hand, A4NR offers a different legal theory. A4NR contends that after the NRC issued a Notice of Violation (NOV)[214] to SCE in December

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[211] 18 CPUC 2d 700, 1985 Cal. PUC LEXIS at *49-50.

[212] Latin, "the thing speaks for itself;" D.94-07-067, 55 CPUC ~~sd~~ 2d 499, 500-01 (July 20, 1994) (Commission does not consider the doctrine of *res ipsa loquitur* to establish a conclusive presumption of imprudence..).

[213] 55 CPUC 2d 499, 500-01 (1994).

[214] *See*, http://pbadupws.nrc.gov/docs/ML1335/ML13357A058.pdf.

finding SCE imprudent at some point during the SGRP would likely be to disallow costs, but the range of evidentiary outcomes is wide.

For example, SCE views the NOV as a technical violation, and responds that it contracted with Mitsubishi to perform the design functions, purportedly an industry standard for utilities purchasing nuclear plant components. [217] This type of industry practice evidence is what the Commission typically considers as part of its effort to determine whether a utility has acted reasonably.[218] We acknowledge that an NOV is a significant regulatory action, and that this one relates specifically to the RSG design process. However, not all violations are equal nor of a severity as to invoke an automatic presumption or conclusion of imprudent management over a five to seven year project.

Here, there are fingers pointed between SCE and Mitsubishi in a pending arbitration. In fact, the NRC also issued a Notice of ~~Noncompliance~~ Nonconformance to Mitsubishi because it found errors with Mitsubishi's modeling of the vibration analysis it relied upon to assure SCE the design was compliant with NRC requirements.[219] Therefore, SCE's knowledge, when making decisions to incur costs between 2005 and 2009, is still unsettled and cannot be overlooked when evaluating the reasonableness of SCE's SGRP-related decisions.

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[217] http://pbadupws.nrc.gov/docs/ML1329/ML13296A018.pdf; "Contracting with the equipment vendor to perform required nuclear quality assurance activities, as authorized by 10 CFR Part 50, Appendix B, Criterion I, is the normal and standard practice for utilities engaged in purchasing nuclear plant components."

[218] 53 CPUC2d 452 1994 CPUC LEXIS at *30 (Mohave Coal Plant Accident).

[219] http://pbadupws.nrc.gov/docs/ML1331/ML13311B101.pdf (Nonconformance with Criterion III of Appendix B to 10 CFR Part 50 (Specifically, the code and inputs to the flow induced vibration analysis software (FIVATS) vibration code were not verified to be in accordance with MHI design requirements).

Based on the foregoing, the Commission does not find that the NOV issued to SCE is determinative of the company's prudence when managing the SGRP.

7.1.5. ORA's participation Violates § 309.5

WEM argues that ORA violated its statutory duties by participating in the proposed settlement. Section 309.5 provides that the purpose of ORA is "to represent and advocate on behalf of the interests of public utility customers…..goal…is to obtain the lowest possible rate for service consistent with reliable and safe service levels."

According to WEM, ORA's original litigation position was to apply performance-based ratemaking principles, rather than cost-of-service principles. Because the Agreement is more aligned with cost-of-service ratemaking, WEM charges that ORA "~~abdicated~~ abdicat[ed] its responsibilities" to ratepayers.[220]

We are not persuaded there is any merit to WEM's argument which lacks any clear analysis or citation support.

7.1.6. Allegations of Collusion

Henricks has made numerous unsupported claims of collusion and financial benefit to the non-utility Settling Parties as the pillar of her opposition to the proposed settlement. She identifies the key "factual" evidence as follows:

- the delay and avoidance of the central issues;
- the failure to allow depositions to be taken;
- the misrepresentation to the public of the terms of the agreement;

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[220] WEM OC at 5.

- allowing for a "silent" stay of the proceedings based on a letter from SCE; and
- other factors identified in the fact section of [Henricks Comments].[221]

These "facts" are misstatements of evidence and rulings, and opinion which lacks foundation. It is not enough for a party to simply repeat unsupported allegations, and then argue that it must be true because the allegations have not been specifically refuted. Settling Parties call the charges "baseless" and we agree. We particularly take exception to Henricks' misrepresentations of both the motives and rulings of the Assigned Commissioner and ALJs.

There is no evidence of collusion. The parties' identities are separate and their interests distinct. We note that settlement negotiations have taken more than a year, each side relied on in-house and outside counsel to research and conduct settlement negotiations and the Agreement was reached after the parties had exchanged information, litigated three phases of the OII, and engaged in comprehensive independent discovery. The negotiation process allowed the parties a further opportunity to review the relative strengths and weaknesses of their litigation positions. Every indication is that counsel on each side adequately analyzed the risks and benefits of their clients' respective positions, and advised their clients competently. Notably, not every party who engaged in negotiations signed the Agreement, and some parties who did not participate in negotiations signed it.

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[221] Henricks Comments at 27-28.

3-7,

$389 million preliminarily authorized in D.12-11-051.[229] For 2012, SDG&E's reported total O&M is as follows: $106.122 million for Base-Routine (plus overheads paid to SCE) and $27.043 million for SGIR-related.[230] These values are approximately consistent with those described in the Agreement.

The ~~2012 and 2013 Year-End (YE)~~ SONGSOMA reports, show that the Utilities recorded the following in non-capital expenses for those years:[230A]

	2012		2013	
Subaccount	SCE	SDG&E	SCE	SDG&E
Base -Routine O&M	$300,489	~~$72,685~~ $72, 865	$241,176	$43,075
Seismic Safety	$3,261	$816 ~~$832~~	$6,843	$1,847
Investigation	$67,059	$17,155	$4,089	$737
Repairs – After Outage	$27,302	$6,004	$-	$-
Regulatory – After Outage	~~$3,421~~	$903	$7,678	~~$1,606~~ $761
Defueling	$932	$167	$-	$-
Litigation	$6,145	$-	$21,953	$-
Payroll Taxes	$13,442	$3,744	$7,995	$2,242
Other (Pensions, PBOP, Insurance)	$23,059	$31,624	~~$23,059~~ $13,319	$19,931
Total	~~$443,536~~ $448,090	~~$133,294~~ $133, 981	~~$312,793~~ $303,053	~~$69,438~~ $69, 593

The Agreement treats recorded O&M expenses as if the plant were operational, even though offline, based on SCE's testimony that it still had a

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[229] SCE-35 at 6.

[230] SDG&E-11 at 2 (reallocates $2.11 million in "Base-SGIR"); SDG&E Motion to Supplement Opening Brief at A-2.

[230A] Figures derived from SCE's 2012 and 2013 year-end SONGSOMA reports, and SDG&E's 2014 Q2 SONGSOMA report (filed Oct. 2, 2014).

substantial amount of routine maintenance and regulatory compliance activities prior to June 2013. Furthermore, SCE's explanation that some personnel were re-directed to activities related to the restart effort was corroborated by evidence showing the vast majority of SGIR expenses were for engineering activities. A reasonable plant operator would take steps after a leak such as the one in U3, to try to figure out what went wrong and try to fix it and restore generation. At some point this becomes unreasonable or cost-inefficient. Thus, the Agreement's disallowance and refund of about 2/3 of the SGIR costs is reasonable.

WBA finds the Agreement "generally consistent" with its recommendation that the Utilities recover their labor costs until June 7, 2013 and a 90 day "gradual lay-off" period.[231] WBA also supports rate recovery for costs associated with storing spent fuel, but does not quantify this amount.[232]

On the other hand, several parties oppose the proposed treatment of O&M. WEM suggests that ratepayers should not pay for O&M after the beginning of the outage.[233] A4NR agrees and expresses two rationales for this opposition. First, it is unreasonable for the Utilities to recover O&M after SONGS is no longer a rate base asset generating electricity (February 1, 2012). Second, full rate recovery contrasts with the Phase 1 PD, which reduced O&M recoveries to one third of preliminarily authorized levels beginning in November 2012.[234]

We are not persuaded that it would have been reasonable to do nothing when the leak was discovered. In fact, the NRC found that SCE responded

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[231] WBA OC at ~~7~~. 6-7.

[232] *Id.* at 4.

[233] WEM OC at 5.

[234] A4NR OC at 23-25.

properly to the unexpected shutdown. The allocation of these costs somewhat favor the Utilities but it was reasonable, for some part of 2012, to attempt to save the assets. Furthermore, until the decision to close SONGS permanently was made ~~accepted by the NRC~~, SCE was obligated to follow regulatory requirements for inspections, maintenance, repair, etc.

CDSO would restrict recovery to its own definition of "NWO-related costs" and estimates this value at $92 million.[235] However, there is little record basis for this number or to adopt it as a cap on recovery.[236]

Therefore, the settlement provisions related to O&M and other non-O&M operating expenses are reasonable and within the range of possible outcomes based on the record.

7.2.2. Recovery of CWIP

Our evaluation of the proposed treatment of CWIP is hindered by costs measured in combination with other factors, or in a snapshot at different dates than used in the agreement. Nonetheless, we find with proper supporting documentation, CWIP costs can be quantified and sufficiently verified in the subsequent tariff letters. We find that due to the extra steps necessary, the provision is reasonable when considered in context of the whole agreement, and in light of the whole record.

The agreement allows the Utilities to recover all CWIP, although the recovery details depend on whether the specific item is considered "cancelled" or "completed" CWIP. Notably, Completed CWIP potentially includes projects

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[235] CDSO OC at 39 and CDSO RC at 22.

[236] CDSO first introduced the "Nuclear Waste Operations" or "NWO" concept in its Opening Brief on Phase 2; it is not discussed in evidence.

that will enter service after the effective date of this decision.[237] In addition, the Agreement directs the Utilities to seek recovery of CWIP completed after June 7, 2013 from the Nuclear Decommissioning Trusts, if possible.[238]

The actual amount of CWIP to be recovered cannot be readily validated using information in the record of this proceeding. CWIP balances fluctuate each month based on projects completed and moving into rate base, offset by addition of new projects accruing ~~expenses~~ expenditures. The Utilities argue that CWIP projects are scheduled based on operational factors, and are often started well in advance of completion. Importantly many CWIP projects had been started prior to the beginning of the outage.[239]

According to the Agreement, SCE had $153 million of Cancelled CWIP and $302 million of Completed CWIP as of December 31, 2013; no values are provided for SDG&E.[240] However, these figures differ from CWIP recorded in the SONGSMA. SDG&E identifies YE2012 and YE2013 aggregate CWIP balances as $110.854 million and $129.031 million, respectively.[241] No SGRP-related CWIP remained in CWIP at the end of 2013. Therefore, SDG&E CWIP only increased $30.218 million (31%) post-outage. In Phase 2 testimony, SCE detailed CWIP work orders separated into several categories, consistent with its Phase 2 ratemaking proposal. Although that proposal is not directly incorporated into the Agreement, the sums of the CWIP categories (as of May 31, 2013) provide a

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[237] Agreement ¶2.13(b).

[238] Agreement ¶4.8.

[239] SCE-40 at 9-10.

[240] Agreement ¶¶3.40-3.41

[241] SDG&E-22.

useful comparison, and are summarized in the following table. Note that "Net Investment" represents the depreciated value of the asset; "Net Investment Required" represents the portion of the depreciated value that the Utilities proposed was still needed to operate the plant after the shutdown (*i.e.* Net Investment Required is the product of the "% Used & Useful" and "Net Investment").

	% Used & Useful	**Net Investment**	**Net Investment Required**
Not Needed	0%	$145,710,179.85	$-
Staffing Level	39%	$ (140,090.58)	$ (54,827.85)
Plant Condition	40%	$21,121,716.11	$8,464,687.76
Needed	100%	$62,810,809.38	$62,810,809.38
Total	n/a	$ 229,502,614.76	$71,220,669.29

SCE's year-end 2013 SONGSMA monthly report shows a CWIP balance of $236 million. SDG&E's year-end 2013 SONGSMA quarterly report shows a CWIP balance of $129 million.[242]

A4NR leads the criticism of this provision of the Agreement, suggesting that CWIP should be treated as "abandoned plant."[243] A4NR states SCE's figures represent "an increase of 60% since SONGS stopped generating electricity."[244] A4NR estimates that $584 million of CWIP has never entered service, without citing record support.[245]

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[242] ~~SDGE-22.~~ SDG&E Quarterly Report (Apr. 1, 2014) at 1.

[243] ~~SDG&E Quarterly Report (April 1, 2014) in Compliance with I. 12-10-013 at 1.~~ A4NR OC at 41.

[244] A4NR OC at 26.

[245] A4NR RC at 6.

7.2.3. Reduction of Current Inventories

The proposed treatment of Nuclear Fuel Investment (NFI) proposed in the Agreement is reasonable in light of the whole record.

Nuclear fuel procurement requires significant lead times and SONGS had an inventory of nuclear fuel and contract commitments when the SONGS outage began.[249] The Agreement states that SCE's share of the NFI was $477 million as of December 31, 2013 and SDG&E's share was $116 million. This is approximately consistent with Phase 2 testimony, and these numbers were not disputed.

The Agreement allows the Utilities to recover the entire NFI, including Fuel Cancellation Costs, over the same amortization period as Base Plant, but at a rate of return based on commercial paper. As an incentive, the Utilities will keep five percent (5%) of the proceeds from selling nuclear fuel, net of costs for storing and preparing ~~the~~ fuel for sale. The ninety-five percent (95%) ratepayer share of net proceeds will reduce the NFI recovered in rates. Further, the Utilities will also keep 5% of the difference between fuel purchase obligations and recorded Fuel Cancellation Costs as an incentive to minimize cancellation costs. The 5% incentive portion of this difference will be *added* to NFI.

including costs

Some parties (*e.g.*, A4NR, WEM, CDSO) criticize the proposed NFI treatment. For example, WEM and CDSO argue SCE should not have replaced fuel in U2 in February 2012 during the scheduled RFO because the recent U3 outage was notice that U2 was not likely to return to service. CDSO estimates the value of this fuel as $121 million and argues that there should be zero return

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[249] Exhibit SCE-40 at 12.

on any post-outage NFI.[250] However, the Phase 1 evidence established that refueling occurred during the scheduled outage, after initial U2 inspections and repairs, and before SCE had sufficient evidence to delay placing fuel in the reactor of U2.[251]

Both A4NR and WBA raised concerns about the 5% incentive. WBA also expressed doubts about whether ratepayers should have to pay for unused fuel which cannot be sold. A4NR also questions the reasonableness of applying the incentive to cancellation costs due to insufficient review. A4NR dismisses the Agreement's "feeble enforcement clause (section 6.1)" providing "resource- strapped" ORA and TURN with review rights. However, the modest incentives are a reasonable approach to prod SCE to maximize revenue which favors ratepayers. Furthermore, A4NR's oversight concern is mitigated by the changes adopted by the Settling Parties in the Amended Agreement and discussed below in Section 9.5. These policy questions are presented in a unique set of circumstances, and the proposed resolution is within the range of possible outcomes based on the record.

Therefore, the provisions related to NFI are reasonable and within the range of possible outcomes based on the record.

7.2.4. Materials and Supplies

The treatment of Materials and Supplies (M&S) proposed in the Agreement is reasonable in light of the whole record.

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250 ~~WEM OC at 4;~~ CDSO OC at 38. 849-52.

251 SCE-10, Question 4 at 1 and RT: ~~852.~~

Therefore, the provisions related to M&S are reasonable and within the range of possible outcomes based on the record. The Utilities shall provide detailed validation and support the M&S balances to be recovered in rates in the Advice Letters implementing this decision.

7.2.5. Recovery of Net Investment and Reduced Return on Base Plant

The proposed recovery of Base Plant over a ten year period (2012-2022) at a reduced rate of return is reasonable in light of the whole record.

Henricks argues that the Utilities should recover nothing for Base Plant after the outage began due to imprudence or unreasonable actions.[256] CDSO also assumes imprudence, and recommends that all assets, except for a portion ($342 million by original cost; $83 million depreciated) in NWO-related assets, should be "transferred to the ~~decommissioning activity~~ Decommissioning operation" along with a full return ($8 million).[257] On the other hand, WBA finds the proposed recovery to be "not at odds with" its settlement principles and A4NR supports the depreciation period and rate of return.[258]

As discussed previously, there is no record basis for an assumption of broad imprudence by Edison, accordingly, Henricks' and CDSO's arguments premised upon such a finding have no merit. In addition, CDSO's recommendation that the SONGS assets be "transferred to the decommissioning activity" is incomprehensible and reflects a misunderstanding of California's compliance with federal funding assurance laws for nuclear decommissioning.

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[256] Henricks RC at 19.

[257] CDSO OC at ~~36.~~ 37

[258] WBA OC at 5 and A4NR OC at 58.

In Phase 2, both the amount of assets that would be depreciated and the appropriate rate of return were disputed issues. SCE and SDG&E proposed that 23% of SONGS assets would remain in rate base at full rates of return, while the other 77% would be recovered over five years at a reduced rate of return that is higher than that allowed in the Agreement.[259] In contrast, both DRA and TURN suggested zero rate of return for assets removed from rate base, and DRA advocated that only 75% of assets should be recovered at all.[260] The Agreement clearly represents a compromise between these positions and is within the range of possible outcomes.

This compromise is clearly demonstrated in the PVRR calculations, which show that SCE's Base Plant PVRR under the Agreement is $360 million less than SCE's litigation position and $348 million more than ORA's position.[261] According to the Agreement, as of February 1, 2012 SCE's share of Base Plant was $622 million and SDG&E's share was $165.6 million, ~~including~~ excluding CWIP.[262] SCE's Year End 2012 SONGSMA report shows a February 1, 2012 rate base balance of $546 million, and SDG&E's shows a balance $104 million.[263] For SDG&E, adding $66 million in CWIP to the rate base balance yields $170 million, approximately consistent with the Agreement.

Therefore, the provisions related to recovery of Base Plant are reasonable and within the range of possible outcomes based on the record. The Utilities shall

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[259] *See*, SCE-36, SCE-40, and SDG&E-18-B for the complete proposal.

[260] *See*, DRA-3, DRA Phase 2 OB, and TURN Phase 2 OB.

[261] Calculated from SCE-56.

[262] Agreement ¶3.37.

[263] SCE's report is dated April 1, 2013, and SDG&E's is ~~April 2013~~ April 2, 2013.

provide detailed validation of the actual Base Plant amounts to be recovered in their tariff filings implementing this decision. Such validation shall clearly demonstrate that the Base Plant recovery does not double count other values such as CWIP and M&S.

7.2.6. No Recovery for Post-Outage SGRP costs

The disallowance of SGRP costs beginning February 1, 2012, and allowance of SGRP costs before that date, are reasonable in light of the whole record.

The Agreement states that SCE's share of the Net Book Value of the SGRP, including CWIP, was $597 million as of February 1, 2012 and SDG&E's share was $160.4 as of the same date. These values are consistent with testimony in this proceeding as summarized below.

	SCE[264]	SDG&E[265]
Plant in Service	$ 590	$ 149
Accumulated Depreciation	$ (84)	$ (16)
CWIP	$ 91	$ 27
Total	$ 597	$ 160

Parties offered a variety of attacks on the proposed treatment of SGRP costs. Henricks opposes the disallowance because it would result in no comprehensive reasonableness review of the SGRP.[266] ~~A4NR argues pre-2012 SGRP costs should be disallowed due to SCE's imprudence.~~[267] Further, A4NR suggests the inflation-adjusted costs of the SGRP were under the authorized

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264 SCE-54 at Question 3.

265 SDGE-22 at 2.

266 Henricks OC at ~~23-24~~. 33.

~~267 A4NR OC at 17-21.~~

amount only because SCE applied the Handy-Whitman Index to de-escalate costs to $2004, and estimates that SCE exceeded the cap by $7.8 million if the Consumer Price Index were used.[268] WEM and CDSO also oppose Utility recovery of pre-outage SGRP costs, although WBA supports it.[269] WEM disputes TURN's view that SGRP refunds are a proxy for an imprudence finding.[270]

In general terms, we find the approach to SGRP recovery is fair and conforms with cost-of-service ratemaking principles. The Utilities will only recover costs for the time period that the RSGs were actually used to produce power, and ratepayers will not pay for a non-operating generation source when they are paying for purchased power. No finding on prudence or imprudence has been made, or needs to be made to reach this conclusion.

We are unpersuaded by the other arguments from Opposing Parties. The Handy-Whitman Index is an appropriate measure of inflation for utility construction projects, is commonly used for utility projects, and is consistent with our intent in D.05-12-040.[271] We also understand TURN's view that disallowance of SGRP from rate base is functionally a simulated result of finding some SCE contribution to the failures. In contrast, WEM is stuck on its speculative premise that SCE intentionally or knowingly approved a flawed design destined to break down on ratepayers. This prevents WEM from

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[268] *Id.* at 44-48.

[269] WBA OC at 6.

[270] WEM OC at 6; WEM RC at 2; CDSO OC at 39.

[271] In D.12-~~10~~-051 (SCE's 2012 GRC), we rejected use of the Consumer Price Index as an escalator because it is comprised of retail consumer goods, instead of utility construction materials.

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should not be dependent on uncertain recoveries from third parties.[281] A4NR and Joint Parties initially suggested changes to the sharing formulas to increase Utility incentives for recoveries for ratepayers.[282] While the changes in the Amended Agreement are consistent with these suggestions, A4NR does not believe the changes are adequate.[283] A4NR also argues that, in the absence of DRA and TURN independently reviewing the likelihood of recoveries, there is no basis for expecting specific levels of recoveries or setting specific formulas. [284] WBA supports the sharing formula, but expresses concern over the level of oversight of third party recoveries in the original Agreement.[285]

The modification in the Amended Agreement from a three tiered lop-sided formula favoring investors for recoveries from Mitsubishi is a substantial improvement. As initially constructed, the Utilities would be reimbursed for losses long before ratepayers received a similar refund. Unlike some opposing parties, we do not dismiss SCE's position, under its warranty or contract claims against Mitsubishi, to obtain compensation which ratepayers will now share equally with shareholders. Similarly, other amendments to the Agreement corrected the anomaly of ratepayers paying 100% of replacement power, yet only receiving ~~85%~~ 82.5% of recovery from the NEIL claims for replacement power.

The sharing formulas are a reasonable policy outcome, allocating possible recoveries under considerable uncertainty about the actual level of recoveries.

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[281] WEM RC at 2; CDSO OC at 40.

[282] A4NR OC at ~~34~~ 35; Joint Parties OC at 3.

[283] A4NR Comments on Ruling at 3-4.

[284] *Ibid.*

[285] WBA OC at 6.

None of the parties opposed to these provisions specifically oppose the formulas, they simply argue that these uncertain ratepayer benefits should be traded for other, more certain ratepayer benefits. This is mere second guessing the compromises made by the Settling Parties, allocating certain benefits and costs to ratepayers and others to investors. The sharing provisions in themselves fairly allocate the large majority of insurance recoveries to ratepayers who paid for the insurance. Recoveries from Mitsubishi will be shared equally, so that the Utilities retain a clear incentive to maximize recoveries for ratepayers as well as for themselves.

We find that with the Commission's general oversight authority and the specific provisions for Commission review adopted in ¶4.11 (g) and the additional oversight discussed in Section 9.5 below, ratepayers' interests in third party recoveries are appropriately protected.

7.2.9. Other Terms

7.2.9.1. Community Education & Outreach

The Agreement does not directly address the topic of community outreach and education, even though this topic was discussed in Phase 1. At that time, SCE argued that its outreach and education were "extensive, transparent, and responsive to the community's concerns and inquiries" and therefore, reasonable.[286] Joint Parties led the argument for expanding outreach in several ways to meet community concerns about the changes at SONGS.

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[286] SCE Phase 1 OB at ~~51.~~ 53.

the record and known at the time. It is not fatal if other outcomes were possible in a settlement, only that the results of the proposed settlement are consistent with the law, reasonable in light of the whole record, and in the public interest.

Therefore, we find that even though not all provisions favor ratepayers, the proposed settlement reasonably allocates the various cost categories between shareholders and ratepayers and is in the public interest.

7.3.3. Delayed refunds & remedies

The proposed settlement would, in effect, retrieve ratepayers' funds already applied to inoperative SONGS plant after January 31, 2012, and instead credit the funds to reduce the pending rate increases from each utility's ERRA account due to unplanned purchases of replacement power. [296] Settling Parties assert the refund mechanism is reasonable and in the public interest because it will bring relief to ratepayers soon after the Commission adopts the proposed settlement.

A4NR, WEM, and Henricks each criticized the refund mechanism provided in the Agreement for different reasons.

Henricks claims the Settling Parties intentionally misled the public by claiming ratepayers would receive refunds.[297] Henricks flatly declares claims of $1.4 billion in proposed refunds to be "false," instead calling it a $3.3 billion "transfer of wealth from the ratepayers to ~~the [Utilities]~~ [the Utilities]."[298] Henricks also

[296] Agreement ¶4.12.

[297] Henricks Comments at 4; Henricks RC at 14, 16-18.

[298] Henricks ~~OC~~ Comments at 4.

dismisses the refund mechanism, which she describes as "paper refunds in the form of bookkeeping entries," while the utilities collect "real money" in rates.[299]

These criticisms are puzzling. The Agreement provides for several categories of costs collected from ratepayers after January 31, 2012 to be "refunded" to ratepayers.[300] In utility ratemaking, the Commission has authorized various ratemaking mechanisms for regulated companies to make adjustments to rates. SCE's ERRA balancing account has ongoing material under-collections, due in large part to the SONGS outages.[301] The use of the ERRA to accept refund credits follows cost-of-service ratemaking principles and serves to reduce the pending ERRA-based rate increases. Thus, the mechanism conforms to existing policy and is in the public interest.

Henricks' characterization of the refund mechanism is misleading. This is not an ephemeral "bookkeeping entry" with no actual relief for ratepayers; it is basic accounting with the tangible result of lowering the net costs to ratepayers for the power purchased for their use.

WEM disputes Settling Parties' claim that adoption of the proposed settlement will result in earlier refunds to ratepayers, and argues the Commission could have ordered refunds at any time.[302] However, WEM offered no legal basis for the Commission to do so without hearings and/or a Commission order, nor did any party file a Petition for Modification of

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299 ~~*Id.* at 7.~~ *Ibid.*

300 *See, e.g.*, Agreement at ¶4.2(b), ¶4.3(b)(ii), ¶4.9(b), and ¶4.9(f).

301 SCE Motion for Order Authorizing Change re ERRA (ERRA Motion)at 2;.

302 WEM OC at 6.

WEM specifically criticizes the identified provisions as speculative because WEM views SCE as negligent or imprudent and unlikely to prevail in the litigation.[309] Both CDSO and A4NR disapprove of any provision that allows ratepayers to share in potential litigation recoveries. They would gladly trade ratepayers' share of such recoveries for zero recovery of net investment and no return to shareholders for Base Plant.

Additionally, CDSO disfavors settlements that need constant oversight and review. They consider the litigation recovery provisions here "poor policy," stating, "Once the settlement is done, there should be no need to review anything ongoingly (sic).[310] A4NR argues that ratepayers should not be put in the position of waiting for the results of the arbitration and litigation between the two utilities and Mitsubishi.

We do not agree ratepayers would never have a claim to a utility's litigation proceeds. The subject of litigation may be interwoven with rate recovery of certain costs. An obvious example is the insurance claim for replacement power and the proposal that ratepayers pay for all purchased power. The original Agreement allocated ~~15%~~ 17.5% of the replacement power insurance recovery to the utility. This outcome would have unreasonably benefited shareholders as to this one particular category of expenses for which liability had passed to ratepayers. Furthermore, as discussed above, we do not share the conclusions of parties who assume SCE's imprudence and failure in the

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[309] WEM OC at ~~5~~; *See, e.g.*, Agreement at ¶4.11(f) and ¶4.11(g)(ii).

[310] CDSO OC at 40.

For unknown reasons, Settling Parties did not add the corresponding change to ¶6.3 to expressly direct the Utilities to provide documentation of revised calculations of the revenue requirement when submitting the Revised Tariff Sheets described in ¶6.1. In order to safeguard the integrity of a settlement adopted by the Commission, our practice is to engage in careful oversight to ensure that all allocated costs to ratepayers are accurate, and the calculations resulting in changes to a utility's revenue requirement are correct

Pursuant to § 451, we have authority to review any utility submission, and request additional documentation as needed, to corroborate the utility's claims therein and ensure safe and reliable service at just and reasonable rates. Clarification of the revised tariff Advice Letter (AL) process was requested because the Agreement excluded it. The objective is to guard against a party later arguing the language could be interpreted to deny our regulatory obligation to apply due diligence in review of Advice Letters.

Regardless of the SONGS-related expense numbers used by Settling Parties in the Agreement, the actual recorded numbers used to establish the revised tariffs, and ratepayer refunds, may differ. This is because costs for various categories were identified at different dates in the record and must be updated, and some costs will be aggregated ~~as of the Effective Date~~ as of the last day of the month prior to the Effective Date of the Decision. Other provisions (*e.g.*, M&S, nuclear fuel inventory) require calculations of costs and offsets based on the Utilities' salvage efforts. Thus, recorded costs, recovered value, and other expenses may figure in the Utilities' calculations.

The original Agreement granted TURN and ORA "the prerogative to review and validate any amounts used…..to meet and confer with the Utilities….

calculations, and establishment of a mechanism to prompt decrease in GHG during expected life of SONGS and more, the proposed settlement agreement is in the public interest.

8. Rate Adjustments for Direct Access Customers

As discussed above AReM and DACC support the Agreement, but express certain implementation concerns relative to how the ratemaking changes in this decision impact direct access (DA) customers. The Settling Parties agree with AReM/DACC's recommendation that the "Consensus Protocol" adopted in D.14-05-003 should be used in calculating changes to the PCIA so that there is no delay to DA customers' rate adjustments.[315] Settling Parties disagree, however, with AReM and DACC's second recommendation that replacement power costs should be excluded from the PCIA calculation.[316] ~~There are many different types of costs included within the category of replacement power costs. Fairness suggests that only those costs that were incurred on behalf of system customers should be charged to DA customers through the PCIA; costs that were incurred on behalf of bundled customers should be paid entirely by bundled customers.~~

9. Oral Argument

Pursuant to Rule 13.13, in a ratesetting proceeding, a party may request a final oral argument before the Commission. A party may request oral argument on this Proposed Decision by filing and serving a request no later than October 17, 2014.

We do not resolve that disagreement here, but will address the issue as necessary in connection with subsequent filings in other proceedings by the Utilities to update the PCIA.

[315] JSP RC at 36.

[316] *Ibid* at 36-37.

SCE shall maintain the SONGSMA and SONGSOMA until the Commission renders a decision on SCE's application for reasonableness review of its 2014 SONGS-related expenses, or until such date as the CPUC otherwise directs.

12. ~~SCE shall maintain the SONGSMA through the end of 2014 in order to support its application for reasonableness review of 2014 SONGs-related expenses.~~

SDG&E shall maintain the SONGSBA and SONGSOMA until the Commission renders a decision on SDG&E's application for reasonableness review of its 2014 SONGS-related expenses, or until such date as the CPUC otherwise directs.

13. ~~SDG&E shall maintain the SONGSBA through the end of 2014 in order to support its application for reasonableness review of 2014 SONGs-related expenses.~~

14. It is in the public interest to reduce emissions at existing and future California power plants, particularly those which provide electric service to the customers in Southern California previously served by SONGS.

15. Modifications to the Agreement that provide closer Commission scrutiny of the Utilities' post-decision final revenue requirement calculations are in the public interest.

16. Modifications to the Agreement which increased the portion of third party recoveries to be allocated to ratepayers is in the public interest.

17. It is reasonable to withdraw the proposed decision for Phases 1 and 1A.

18. This decision does not constitute approval of, or precedent regarding, any principle or issue in the consolidated proceedings or other proceedings pursuant to Rule 12.5 of the Commission's Rules of Practice and Procedure.

19. This decision should be effective immediately to provide certainty to the parties, permit the utilities to effectuate the terms of the Amended Agreement promptly and to ensure the timely resolution of this investigation and consolidated proceedings.

20. Investigation 10-02-003 and consolidated proceedings should remain open so the Commission may undertake consideration of Rule 1.1 violations which appear to have occurred during the course of these proceedings.

O R D E R

IT IS ORDERED that:

1. The Amended and Restated Settlement Agreement, dated September 23, 2014, which resolves all but one of the issues in this consolidated proceeding is adopted. The Amended and Restated Settlement Agreement is attached to this decision as Attachment B.

2. The remaining issue, unresolved by the Amended and Restated Settlement Agreement, is community outreach and education, which may be addressed in Southern California Edison Company's ongoing general rate case, Application 13-11-003 and in San Diego Gas & Electric Company's next general rate case.

3. Southern California Edison Company and San Diego Gas & Electric Company (collectively, the Utilities) are authorized to recover, through rates and through authorized ratemaking accounting mechanisms, the revenue requirements described in Attachment B. This revenue requirement is net of certain refunds described in Attachment B, such as the termination of the capital related revenue requirement for the San Onofre Nuclear Generating Station steam generator replacement program as of February 1, 2012.

   a. Within 30 days from the effective date of this decision, each of the Utilities shall file a Tier 1 advice letter with revised tariff sheets to: implement the revenue requirement, accounting procedures, and charges authorized by this decision. The revised tariff sheets shall (a) become effective on filing, subject to a finding of compliance by the Commission's Energy Division, (b) comply with General Order 96-B, and (c) apply to service rendered on or after their effective date.

b. The Utilities shall each file Tier 2 Advice Letters to implement the changes to their respective revenue requirements, effective January 1, 2015. The Utilities shall each provide detailed validation and support for the actual amounts used to calculate the revenue requirements in the Advice Letters.

e. ~~c.~~ The Utilities shall use the Consensus Protocol adopted in Decision 14-05-003 to calculate the Power Charge Indifference Amount for Direct Access customers. ~~Direct Access customers shall be charged for replacement power costs, only to the extent that the particular replacement power charge was procured on behalf of system (as opposed to bundled) customers.~~

f. ~~d.~~ The Office of Ratepayer Advocates and The Utility Reform Network may, notwithstanding the figures set forth in ¶3.36 – 3.48, of the Amended and Restated Settlement Agreement ~~to~~ review and validate any amounts used by the Utilities to implement the revenue requirement, accounting procedures, and charges authorized by the Amended and Restated Settlement Agreement. The Office of Ratepayer Advocates and The Utility Reform Network may meet and confer with the Utilities to resolve any concerns and have the prerogative to protest the advice letters in sub-paragraphs a) and b) of this ordering paragraph if such concerns are not resolved.

g. ~~e.~~ The Commission always retains authority to review the Utilities' submissions, such as the revenue requirement changes discussed in this ordering paragraph. To ensure that the revised rates conform with the terms and provisions of the Amended and Restated Settlement Agreement, the Energy Division shall carefully review and validate the calculations in the advice letter filings in sub-paragraphs a) and b) of this ordering paragraph. The Utilities shall provide any and all data or information requested by the Energy Division to facilitate this review. At its discretion, the Energy Division may order and direct third-party audits of any of the amounts, accounting procedures, or charges used by the Utilities to implement the revenue requirement. The Utility or Utilities shall pay

3(c): In the event the Commission has not completed its review of SCE's advice letters prior to January 1, 2015, the associated rate changes will be subject to refund if the Commission subsequently determines that the SCE advice letters do not accurately calculate the revenue requirement. In addition, the credits provided by SCE pursuant to section 4.12 of the settlement will be implemented in rates when updated ERRA rates are put into effect for SCE.

3(d): If a Commission decision in this proceeding has not been approved in time for SDG&E to receive required regulatory approvals needed to effectuate its revenue requirement on January 1, 2015, presented in the Tier 2 Advice Letter referenced in OP3(b), SDG&E will (a) file its 2014 NGBA Advice Letter no later than November 21, 2014, with revised revenue requirements, which eliminate SGRP and revise capital-related amounts that reflect the settlement agreement as well as including the forecasted year-end NGBA balance based on recorded amounts as of October 31, 2014, (b) effectuate the revenue requirement as of January 1, 2015, (c) subject to true-up adjustment through the NGBA balance based on the final disposition of the Tier 2 Advice Letter. SDG&E shall also file a Tier 2 advice letter to identify the transfers to ERRA to adjust the ERRA balance pursuant to Settlement sections 4.12 and 4.13.

the cost of such an audit. In the event that any of the amounts used differs from the figures set forth in ¶3.36 – 3.48 by more than five percent and the difference is not explained to its satisfaction, the Energy Division shall order such an audit. The preceding sentence does not limit Energy Division's discretion to order an audit of any amount, accounting procedure or charge, even if the difference is less than five percent. The cost of such audits shall not exceed $200,000 in aggregate. By May 1, 2015,

4. ~~Within sixty (60) days of the effective date of the decision~~, Southern California Edison Company and San Diego Gas & Electric Company shall each file an application to recover costs for 2014 operations and maintenance and non-operations and maintenance expenses at the San Onofre Nuclear Generating Station, whether requesting recovery in general rates or the decommissioning trusts.

5. The Commission's Energy Division shall oversee the development by the Utilities of a Greenhouse Gas Research and Reduction program and an associated Program Implementation Plan. The program and Program Implementation Plan shall meet the following criteria:

   a. As part of their philanthropic programs, each of Southern California Edison Company and San Diego Gas & Electric Company agree to work with the University of California Energy Institute (or other existing UC entity, on one or more campuses, engaged in energy technology development) to create a Research, Development, and Demonstration program, whose goal would be to deploy new technologies, methodologies, and/or design modifications to reduce greenhouse gas emissions, particularly at current and future generating plants in California.

   b. The Greenhouse Gas Research and Reduction program will operate for up to five years following the Commission's