

BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA



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Joint Application of Southern California Edison  
Company (U 338-E) and San Diego Gas & Electric  
Company (U 902-E) For the 2024 Nuclear  
Decommissioning Cost Triennial Proceeding.

Application 24-12-003

OPENING BRIEF OF THE UTILITY REFORM NETWORK

*PUBLIC VERSION*



Matthew Freedman  
360 Grand Avenue, #150  
Oakland, CA 94610  
415-929-8876 x304 Voice  
415-929-1132 Fax  
[matthew@turn.org](mailto:matthew@turn.org)  
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## SUMMARY OF RECOMMENDATIONS

TURN offers the following recommendations in this opening brief:

- (1) The 2024 Decommissioning Cost Estimate (DCE) for the San Onofre Nuclear Generating Station Units 2 and 3 (SONGS 2 and 3) should be adjusted to maintain the 10% contingency factor for the Decommissioning General Contractor (DGC) contract adopted in D.24-08-001. Alternatively, the Commission should affirm the 8% DGC contingency factor adopted in D.21-12-026 with an additional allowance for the identified costs of the settlement relating to COVID-19 delays.
- (2) The 2024 DCE for the San Onofre Nuclear Generating Station Unit 1 (SONGS 1) should be adjusted as follows:
  - Remove all Short-Term Incentive Plan (STIP) costs and reduce the overall STIP forecast by \$0.1 million/year.
  - Reduce contingency for labor staffing costs from 10% to 5%.
  - Remove the 15% contingency for payments under the offshore lease agreement with the California State Lands Commission (CSLC) and the surety bond required under the lease. Alternatively, the contingency should be eliminated through 2035.
  - Reduce forecasted security overtime to match the average of 2021-2023 actual overtime.
  - Reduce forecasted Nuclear Regulatory Commission (NRC) fees through 2054 to reflect the average number of Part 170 hours recorded between 2021-2023.
  - Forecast future Industry Credit Rating Plan (ICRP) credits consistent with the average credits received between 2015-2023.

- Reduce the forecast of contracted services costs through 2040 to match actual 2021-2023 average spending.

(3) With respect to the treatment of Department of Energy (DOE) litigation proceeds, the Commission should do the following:

- Conclude that SCE and SDG&E have failed to provide a comprehensive or persuasive showing in support of depositing Department of Energy (DOE) litigation proceeds into the SONGS Non-Qualified Nuclear Decommissioning Trusts (NQNDTs).
- Find that the SONGS decommissioning trust fund balances are forecasted to be adequate to support decades of additional spent fuel storage costs without any need to use DOE litigation proceeds or restart collections from customers.
- Direct SCE and SDG&E to credit the net DOE litigation proceeds to ratepayers starting with the Round 5 claim that is currently pending.

## OPENING BRIEF OF THE UTILITY REFORM NETWORK

Pursuant to Rule 13.11 of the Rules of Practice and Procedure, and the October 2, 2025 ruling of Administrative Law Judge McGary, The Utility Reform Network (TURN) submits this opening brief on the 2024 Nuclear Decommissioning Cost Triennial Proceeding (NDCTP) application of Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E).

TURN's brief addresses disputed issues relating to the Decommissioning Cost Estimates (DCEs) for San Onofre Nuclear Generating Station (SONGS) Units 1, 2 and 3. TURN also urges the Commission to deny SCE and SDG&E the authority to deposit Department of Energy (DOE) litigation proceeds into the Non Qualified Nuclear Decommissioning Trusts (NQNDTs) SONGS Units 1, 2 and 3.

### **I. THE CONTINGENCY FACTOR FOR THE DECOMMISSIONING GENERAL CONTRACTOR WORK SHOULD REMAIN AT 10%**

TURN's testimony urges the Commission to reject SCE's request to increase the contingency factor in the DCE applied to Decommissioning General Contractor (DGC) contract costs.<sup>1</sup> Instead of increasing the contingency factor, TURN urges the Commission to direct SCE to maintain the previously adopted 10% level.

In D.21-12-026, the Commission adopted an 8% contingency factor for Decommissioning General Contractor (DGC) contract costs based on evidence presented in that proceeding.<sup>2</sup> In its 2021 NDCTP, SCE originally proposed a 10% contingency factor for SONGS 2&3 DGC contract costs but the Commission approved a settlement with a 10% contingency factor.<sup>3</sup> In this application, SCE proposes to raise the DGC contract contingency to 15%, the same level proposed in its last NDCTP.<sup>4</sup> SCE argues that a higher contingency factor is appropriate to

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<sup>1</sup> Ex. TURN-302C, Bates Stamp pages 0302C-003 through 0302C-005.

<sup>2</sup> D.21-12-026, page 35.

<sup>3</sup> D.24-08-001, page 15; Ex. SCE-0009C, Bates Stamp page 1192.

<sup>4</sup> Ex. SCE-0004C, Bates Stamp page 0591.

“account for the significant and substantial risk associated with anticipated costs regarding a claim made by the DGC for costs associated with COVID-19 impacts.”<sup>5</sup> SCE does not explain why the 10% contingency factor included in the settlement adopted in D.24-08-001 is insufficient to cover these costs. Instead, SCE presumes that that 10% is a minimum baseline from which increases may be proposed. The Commission should reject the notion that SCE is entitled to a minimum 10% contingency for a fixed-price contract.

In the 2018 NDCTP when the DGC contract was first presented to the Commission, SCE’s Vice-President for SONGS Decommissioning, and Chief Nuclear Office, referred to the DGC agreement as a “firm-fixed-price” contract at least four times during his appearance at the evidentiary hearings.<sup>6</sup> With that characterization in mind, the Commission evaluated arguments regarding the appropriate contingency factor for the DGC contract. In the final decision, the Commission affirmed its intent to “carefully consider whether to reduce the overall contingency estimates from past levels to account for less uncertainty over time and greater industry experience.”<sup>7</sup> Based on the evidence presented in that proceeding, and given the transfer of performance risk to the contractor under a fixed-price contract, the Commission determined that an 8% contingency factor, rather than the 20% proposed by SCE and SDG&E, was appropriate.

In the 2021 NDCTP, SCE stated that contingency needs had decreased as work progressed and noted the fact that the COVID-19 pandemic created “external risks” on performance that should be included in the contingency factor.<sup>8</sup> The settlement containing the 10% contingency factor was submitted on May 3, 2023.<sup>9</sup>

[REDACTED]

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<sup>5</sup> Ex. SCE-0004C, Bates Stamp page 0591.


<sup>6</sup> Ex. TURN-301, Bates Stamp page 004.


<sup>7</sup> D.21-12-026, page 34.

<sup>8</sup> Ex. SCE-04, A.22-02-016, pages 15-16.

<sup>9</sup> Ex. TURN-301, Bates Stamp page 004.



<sup>10</sup> Both SCE and SDG&E were aware of both this claim, and the project timeline delays resulting from COVID-19, when they agreed to a 10% contingency factor for the DGC contract as part of a settlement. In rebuttal testimony, SCE argues that the DGC's COVID-19 claim had not been "fully analyzed" prior to the execution of the settlement agreement in the last NDCTP.<sup>11</sup> This claim is not persuasive because SCE was made aware of the potential for these costs to be incurred during the course of settlement negotiations.<sup>12</sup> The Commission should therefore reject any argument that such claims represent new information in this proceeding that justifies an increase in the contingency factor relative to previously adopted levels.

SCE's process of developing contingency factors is vested entirely in SCE management. In the 2018 NDCTP, SCE's primary witness acknowledged that the final decisionmaker for determining contingency factors is the site Vice President.<sup>13</sup> In this case, SCE stated that its request for a higher DGC contract contingency factor was the result of its own internal determinations rather than the product of review and analysis by its outside contractor that prepared the DCE.<sup>14</sup> In rebuttal testimony, SCE argues that it properly relied on the conclusions reached by its outside contractors to develop the proposed contingency factor.<sup>15</sup> SCE provides no documentation to support this claim and its direct testimony specifically references the substitution of the judgement of internal staff for those of its contractors ("SCE directed HKA to maintain the %")

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<sup>10</sup> Ex. TURN-303C, Bates Stamp page 303C-004.

<sup>11</sup> Ex. SCE-0009C, Bates Stamp page 1192.

<sup>12</sup> Contrary to the suggestions made in SCE's rebuttal testimony (Ex. SCE-0009, Bates Stamp page 1146), TURN's reference to the terms of the Settlement in the 2021 NDCTP does not violate Rule 12.6. TURN's observation about the terms of the agreement does not disclose any confidential settlement negotiations or admissions made by parties in the course of the settlement process.


<sup>13</sup> Ex. TURN-301, Bates Stamp page 004.

<sup>14</sup> Ex. SCE-0004, Bates Stamp pages 0321-0322.

<sup>15</sup> Ex. SCE-0009, Bates Stamp pages 1195-1196.

contingency factor for DGCA costs”).<sup>16</sup> Had the recommendation come from its external contractors, SCE would have made this fact clear in its direct testimony or provided some evidence to support its claim in rebuttal testimony.

Additionally, TURN asked for details regarding the recommendations made by ABZ (its outside contractor) for contingency factors relating to DGC contract costs at other nuclear plants undergoing active decommissioning. SCE was unable to provide any responsive documents and noted that “ABZ did not recommend a contingency factor for these plants and did not provide SCE with documents” responsive to TURN’s request.<sup>17</sup> The Commission should therefore place no reliance on SCE’s claim that its proposed DGC contract contingency factor was based on recommendations made by its outside contractors and consistent with industry practice. Instead, the Commission should recognize that SCE’s effort to inflate its contingency factor may be motivated by the company’s interest in minimizing its liability risk and any potential future Commission reasonableness review.

In rebuttal testimony, SCE claims that the two factors driving the higher proposed contingency factor are the costs of the settlement executed with the DGC and the “remaining risk associated with the to-go DGC scope.”<sup>18</sup> SCE fails to demonstrate a reasonable basis for these “remaining risks”. For example, SCE’s rebuttal testimony identifies the need for a higher contingency factor to address potential “”<sup>19</sup> but admits, in response to a TURN data request, that the only remaining permit is a coastal development permit for the offshore portion of the project.<sup>20</sup> Since work on the offshore conduits is not within the scope (or costs) of the current DGC contract, there is no

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<sup>16</sup> Ex. SCE-0004C, Bates Stamp page 0591.

<sup>17</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q5, Bates Stamp page 306-013.

<sup>18</sup> Ex. SCE-0009C, Bates Stamp page 1194.

<sup>19</sup> Ex. SCE-0009C, Bates Stamp page 1197.

<sup>20</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q6, Bates Stamp 306-015.

relevance of these costs to the contingency factor for the DGC contract itself.<sup>21</sup> With respect to other potential risks, SCE fails to acknowledge any reduced level of risk due to the advanced stage of the project (relative to the prior NDCTP). SCE gives no weight to the Commission's prior directive that contingency factors should "account for less uncertainty over time and greater industry experience."<sup>22</sup> Given that the Commission found an 8% contingency factor reasonable in the 2018 NDCTP, it would be unreasonable to set the level higher in the 2024 NDCTP based on generic and unspecified risks.

In short, SCE fails to present a basis for inflating the contingency factor from the previously approved 8% (litigated) and 10% (settled) levels. The proposal to increase the contingency in this NDCTP appears to be nothing more than an attempt to relitigate the 2018 and 2021 NDCTPs. The Commission should decline to allow contingencies to creep upwards in the final years of a fixed-price contract scheduled to be complete by December of 2028.<sup>23</sup>

TURN believes that a far lower contingency factor would be appropriate given the fact that so much performance risk is transferred to the DGC, that costs are locked in under the agreement, and that only a few years remain before the scope of work under the contract is complete. However, TURN does not oppose retaining the 10% contingency factor approved in D.24-08-001. Alternatively, the Commission may reaffirm the 8% contingency factor adopted in D.21-12-026 and

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<sup>21</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q6, Bates Stamp 306-015; Ex. SCE-0004, pages 0410-0411 (work related to the offshore conduits is scheduled to occur during Periods 6 and 7 which runs from 2036 to 2056, well after the DGC contract is completed. The DGC contract does not include any permitting costs relating to the offshore work).

<sup>22</sup> D.21-12-026, page 34.

<sup>23</sup> Ex. TURN-301, Bates Stamp page 004.

provide an additional allowance for the identified costs of the DGC settlement relating to COVID-19 delays.<sup>24</sup>

## II. SONGS 1 DECOMMISSIONING COST ESTIMATE





TURN's prepared testimony recommended a series of small adjustments to the SONGS 1 Decommissioning Cost Estimate (DCE). Most of these adjustments rely on the variances between forecasted and recorded spending between 2021-2023 and use this differential to adjust the 2024 DCE forecast. This approach is appropriate because SCE failed to demonstrate a reasonable expectation that the historical average costs of work in the categories described in this section are not representative of future costs.

### A. Short-Term Incentive Plan costs

TURN's direct testimony recommends a reduction in the forecast for Short-Term Incentive Plan (STIP) costs for SONGS 1 and a removal of these costs from any future DCE.<sup>25</sup> This recommendation is based on the fact that no STIP costs were recorded to SONGS 1 between 2021-2023.

In the 2020 DCE, SCE forecasted Short-Term Incentive Plan (STIP) costs for SONGS 1 at \$0.11 million in 2021, \$0.1 million in 2022 and \$0.1 million in 2023.<sup>26</sup> However, no STIP costs were recorded for SONGS 1 with all STIP costs attributed to SONGS 2&3 because the costs of allocating the costs to SONGS 1 "outweighed the benefit."<sup>27</sup> Despite this practice, the SONGS 1 DCE continues to forecast STIP payments in every future year amounting to a cumulative total of

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<sup>24</sup> Adding the costs of the DGC settlement (\$ million) to an 8% contingency (\$ million) would result in \$ million, which is slightly below a 12.5% contingency level (\$ million). See Ex. SCE-0009C, Bates Stamp page 1194; Ex. TURN-307C, SCE response to TURN data request 5, Q4, Bates Stamp page 307C-001.

<sup>25</sup> Ex. TURN-301, Bates pages 301-005 and 301-006.

<sup>26</sup> Ex. TURN-301, Bates pages 301-005; Ex. TURN-304, SCE response to TURN Data Request 2, Q5(a), Bates page 304-013.

<sup>27</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q5(b), Bates page 304-013.

\$1.66 million (100% share, \$2014) through 2056.<sup>28</sup> Additionally, SCE notes that total SCE labor allocated to SONGS 1 was approximately 4% of labor costs “which means a maximum of \$0.2 million could have been allocated to SONGS 1 per year.”<sup>29</sup>

In rebuttal testimony, SCE acknowledged the legitimacy of TURN’s critique and explained that “100% of recorded payments” are allocated to SONGS 2&3.<sup>30</sup> SCE further states that it “agrees with TURN’s recommendation and will revise its 2027 SONGS 1 DCE to remove future STIP costs from the SONGS 1 forecast through 2028.”<sup>31</sup> Based on this understanding, the SONGS 1 DCE should be adjusted to address the mismatches between the labor allocation, STIP payments and the forecast of future STIP costs. To that end, future STIP costs should be removed from the SONGS 1 forecast. Additionally, the overall STIP forecast across all three SONGS units should be adjusted to reflect lower utilization (\$0.1 million vs. \$0.2 million allocated) for labor at SONGS 1.

## **B. Contingency**

TURN’s testimony identified two issues relating to contingency in the SONGS 1 DCE.<sup>32</sup> The first applies to forecasted labor staffing costs between 2029-2056 and the second applies to payments under the offshore lease agreement with the California State Lands Commission (CSLC) and the surety bond required under the lease. TURN addresses each of these issues in the following sections.

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<sup>28</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q5(c), Bates page 304-013 and 304-014.

<sup>29</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q5(b), Bates page 304-013.

<sup>30</sup> Ex. SCE-0009, Bates page 1129.

<sup>31</sup> Ex. SCE-0009, Bates page 1129.

<sup>32</sup> Ex. TURN-301, Bates page 301-006

## 1. Labor Staffing Costs

The SONGS 1 DCE includes a 5% contingency factor for labor staffing costs between 2024-2028 and a 10% contingency factor from 2029-2056.<sup>33</sup> SCE's direct testimony notes that an underrun in labor-staffing costs between 2021-2023 was attributable to the absence of any of the forecasted \$0.13 million in contingency being used.<sup>34</sup>

SCE's direct testimony fails to explain why the DCE increases the labor staffing contingency to 10% starting in 2029. In rebuttal, SCE argues that the increase in future labor staffing contingency is justified due to ongoing uncertainty regarding future costs and no organizational chart for the 2029-2056 period.<sup>35</sup> Despite these claims, SCE concedes that future information may justify a lower contingency factor as proposed by TURN.<sup>36</sup>

The DCE does not forecast any real increase in annual labor staffing costs through 2035 but still increases the contingency from 5% to 10% starting in 2029.<sup>37</sup> This increase is unwarranted and has not been justified based on any identifiable risk. The Commission should not authorize an increase in the contingency factor based on the mere fact that there is no organizational chart that has yet been developed for the post-2028 period. TURN recommends reducing contingency to 5% for the entire decommissioning period (2024-2056). This reduction would lower total costs attributable to the labor staffing contingency by \$0.645 million through 2056.

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<sup>33</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q6(b), Bates pages 304-015 and 304-016.

<sup>34</sup> Ex. SCE-002, Bates page 0044; Ex. TURN-304, SCE response to TURN Data Request 2, Q4, Bates page 304-012.

<sup>35</sup> Ex. SCE-0009, Bates page 1130.

<sup>36</sup> Ex. SCE-0009, Bates page 1130.

<sup>37</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q6, Bates page 304-016.

## 2. Offshore lease agreement payments

SCE applies a 15% contingency to payments under the offshore lease agreement with the California State Lands Commission (CSLC) and the costs of the surety bond required under the lease.<sup>38</sup> Since the actual payments are specified in the final lease, and the amount of the surety bond has been fixed, there is no reason to apply any contingency for purposes of the forecast. TURN recommends removing contingency which would reduce the DCE by \$1.056 million (100% share, \$2014).<sup>39</sup>

In rebuttal testimony, SCE argues that the 15% contingency is appropriate because these costs “are not free from future cost variability.”<sup>40</sup> Specifically, SCE points to the fact that the base rent is subject to “annual unpredictable increases based on the Consumer Price Index.”<sup>41</sup> To reflect this risk, SCE already escalates the base rent assuming a 5% Consumer Price Index (CPI) in 2024 and 2025, a 4% CPI during 2026-2027, and 3% CPI in subsequence years.<sup>42</sup> These high CPI assumptions are incorporated before applying the 15% contingency. The assumed CPI values are inconsistent with observed CPI and therefore incorporate another level of contingency (on top of the explicit 15%). For example, the most recent Consumer Price Index for Urban Customers (CPI-U) for the year ending July 2025 was 2.7%.<sup>43</sup> The SONGS DCE assumes a CPI that is almost double this value for 2025 and then adds a 15% contingency factor. The use of inflated CPI values in the DCE likely overestimates the annual increase in the lease payment and represents a second level of contingency.

SCE also notes that the CSLC may establish a new base rent every five years through 2035 but provides no basis for a potential change to the base rent in the

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<sup>38</sup> Ex. SCE-0004, Bates page 0321.

<sup>39</sup> Ex. TURN-301, Bates page 301-006

<sup>40</sup> Ex. SCE-0009, Bates page 1131.

<sup>41</sup> Ex. SCE-0009, Bates page 1131.

<sup>42</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q3, Bates page 306-004.

<sup>43</sup> D.25-10-034, page 23.

future.<sup>44</sup> The lease does not permit the CSLC to raise the rent without conforming to factors and methods allowed under California Code of Regulations.<sup>45</sup> In addition, SCE has the ability to challenge any appraisal used to establish a new base rent.<sup>46</sup>

SCE argues that the increase in lease-related costs between the 2017 and 2024 DCEs justifies the 15% contingency factor applied to all future years.<sup>47</sup> But this increase resulted primarily from the requirement to add a surety bond.<sup>48</sup> There is no basis for assuming that CSLC will require a second surety bond (in addition to the current bond) as part of a future lease. Moreover, the current lease runs through 2035 which guarantees less variability over this period.

For the surety bond, the only basis for an increase would occur at five year intervals to reflect “the estimated cost of potential removal of the improvements on the Lease Premises.”<sup>49</sup> Since there is no anticipated change in the scope of removal required under the current lease, there is no basis for a large contingency to be applied to the surety bond cost. SCE offers no persuasive justification for assuming large increases in the surety bond cost during the tenure of the current lease.

At a minimum, the Commission should find that a 15% contingency factor applied to each year (on top of inflated annual CPI adjustments) is not warranted through 2035 (the expiration of the current lease). At a minimum, no contingency should be applied to all years prior to the first opportunity for any changes to the payment terms (no earlier than 2027 under the lease). The total contingency

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<sup>44</sup> Ex. SCE-009, Bates page 1131.

<sup>45</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q3(b), Lease Section 2(a)(citing California Code of Regulations §2003), Bates page 306-008.

<sup>46</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q3(b), Lease Section 2(b), Bates page 306-008.

<sup>47</sup> Ex. SCE-0009, Bates page 1131.

<sup>48</sup> Ex. SCE-0009, Bates page 1131.

<sup>49</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q3(b), Lease Section 4, Bates page 306-009.



value between 2024-2035 exceeds \$400,000 (\$2014) despite an annual lease payment of less than \$110,000.<sup>50</sup>

Given the lack of near-term risk, the excessive CPI forecast applied to the base rent, and the absence of any reason to fear higher surety bond costs through 2035, TURN urges the Commission to direct SCE to eliminate, or substantially reduce, any contingency applied to these costs.

### C. Security Overtime

TURN's testimony recommended reducing the forecasted security overtime in the DCE to match the average of 2021-2023 actuals (5,867 hours/year).<sup>51</sup> This reduction is appropriate because SCE has not demonstrated that future overtime is likely to deviate materially from actual recorded values between 2021-2023.

SCE reported a \$0.5 million underspend, or 33% below the 2020 DCE forecast, for security force personnel between 2021-2023.<sup>52</sup> A key reason for the underspend was "less overtime than estimated was recorded" for these personnel.<sup>53</sup> The 2020 DCE forecast 9,048 hours of overtime per year for security personnel but actual overtime hours were 35% less between 2021-2023.<sup>54</sup> The amount of overtime declined in each year between 2021 and 2023.<sup>55</sup> Overtime hours in 2020 were also well below the forecast.<sup>56</sup> SCE offers no explanation as to why overtime was below the forecasted level.

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<sup>50</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q10, Bates page 304-019.

<sup>51</sup> Ex. TURN-301, Bates page 301-007.

<sup>52</sup> Ex. SCE-0002, Bates page 0044.

<sup>53</sup> Ex. SCE-0002, Bates page 0044.

<sup>54</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q8(a), (b), Bates page 304-017.

<sup>55</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q8(b), Bates page 304-017.

<sup>56</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q1(b), Bates page 306-002 (SCE reported 2,770 security force overtime hours between August and December of 2020. Even when adjusting to an annual value, total overtime in 2020 was well below the 9,048 hours in the forecast).

In rebuttal testimony, SCE argues that the forecast for security overtime in the 2024 DCE was developed by its outside contractors “through a rigorous process”.<sup>57</sup> The Commission should note that this “rigorous process” yielded the identical number of forecasted overtime hours (9,048/year) as were included in the 2020 DCE.<sup>58</sup> There is no reason to conclude that the 2024 DCE employed a different or updated approach than the 2020 DCE or took into account actual experience in recent years.

Since the 2020 DCE significantly overforecasted security overtime, there is no reason to defer to the same forecast in the 2024 DCE. SCE provides no specific basis for the assumption that overtime hours will significantly increase in future years relative to recently observed levels. The adjustments proposed by TURN, which conform the forecast to recorded data, are therefore reasonable.

#### **D. NRC Inspection Hours**

TURN’s testimony recommended reducing the forecasted Nuclear Regulatory Commission (NRC) fees through 2054 to reflect the average number of Part 170 inspection hours recorded between 2021-2023 (60.7 hours/year).<sup>59</sup> TURN does not recommend an adjustment to the forecast for 2055-2056 due to the likelihood of additional workload in the final years of decommissioning. The reductions for 2024-2054 are appropriate because SCE has not demonstrated that future Part 170 NRC inspection hours are likely to deviate materially from actual recorded values between 2021-2023.

SCE reported underspending its forecasted NRC fees by \$0.28 million between 2021-2023 due to “fewer inspection hours than estimated.”<sup>60</sup> While the 2020 DCE forecast 220 hours per year, the actual number of hours averaged 60.7/year over

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<sup>57</sup> Ex. SCE-0009, Bates page 1128.

<sup>58</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q8(c), Bates page 304-017.

<sup>59</sup> Ex. TURN-301, Bates pages 301-007 and 301-008.

<sup>60</sup> Ex. SCE-0002, Bates page 0046.

this period, a 72.4% reduction from the forecast.<sup>61</sup> The 2024 DCE continues to forecast the same annual value (220 hours) of Part 170 NRC inspection hours per year through 2054, after which the hours increase in 2055 and 2056 to reflect workload associated with the License Termination Plan and Final Status Surveys.<sup>62</sup>

In rebuttal testimony, SCE does not dispute that actual inspection hours are far below the forecast and offers no basis to assume higher numbers of inspection hours will occur in the coming years. Instead, SCE argues that it will update the DCE in 2027 and “review all the forecast costs to determine if changes to the forecast methodology are warranted.”<sup>63</sup> This explanation is not persuasive. SCE overforecast NRC inspection hours in the 2020 DCE and failed to make any adjustments in the 2024 DCE to reflect actual experience. There is little reason to believe that continued underspending will cause SCE to make any adjustments in the 2027 DCE. The Commission should direct SCE to adopt TURN’s recommended reductions which merely conform the values to reflect recent experience.

#### **E. Insurance Credit Rating Plan credits**

TURN’s testimony recommended adjusting SONGS 1 insurance costs in the DCE to reflect the average “Industry Credit Rating Plan” (ICRP) credit received between 2015-2023 (\$0.088 million).<sup>64</sup> Given the consistent availability of these credits since 2015, they should be treated as an offset to forecasted insurance costs in the DCE.

SCE reported underspending forecasted insurance costs by \$0.32 million between 2021-2023 largely due to an “Industry Credit Rating Plan” (ICRP) credit

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<sup>61</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q11(a), (b), Bates page 304-020.

<sup>62</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q11(c), Bates page 304-020.

<sup>63</sup> Ex. SCE-0009, Bates page 1128.

<sup>64</sup> Ex. TURN-301, Bates page 301-008.

attributable to SONGS 1.<sup>65</sup> These credits, which reflect the unused portion of reserve premiums held for 10 years, were \$0.07 million (100% share, \$2014) in 2021, 2022, and 2023.<sup>66</sup> Since 2015, SCE has received these credits in every year except for 2019 with an average credit value of \$0.088 million per year.<sup>67</sup> The 2024 DCE forecasts \$0 in ICRP credits for the duration of the decommissioning period.<sup>68</sup>

In rebuttal testimony, SCE argues that the inclusion of ICRP credits is “inappropriate because these credits are not guaranteed, and are highly dependent on industry-wide insurance performance and reserve structures that are outside of SCE’s control.”<sup>69</sup> SCE makes this claim despite having received significant ICRP credits in 8 out of the last 9 years. Ignoring these credits simply inflates the DCE for no valid purpose.

SCE’s opposition to including a non-zero forecast of future ICRP credits is unreasonable and inconsistent with its historic practice of forecasting Nuclear Energy Insurance Limited (NEIL) dividends as a cost offset in DCEs prior to the adoption of the settlement in D.24-08-001.<sup>70</sup> Similar to ICRP credits, NEIL dividends were not “guaranteed” and the amounts vary annually. Given this practice, the Commission should require SCE to forecast ICRP credits based on an average of historical recorded values. The average credits received since 2015 constitute an appropriate data set for this purpose.

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<sup>65</sup> Ex. SCE-0002, Bates page 0046.

<sup>66</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q12(a), Bates page 304-021.

<sup>67</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q12(a), Bates page 304-021; SCE response to TURN Data Request 3, Q4, Bates page 304-028.

<sup>68</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q12(d), Bates page 304-021.

<sup>69</sup> Ex. SCE-0009, Bates page 1129.

<sup>70</sup> Ex. TURN-304, SCE response to TURN Data Request 3, Q19, Bates page 304-037. As a result of the settlement, NEIL dividends are now allocated 50% to the Non-Qualified Nuclear Decommissioning Trust fund and 50% as refunds to current ratepayers.

## F. Contracted Services Expense

TURN's testimony recommended reducing the forecast of contracted services through 2040 to match actual 2021-2023 average spending.<sup>71</sup> This adjustment would lower the DCE by approximately \$2.65 million (100% share, \$2014).<sup>72</sup> The Commission should adopt TURN's recommendation because SCE has not demonstrated that future contracted services costs through 2040 are likely to deviate materially from actual recorded values between 2021-2023.

SCE reported underspending the contracted services forecast by \$0.45 million between 2021-2023 which reflected a lower than estimated need for various staff services.<sup>73</sup> The 2020 DCE forecasted an average cost of \$0.37 million/year while actual recorded expenses were \$0.22 million/year, a 41% reduction from the forecast.<sup>74</sup> The 2024 DCE forecast an average cost of \$0.38 million/year between 2024-2040, after which the costs fall to \$0.05 million/year until the final two years of decommissioning.<sup>75</sup> TURN does not propose adjusting the contracted services forecast starting in 2041 since the values in the DCE drop significantly at that time.

In rebuttal testimony, SCE opposes TURN's adjustment but offers no specific basis for assuming a significant increase in future costs relative to the 2021-2023 average. SCE relies on the claim that its outside consultants developing the 2024 DCE used "project-specific details, not just past averages."<sup>76</sup> Presumably, SCE's consultants used a similar approach in developing the 2020 DCE that forecasted

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<sup>71</sup> Ex. TURN-301, Bates page 301-009.

<sup>72</sup> Ex. TURN-301, footnote 36, Bates page 301-009 (The DCE forecasts \$6.39 million over this period while the use of the 2021-2023 average would result in a \$3.74 million forecast.)

<sup>73</sup> Ex. SCE-0002, Bates page 0046.

<sup>74</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q13, Bates page 304-022.

<sup>75</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q13(c), Bates page 304-023.

<sup>76</sup> Ex. SCE-0009, Bates page 1132.

contracted services costs to be 68% higher than actuals.<sup>77</sup> The errors in SCE's prior forecast are relevant to the reliability of its current forecast. Absent an explanation as to why the prior forecast was wrong, and how the new forecast corrects for these past mistakes, the Commission should give little weight to SCE's rote objections to TURN's recommendation.

In short, TURN's proposed reduction is appropriate because SCE has not demonstrated that future contracted services costs are likely to deviate materially from actual recorded values between 2021-2023. The Commission should therefore direct SCE to make this change to the 2024 DCE.

### **III. TRUST FUND BALANCES AND TREATMENT OF DEPARTMENT OF ENERGY LITIGATION PROCEEDS**

SCE and SDG&E seek authorization to deposit the proceeds of all future Department of Energy (DOE) litigation proceeds into the SONGS Non-Qualified Nuclear Decommissioning Trusts (NQNDTs). TURN's testimony urged the Commission to find that SCE and SDG&E failed to provide any substantive showing to support the need for these proceeds to be held in the NQNDTs.<sup>78</sup> TURN demonstrated that the SONGS decommissioning trust fund balances are forecasted to be adequate to support decades of additional spent fuel storage costs without any need to use DOE litigation proceeds or restart collections from customers.

As of the time of briefing, the total Round 5 and 6 claims pending with DOE amount to \$605 million.<sup>79</sup> The expected value of these claims represents a

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<sup>77</sup> The 2020 DCE forecast of \$0.37 million/year was 68% higher than actual recorded expenses of \$0.22 million/year.

<sup>78</sup> Ex. TURN-301, Bates pages 009-028

<sup>79</sup> Ex. SCE-0007, Bates page 1102. The Round 5 claim is shown as \$168 million. The Round 6 claim in SCE's testimony is inaccurate. As explained by SDG&E in response to a TURN data request, the final Round 6 claim submitted was \$436.6 million (as compared to the \$284 million value shown in SCE's testimony). See Ex. TURN-306, SDG&E response to TURN Data Request 5, Q8, Bates page 306-105.

substantial sum of money that should be returned to SCE and SDG&E ratepayers upon receipt from the federal government. A decision to divert these funds to the NQNDTs rather than refunding the money to ratepayers should not occur unless there is a compelling demonstration of funding insufficiency. No such demonstration has been made by either SCE or SDG&E.

Based on the evidence provided in TURN's testimony, which relies on the workpapers and trust fund models utilized by SCE and SDG&E, the Commission should conclude that there is no basis for changing the prior practice of refunding DOE litigation proceeds to customers. Because no valid cause has been shown to add incremental funding to the decommissioning trusts, the Commission should direct SCE and SDG&E to credit the net DOE litigation proceeds to ratepayers starting with the Round 5 claim that is currently pending. These funds will provide downward pressure on customer rates to help address urgent affordability challenges.

**A. The Utilities Failed to Provide the More Comprehensive Showing Anticipated in D.24-08-001 to Support the Deposit of DOE litigation Proceeds in the Non-Qualified Decommissioning Trusts**

In D.24-08-001, the Commission allowed SCE and SDG&E to deposit DOE litigation proceeds into the SONGS NQNDTs. The Commission specified that these funds "shall be used only for the purposes of spent fuel management and storage costs, and any unspent funds should be returned to ratepayers."<sup>80</sup> The Decision further explains that "The Commission may review the disposition of these funds at any future NDCTP" and notes that the Commission has "the opportunity to continually evaluate the NDCTP balances and forecasted costs in each subsequent NDCTP to minimize any potential intergenerational inequities."

<sup>81</sup> Since the adoption of D.24-08-001, there has been no final resolution on the Round 5 DOE claim seeking \$168 million or the Round 6 DOE claim seeking \$437

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<sup>80</sup> D.24-08-001, page 24.

<sup>81</sup> D.24-08-001, pages 24-25.

million.<sup>82</sup> As a result, no DOE litigation proceeds have yet been received by SCE or SDG&E.

The Commission's decision in the 2021 NDCTP relied on the claim by SCE and SDG&E that "customer contributions may need to be restarted as early as the next NDCTP if the start date for spent fuel removal, which has been extended in the past consecutive NDCTPs, gets further extended."<sup>83</sup> The Decision accepted the factual assertion made by SCE and SDG&E that an additional two year delay in spent fuel pickup may deplete the trust funds and require customer collections to restart.<sup>84</sup> Based on the contention that any additional delays would trigger the need for new customer contributions, the Commission approved the SCE/SDG&E request.<sup>85</sup>

Although the Decision directs SCE and SDG&E to present a more comprehensive showing of need for DOE litigation proceeds in subsequent NDCTPs to cover additional spent fuel management costs, the utilities make no such demonstration in the current application.<sup>86</sup> In particular, the Commission ordered SCE and SDG&E to "compare the forecasted decommissioning costs, with the forecasted spent fuel storage costs included, against the forecasted Non-Qualified Nuclear Decommissioning Trust fund balances, with the amount of DOE litigation proceeds received included".<sup>87</sup> Despite SCE's rebuttal testimony claim that it "fully complied with the Commission's order"<sup>88</sup>, no analysis was presented in this proceeding that "included" any DOE litigation proceeds in the comparison of forecasted decommissioning costs (with or without spent fuel

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<sup>82</sup> Ex. SCE-0007, Bates page 1102; Ex. TURN-304, SCE response to TURN Data Request 3, Q9, Bates page 304-033; Ex. TURN-306, SDG&E response to TURN Data Request 5, Q8, Bates page 306-105.

<sup>83</sup> D.24-08-001, page 20.

<sup>84</sup> D.24-08-001, page 20.

<sup>85</sup> D.24-08-001, page 24.

<sup>86</sup> D.24-08-001, pages 25-26.

<sup>87</sup> D.24-08-001, Ordering Paragraph 5(d).

<sup>88</sup> Ex. SCE-0009, Bates page 1157.



storage costs) with forecasted NQNDT balances. After noting that this analysis was missing from the current application, TURN asked SCE and SDG&E to update their trust fund cash flow modeling to incorporate the assumption that 100% of its pending Round 5 and 6 claims are received and deposited into the NQNDTs. Both IOUs objected and refused to provide any relevant analysis.<sup>89</sup> This refusal is designed to prevent the Commission from assessing the impact of DOE litigation proceeds on future NQNDT balances and frustrate an evaluation of overall decommissioning funding adequacy.

In this proceeding, SCE and SDG&E provide analysis of trust fund adequacy that excludes any DOE litigation proceeds (including the Round 5 and 6 claims). The Utility modeling assumes DOE will begin spent fuel pickup in 2034 and complete removal by 2054, a three-year delay from the assumptions included in the DCE approved in D.24-08-001.<sup>90</sup> SCE states that no additional contributions are needed based on the latest DCEs, updated trust fund balances, and “reasonable projections of cost escalation and NDT fund asset returns.”<sup>91</sup> SDG&E similarly explains that it projects no additional contributions based on the DCE, “projected escalation of decommissioning costs, SDG&E-only costs, and estimated trust returns net of management fees”.<sup>92</sup> Despite this analysis, SCE and SDG&E seek to deposit their shares of up to \$604 million in DOE litigation proceeds into the NQNDTs during the current NDCTP cycle.

In A.22-02-016, SCE justified its proposal to retain DOE litigation proceeds by pointing to the potential cost of a hypothetical 12-year delay in the timeline for the pickup of spent fuel from the SONGS site.<sup>93</sup> No similar delay costs are specifically identified or modeled by either Utility in the current application. The

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<sup>89</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q25, Bates page 304-026; Ex. TURN-304, SDG&E response to TURN Data Request 2, Q3, Bates page 304-050.

<sup>90</sup> Ex. SCE-0007, Bates page 1104; Ex. TURN-301, footnote 44, Bates page 301-011.

<sup>91</sup> Ex. SCE-0006, Bates page 1067.

<sup>92</sup> Ex. SDG&E-104, Bates page 0104-0219.

<sup>93</sup> Ex. TURN-301, footnote 47, Bates page 301-011.

fact that neither utility provides any modeling showing a trust fund deficiency under different spent fuel delay scenarios, despite a directive from the Commission in D.24-08-001 to present such analysis, highlights the fatal flaws in their case.

In support of continuing the treatment adopted in D.24-08-001, SCE points to the spent fuel storage cost forecast contained in the SONGS DCE, asserts that an unspecified amount of additional funds may be needed for long-term onsite spent fuel storage and claims that the need to renew its Coastal Development Permits (CDPs) for the existing SONGS interim storage facilities raises a non-zero risk that relocation may be necessary.<sup>94</sup> No details are provided about the potential relocation that would allow the Commission to evaluate the reasonableness of this concern and no forecast of potential incremental costs is identified by either utility or included in the DCEs.

The Commission should find that the utilities have not offered any demonstration, or reasonable likelihood, that any DOE litigation proceeds are needed to cover projected future decommissioning costs. The reevaluation of any identified need was expressly contemplated in D.24-08-001 and is reinforced by inclusion of this issue in the Scoping Memo.<sup>95</sup> Rather than allowing the Utilities to retain these funds for no clearly identified purpose, and with no clear demonstration of need, the Commission should revert to the longstanding treatment that involves crediting DOE litigation proceeds to customers.

#### **B. Other facilities facing similar risks have not sought to deposit DOE litigation proceeds in the decommissioning trusts**

While SCE and SDG&E assert that DOE litigation proceeds are needed to ensure against various unquantified risks at SONGS including spent fuel pickup delays,

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<sup>94</sup> Ex. SCE-0007, Bates pages 1099, 1104.

<sup>95</sup> Assigned Commissioner's Scoping Memo and Ruling, June 3, 2025, pages 4-5, Item 7.

no similar arguments are made for SCE's share of the Palo Verde Nuclear Generating Station (PVNGS). For Palo Verde, SCE applies DOE litigation proceeds to spent fuel storage costs collected via its Energy Resource Recovery Account (ERRA).<sup>96</sup> This treatment results in the value being provided directly to ratepayers in the year the proceeds are received. SCE does not propose to change this treatment going forward despite Palo Verde facing the same spent fuel delay risk as SONGS.

The Commission should recognize that PG&E, which faces the same risks relating to spent fuel storage pickup delays at both Diablo Canyon (operating) and the Humboldt Bay plant (retired), has not sought to retain DOE litigation proceeds in its trusts. In its current Diablo Canyon cost recovery application, PG&E proposes to continue to return these funds to customers when they are received.<sup>97</sup> PG&E also provides a forecast of expected DOE litigation proceeds through 2030 even though there is no settlement agreement that guarantees reimbursements through that date.

The Commission should reject the claim that DOE proceeds for SONGS should be diverted to the NQNDTs while no similar treatment has been requested or granted for Diablo Canyon, Humboldt Bay or PVNGS. Neither SCE nor SDG&E have presented any specific evidence to justify this unique treatment for SONGS.

### **C. The likelihood of a 12-year delay in spent fuel pickup has not been established**

In D.24-08-001, the Commission authorized the use of DOE litigation proceeds to pay for "additional spent fuel storage costs caused by DOE delays".<sup>98</sup> This authorization was based on SCE's suggestion in A.22-02-016 that the

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<sup>96</sup> Ex. TURN-304, SCE response to TURN Data Request 3, Q8, Bates pages 304-031 and 304-032

<sup>97</sup> Ex. TURN-301, Bates page 301-013.

<sup>98</sup> D.24-08-001, page 24.

Commission should evaluate a hypothetical 12-year delay (beyond the dates in the DCE) for the commencement of spent fuel pickup by the federal government.<sup>99</sup> In the current application, SCE offers no support for the 12-year delay that it relied upon in A.22-02-016.

Instead, SCE notes that Congress recently provided funding to support work on interim spent fuel storage facilities that could receive spent fuel from commercial reactor sites.<sup>100</sup> In addition, SCE explains (in response to a TURN Data Request):

In December 2021, DOE effectively re-started work on federal storage for spent fuel with the issuance of a request for information on “Using a Consent-Based Siting Process to Identify Federal Interim Storage Facilities.” Congress provided funds and direction for DOE to pursue a federal interim storage capability for spent nuclear fuel (and high-level radioactive waste). In September 2022, DOE launched a three-stage process intended to establish operational consolidated interim storage (CIS) facilities by the mid- to late-2030s.<sup>101</sup>

In May 2024, the DOE issued a request for information opportunity for the design and construction of a federal consolidated interim storage facility for spent nuclear fuel. The DOE appears to be planning to rely on interim storage until a permanent repository is available.<sup>102</sup> Apart from the federal effort, private entities have moved forward with interim storage facilities in New Mexico and Texas. In 2021, the US Nuclear Regulatory Commission granted a license to Interim Storage Partners for the construction of an interim storage facility in Texas.<sup>103</sup> In 2023, the US Nuclear Regulatory Commission granted a license to Holtec for a facility in New Mexico.<sup>104</sup> Challenges by the state of Texas to the NRC’s issuance of a license to Interim Storage Partners were rejected by the US

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<sup>99</sup> Ex. TURN-301, Bates page 301-013 (*referencing* Ex. SCE-09, A.22-02-016, pages 32-33).

<sup>100</sup> Ex. SCE-0007, Bates page 1099.

<sup>101</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q3, Bates page 304-011.

<sup>102</sup> Ex. TURN-301, Bates page 301-014, footnote 57.

<sup>103</sup> Ex. TURN-301, Bates page 301-014, footnote 58.

<sup>104</sup> Ex. TURN-301, Bates page 301-014, footnote 59.

Supreme Court on June 18, 2025.<sup>105</sup> This decision clarified the right of the NRC to issue licenses for private interim storage facilities.

Although TURN recognizes the ongoing challenges of relocating spent fuel offsite, the Commission should be aware that developments in the past few years suggest accelerated progress on the availability of options to begin moving fuel in the 2030s. As shown in the following sections, TURN's modeling demonstrates that the decommissioning trust funds could easily absorb extended delays in spent fuel pickup without any need to divert DOE litigation proceeds or require new customer contributions.

#### **D. The Utility Modeling of the Trust Funds Contains Omissions and Errors**

The testimony of SCE and SDG&E regarding trust fund adequacy is supported by workpapers identifying annual forecasts of trust fund investment returns, withdrawals to support decommissioning costs, contributions to the trusts, and tax impacts. TURN's testimony identified a series of problematic omissions from the testimony and cash flow modeling workpapers for the decommissioning trust funds presented by SCE and SDG&E.<sup>106</sup>

##### **1. SCE/SDG&E analysis of Trust Fund Adequacy Excludes late 2024 contributions to the SONGS 2 and 3 NQNDTs**

Both utilities rely on outdated trust fund balances and ignore material contributions to the NQNDTs made in late 2024. These omissions adversely affect forecasts of future trust fund adequacy and should be corrected to assess the need for additional contributions from DOE litigation proceeds. TURN's modeling identifies and corrects this omission.

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<sup>105</sup> Nuclear Regulatory Commission v. Texas, 605 U.S. 665 (2025).

<sup>106</sup> Ex. TURN-301, Bates pages 301-015 to 301-018.

SCE's modeling does not include deposits of \$28.76 million on September 20, 2024 to reflect the Black Box disallowance adopted in D.24-08-001 and 50% of SCE's share of NEIL dividends for 2023-2024.<sup>107</sup> SDG&E's cash flow analysis of trust fund adequacy uses December 31, 2023 balances as a starting point and does not reflect \$8.936 million in contributions made in late 2024 attributable to the Black Box disallowance adopted in D.24-08-001 and 50% of SDG&E's share of NEIL dividends for 2023-2024.<sup>108</sup>

Both SCE and SDG&E objected to TURN's request to update their modeling to include December 31, 2024 values.<sup>109</sup> The objections to TURN's request for updated analysis are unreasonable and designed to frustrate the Commission's review of NQNDT funding adequacy over time. The use of December 31, 2024 balances represents a more appropriate starting point for any cash flow modeling of the NQNDTs. TURN would also support a requirement to use December 31, 2025 balances once available. TURN uses updated balances from December 31, 2024 in its modeling. The Commission should rely on this updated information in evaluating trust fund adequacy.

## **2. The Value of Nuclear Energy Insurance Limited Dividends Have Been Entirely Excluded from the SCE/SDG&E analysis.**

Neither SCE nor SDG&E forecast any future NQNDT deposits attributable to property insurance dividends from Nuclear Electric Insurance Limited (NEIL).<sup>110</sup> Pursuant to the settlement agreement adopted in D.24-08-001, each utility committed to deposit 50% of its share of these dividends into the NQNDTs beginning in 2023.<sup>111</sup> SCE notes that the 2020 DCE assumed annual NEIL dividends (applied as a net credit) of \$1.6 million (2014\$, 100% share) but that the

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<sup>107</sup> Ex. TURN-304, SCE response to TURN Data Request 3, Q22, Bates page 304-040.

<sup>108</sup> Ex. TURN-304, SDG&E response to TURN Data Request 4, Q1, Bates pages 304-057 and 304-058.

<sup>109</sup> Ex. TURN-304, SCE response to TURN Data Request 3, Q13, Bates page 304-036; SDG&E response to TURN Data Request 3, Q1, Bates page 304-054

<sup>110</sup> Ex. TURN-304, SCE response to TURN Data Request 3, Q5, Bates page 304-029.

<sup>111</sup> D.24-08-001, page 15.

2024 DCE no longer includes this assumption.<sup>112</sup> The elimination of any forecast of future NEIL dividends that will be deposited into the NQNDTs is unreasonable.

There has not been a single year since 2018 when no NEIL dividends were received. Between 2018-2024, NEIL dividends averaged approximately \$11.1 million (\$2014, 100% share).<sup>113</sup> Since 2021, NEIL dividends averaged \$9.1 million (\$2014, 100% share). For each dollar of NEIL dividends received, approximately 76% are allocated to SCE and 20% to SDG&E.<sup>114</sup> Going forward, 50% of these allocations will be deposited into the NQNDTs. Assuming zero future contributions relating to NEIL dividends is unreasonable and arbitrarily depresses the expected balances in the NQNDTs over time.

### **3. Zero analysis on the Impact on Trust Fund Balances Due to Diverting Future DOE Litigation Claims to the NQNDTs**

Neither SCE nor SDG&E provide any forecast showing the impacts on trust fund adequacy from depositing the Round 5 and 6 claims into the NQNDTs.<sup>115</sup> The total face value of these two claims amounts to \$604 million before litigation costs.<sup>116</sup> TURN asked SCE and SDG&E to update their trust fund cash flow modeling to incorporate the assumption that 100% of its pending Round 5 and 6 claims are received. Both IOUs objected and refused to provide this information.<sup>117</sup>

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<sup>112</sup> SCE response to TURN Data Request 3, Q19.

<sup>113</sup> Ex. TURN-304, SCE response to TURN Data Request 4, Q1, Bates page 304-041; Ex. TURN-304, SCE response to Cal Advocates Data Request 1, Q2, Bates page 304-062; SCE response to TURN Data Request 2, Q14, Bates page 304-024.

<sup>114</sup> Ex. TURN-304, SCE response to TURN Data Request 3, Q6, Bates page 304-030.

<sup>115</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q24, Bates page 304-025; Ex. TURN-304, SDG&E response to TURN Data Request 2, Q2, Bates page 304-049.

<sup>116</sup> Ex. SCE-0007, Bates page 1102; Ex. TURN-306, SDG&E response to TURN Data Request 5, Q8, Bates page 306-105.

<sup>117</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q25, Bates page 304-026; Ex. TURN-304, SDG&E response to TURN Data Request 2, Q3, Bates page 304-050.

Neither SCE nor SDG&E have limited their request to divert DOE litigation proceeds to the NQNDTs to the Round 5 and 6 claims. Both Utilities presume that all future DOE litigation proceeds will be subject to the treatment adopted in D.24-08-001. Through its Round 1-4 claims, the SONGS co-owners have received an average of \$21.533 million/year (nominal) since 1998 (after litigation expenses) and realized an 88% success rate (net proceeds after litigation costs divided by initial claim amounts).<sup>118</sup> The trust fund cash flow modeling presented in this proceeding assumes that there are no deposits of any future DOE litigation proceeds.

DOE litigation claims will continue after Round 6. Significant amounts of spent fuel management costs shown in the SONGS 1, 2 and 3 DCEs are attributable to delays by the federal government and are therefore eligible for recovery from DOE.<sup>119</sup> Adding these future DOE litigation proceeds to the NQNDTs would dramatically inflate the surplus well beyond any conceivable need for decommissioning funds.

Neither SCE nor SDG&E make any effort to demonstrate that retaining DOE litigation proceeds is needed to support additional spent fuel storage costs attributable to pickup delays. No calculations or modeling are presented showing the ability of the Qualified Nuclear Decommissioning Trusts (QNNTs) or NQNDTs to cover these additional costs with and without DOE litigation proceeds. This omission makes it impossible for the Commission to assess the reasonableness of diverting DOE litigation proceeds to the trusts. To address this deficiency, the Commission should instead rely on TURN's adjustments to the SCE and SDG&E cash flow models showing the impacts of depositing the Round 5 and 6 DOE litigation claim proceeds into the NQNDTs.

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<sup>118</sup> Ex. SCE-0007, Bates page 1102.

<sup>119</sup> Ex. TURN-301, Bates page 301-018.



**E. TURN's analysis shows forecasted trust fund surpluses that can be used to cover incremental future spent fuel management costs without any need for DOE litigation proceeds**

**1. Specific TURN adjustments to SCE and SDG&E Trust Fund Modeling**

TURN used the cash flow models contained in the SCE and SDG&E workpapers to assess the potential impacts of incremental spent fuel management costs on trust fund adequacy with, and without, the inclusion of Round 5 and 6 DOE litigation proceeds.<sup>120</sup> TURN performed this work because SCE and SDG&E declined to include any analysis in testimony<sup>121</sup> and refused to respond to TURN data requests asking for revised modeling that included DOE litigation proceeds and incremental spent fuel management costs.<sup>122</sup>

TURN's analysis involved several adjustments to correct for omissions in the current models and incorporating projected incremental spent fuel management costs attributable to additional delays beyond those included in the DCEs. TURN did not alter any of the core assumptions of the SCE and SDG&E models including assumed trust fund returns, investment portfolio mix, tax treatment, or the amount and timing of decommissioning costs.<sup>123</sup> The changes to the models made by TURN were limited to the following:

- TURN used updated NQNDT trust fund values as of December 31, 2024 to incorporate contributions to the NQNDT resulting from the Settlement adopted in D.24-08-001.<sup>124</sup>

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<sup>120</sup> Ex. TURN-0301, Bates pages 301-019 through 301-027

<sup>121</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q24, Bates page 304-025; Ex. TURN-304, SDG&E response to TURN Data Request 2, Q2, Bates page 304-049.

<sup>122</sup> Ex. TURN-304, SCE response to TURN Data Request 2, Q25, Bates page 304-026; Ex. TURN-304, SDG&E response to TURN Data Request 2, Q3, Bates page 304-050.

<sup>123</sup> Ex. TURN-301, Bates page 19.

<sup>124</sup> Ex. TURN-301, Bates page 301-019.

- Consistent with D.24-08-001 and SCE's standard practice, TURN assumed that SCE would withdraw general decommissioning expenses from the QNDTs and only access NQNDT funds to support incremental spent fuel management costs attributable to delays beyond those assumed in the DCE.<sup>125</sup>
- TURN removed SCE's modeling of an immediate withdrawal (in 2024) of amounts precisely calculated to bring each QNDT balance to zero in the final year of decommissioning (2056).<sup>126</sup> SCE's approach ignores expected investment returns over time and fails to capture the ultimate overfunding of the trusts in future years. This change allows for a calculation of projected surplus balances in 2056. TURN addresses SCE's arguments regarding the relevance of its approach to calculating a "decommissioning funding margin" in Section III(E)(4)(b).
- For each utility, TURN models the combined SONGS 1/2/3 balances for the QNDTs and NQNDTs.<sup>127</sup> TURN addresses critiques of this approach in Section III(E)(2).
- Consistent with the Settlement adopted in D.24-08-001,<sup>128</sup> 50% of future after-tax NEIL dividends received by SCE and SDG&E are assumed to be deposited into the NQNDTs in the year they are received.<sup>129</sup> TURN's extraordinarily conservative forecast of future NEIL dividends is based on the average values received from 2021-2024 and is not escalated to reflect any inflation through 2056. After reviewing the rebuttal testimony served by SCE and SDG&E, TURN issued an errata to its direct testimony

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<sup>125</sup> Ex. TURN-301, Bates pages 301-019 and 301-020.

<sup>126</sup> Ex. TURN-301, Bates page 301-020.

<sup>127</sup> Ex. TURN-301, Bates page 301-020.

<sup>128</sup> D.24-08-001, page 15.

<sup>129</sup> Ex. TURN-301, Bates page 301-020.

correcting the calculation of average 2021-2024 NEIL dividends.<sup>130</sup> Prior to making these corrections, TURN served SCE and SDG&E with data requests to quantify the correct values and fix the identified errors in its original testimony.<sup>131</sup>

- After-tax DOE litigation proceeds are credited to the NQNDTs in 2026 (Round 5) and 2028 (Round 6) using a conservative 85% success rate which is consistent with historic rates of success.<sup>132</sup>
- The costs of incremental delays in the pickup of spent nuclear fuel (beyond the dates assumed in the DCEs) are incorporated starting in 2052 based on the timing and amounts of annual incremental costs SCE and SDG&E forecast could be incurred in each year for each SONGS unit.<sup>133</sup> These costs are deducted from the NQNDTs beginning in 2052.<sup>134</sup>

The results of TURN's modeling are explained in the following section.

## **2. Results of TURN adjustments**

In D.24-08-001, the Commission justified the need for DOE litigation proceeds based on the assumption that forecasted balances in the QNDTs and NQNDTs could not support more than a two year delay in spent fuel storage pickup without triggering the need to restart customer collections.<sup>135</sup> Applying TURN's conservative adjustments to the SCE/SDG&E cash flow models shows the extent of projected overfunding for both the QNDTs and NQNDTs relative to the costs

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<sup>130</sup> Ex. TURN-301 is the clean and corrected errata version of TURN's original direct testimony (Ex. TURN-300)

<sup>131</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q15, Bates pages 306-097 and 306-098; Ex. TURN-306, SDG&E response to TURN Data Request 5, Q5, Bates pages 306-102 through 306-104.

<sup>132</sup> Ex. TURN-301, Bates page 301-021.

<sup>133</sup> Ex. TURN-301, Bates pages 301-021 and 301-022.

<sup>134</sup> Ex. TURN-304, SCE response to TURN Data Request 4, Q4, Bates page 304-045.

<sup>135</sup> D.24-08-001, Finding of Fact 22.

of incremental delays in spent fuel storage pickup. The results show a massive overfunding of the trust funds relative to any foreseeable need.

TURN's summary results are presented in the following table:<sup>136</sup>

| <b>Comparison of projected SONGS Trust Fund Surpluses with incremental spent fuel storage costs</b> |                |                 |                  |                 |
|---|----------------|-----------------|------------------|-----------------|
| <i>All values shown in \$2056 (in thousands)</i>  |                |                 |                  |                 |
|   | <b>SCE</b>     |                 | <b>SDG&amp;E</b> |                 |
|   | w/DOE proceeds | no DOE proceeds | w/DOE proceeds   | no DOE proceeds |
| QNDT balances in 2056   | \$ 1,583,383   | \$ 1,583,383    | \$ 656,759       | \$ 656,759      |
| NQNDT balances in 2056 (assumes 5 year SNF delay)   | \$ 860,457     | \$ 266,078      | \$ 246,026       | \$ 113,275      |
| Combined QNDT + NQNDT balances in 2056  | \$ 2,443,840   | \$ 1,849,461    | \$ 902,785       | \$ 770,034      |
| Incremental fuel storage costs (1 year)   | \$ (60,192)    | \$ (60,192)     | \$ (15,840)      | \$ (15,840)     |
| Incremental fuel storage costs (additional 7 year SNF delay)  | \$ (421,344)   | \$ (421,344)    | \$ (110,800)     | \$ (110,800)    |
| Years of incremental SNF storage with QNDT 2056 balances  | 26.31          | 26.31           | 41.46            | 41.46           |
| Years of incremental SNF storage with QNDT+NQNDT 2056 balances                                      | 40.60          | 30.73           | 56.99            | 48.61           |

As shown in this table, the Utility cash flow models calculate that, even without adding a single dollar of DOE litigation proceeds to the NQNDTs, and assuming an additional 5 years of spent nuclear fuel delay costs through 2056, total trust fund balances at the end of 2056 are projected to be able to support another 30.73 years (SCE) and 48.61 years (SDG&E) of additional spent fuel delay costs. After including the 5 years of delay costs already assumed to be paid through the NQNDTs prior to 2056, the trust funds would support a total of at least 35.73 years (SCE) and 53.61 years (SDG&E) of total spent fuel pickup delays.<sup>137</sup> Adding DOE litigation proceeds from Rounds 5 and 6 would increase this margin by another 9.9 years for SCE and 9.2 years for SDG&E.

The impact of adding DOE litigation proceeds to the NQNDTs is significantly understated in TURN's modeling. TURN assumed recovery of 85% of the Round 6 claim based on SCE's prepared testimony identifying a total claim of \$284

<sup>136</sup> Ex. TURN-301, Bates page 301-023. These results contain the corrected NEIL values in response to concerns raised in the rebuttal testimony of SCE and SDG&E.

<sup>137</sup> The 35.73 years for SCE results from adding 5 years of incremental costs incurred between 2052-2056 plus another 30.73 years starting in 2057. The 53.61 years for SDG&E results from adding 5 years of incremental costs incurred between 2052-2056 plus another 48.61 years starting in 2057.

million.<sup>138</sup> In response to a TURN data request submitted after rebuttal testimony was served, SDG&E noted that the actual amount of the “revised” Round 6 claim was \$436.6 million (or 23% higher than shown in testimony).<sup>139</sup> This higher amount was not included in TURN’s modeling. Had TURN used this larger value (subject to an 85% success rate) to model the scenario in which Round 5 and 6 DOE litigation proceeds are diverted to the NQNDTs, the surplus in SCE’s NQNDTs in 2056 would increase from \$860.4 million to \$1.055 billion which is equal to at least another 3 years of spent fuel storage costs.<sup>140</sup> For SDG&E, the surplus in the NQNDTs in 2056 would increase from \$246 million to \$294 million which is equal to at least another 3 years of spent fuel storage costs.<sup>141</sup>

TURN’s calculations also understate the true overfunding of the trusts because they assume that all post-2056 incremental spent fuel costs would be paid with trust fund balances available in 2056. In reality, spent fuel costs attributable to pickup delays would be paid from the trust funds starting in 2052 and continuing well beyond 2056. Meanwhile, trust fund balances would continue to rise in the years following 2056 due to investment returns. Since investment returns are expected to outpace the escalation in spent fuel management costs, the funds available in 2056 under the “no DOE proceeds” scenario would likely

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<sup>138</sup> Ex. SCE-0007, Bates page 1102. TURN applied the 85% success rate to this amount, resulting in an expected value of \$241.4 million which was then allocated to SCE and SDG&E based on their ownership shares of each unit (See Ex. TURN-308, TURN workpapers, Bates page 308-001).

<sup>139</sup> Ex. TURN-306, SDG&E response to TURN Data Request 5, Q8, Bates page 306-105.

<sup>140</sup> TURN obtained this result by assuming a \$205.5 million is deposited into the SCE NQNDTs in 2028 instead of the \$133.9 million assumed in TURN’s original modeling. This calculation was performed with the SCE cash flow model included in Ex. TURN-309C.

<sup>141</sup> TURN obtained this result by assuming a \$54.1 million is deposited into the SDG&E NQNDTs in 2028 instead of the \$35.2 million assumed in TURN’s original modeling. This calculation was performed with the SDG&E cash flow model included in Ex. TURN-309C.

be sufficient to support near-perpetual annual payments for spent fuel management.<sup>142</sup>

In rebuttal testimony, both SCE and SDG&E criticize the fact that TURN's surplus calculations combine the QNDTs and NQNDTs for all three SONGS units. SCE argues that federal law requires that QNDT funds for each unit only be used to pay for costs at that specific unit and prohibits the transfer of such funds to other trusts.<sup>143</sup> SCE also points to prohibitions in the Master Trust Agreements against any transfer of monies between the "fund accounts" except when such transfers do not violate IRS Code §468A.<sup>144</sup> SDG&E similarly argues that assets of each QNDT "cannot be transferred to cover decommissioning of any other unit."<sup>145</sup> TURN does not dispute the existence of these restrictions under federal law although there may be options for taking advantage of significant funding excesses in one QNDT that could be explored in future NDCTPs. However, the existing restrictions do not affect the overall validity of TURN's analysis for three reasons.

First, IRS Code §468A applies only to QNDTs which involve a tax deduction for initial contributions.<sup>146</sup> Both SCE and SDG&E acknowledge that the NQNDTs are not subject to the requirements of IRS Code §468A because there is no tax deduction associated with initial contributions.<sup>147</sup> Amounts held in the NQNDTs are governed by the Master Trust agreement. Under this agreement, the disposition of funds held in the NQNDTs can be changed through a CPUC order.<sup>148</sup> The Commission recently ordered PG&E to return excess funds to its

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<sup>142</sup> Ex. TURN-301, Bates page 301-024.

<sup>143</sup> Ex. SCE-0009, Bates page 1158.

<sup>144</sup> Ex. SCE-0009, Bates page 1158.

<sup>145</sup> Ex. SDG&E-0105, Bates page 0105-0244.

<sup>146</sup> 26 USC §468A.

<sup>147</sup> Ex. SCE-0006, Bates page 1073; Ex. SDG&E-0104, Bates page 0104-0226.

<sup>148</sup> Ex. TURN-306, SCE SONGS NQNDT Master Trust Agreement, Section 2.10, Bates page 306-074; Ex. TURN-306, SDG&E SONGS NQNDT Master Trust Agreement, Section 2.10, Bates page 306-186.

ratepayers from the Diablo Canyon NQNDT, an outcome that was not constrained by federal law or the provisions of the master trust agreements.<sup>149</sup> The Commission may therefore evaluate surplus funding by considering the combined amounts held by each utility the SONGS 1, 2 and 3 NQNDTs.

The surplus amounts forecasted to be available in the NQNDTs are substantial without considering any DOE litigation proceeds. Without including any DOE litigation proceeds, the unspent NQNDT balances in 2056 are forecast to be \$266 million for SCE and \$113 million for SDG&E.<sup>150</sup> The 2056 balances already reflect 5 years of incremental spent fuel storage costs and could support an additional 7 years of delay for SDG&E (total of 12 years) and at a minimum of 5 years of additional delay for SCE (total of 10 years). These are conservative estimates that do not account for trust fund returns over these additional years.

Second, both SCE and SDG&E forecast substantial surpluses in their QNDTs that would be available to fund incremental spent fuel storage costs in the event the NQNDTs are depleted. The following table provides a comparison of the forecasted balances for each QNDT and the amount of incremental spent fuel storage costs per unit per year that are projected.<sup>151</sup>

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<sup>149</sup> D.23-09-004, Ordering Paragraph 4; PG&E implemented this requirement in Advice Letter 7056-E (page 2) which explains that PG&E provided notification to the US Nuclear Regulatory Commission pursuant to 10 CFR 50.75(h) that \$79.8 million would be withdrawn from its Non-Qualified Trust and returned to ratepayers.

<sup>150</sup> Ex. TURN-301, Bates page 301-023.

<sup>151</sup> The data in this table is taken from the following sources in the record: Ex. TURN-309C, Bates pages 309C-004, 309C-006, 309C-008 (SCE QNDT balances by unit in 2056. This data is not confidential); Ex. TURN-309C, Bates pages 309C-032, 309C-034, 309C-036 (SDG&E QNDT balances by unit in 2056. This data is not confidential); Ex. TURN-306, SCE response to TURN Data Request 5, Q12, Bates page 306-093 (Unit-specific incremental spent fuel storage costs for SONGS 2 and 3, of which 75.87% is allocated to SCE); Ex. TURN-304, SCE response to TURN Data Request 3, Q11, Bates page 304-034 (SDG&E allocation of SONGS costs is 20%). Incremental spent fuel costs for SONGS 1 were not available.

| <b>Projected SONGS QNDT Surpluses and incremental spent fuel storage costs</b> |             |                  |
|--|-------------|------------------|
| <i>All values shown in \$2056 (in thousands)</i>                               |             |                  |
|  | <b>SCE</b>  | <b>SDG&amp;E</b> |
| SONGS 1 QNDT   | \$ 820,275  | \$ 206,195       |
| SONGS 2 QNDT   | \$ 108,731  | \$ 179,375       |
| SONGS 3 QNDT   | \$ 654,377  | \$ 271,189       |
|  |             |                  |
| SONGS 2 incremental spent fuel storage costs per year                          | \$ (29,589) | \$ (7,800)       |
| SONGS 3 incremental spent fuel storage costs per year                          | \$ (30,500) | \$ (8,040)       |

This table shows that, for all units except SCE's share of SONGS 2, the forecasted surplus in the QNDTs in 2056 would cover 20-30 years of additional spent fuel storage. For SCE's SONGS Unit 2, any additional funding needs could be met with the use of NQNDT funds including excess funds refunded to customers from the Unit 1 and 3 NQNDTs.

Third, the Commission retains the authority to monitor trust fund adequacy over the next three decades. In a future NDCTP, the Commission could, if necessary, authorize a portion of future DOE litigation proceeds to be retained to support incremental spent fuel storage costs for a particular SONGS unit. For example, the Commission could permit a fraction of future DOE litigation proceeds to be deposited in SCE's NQNDT for SONGS Unit 2 to support spent fuel storage costs at that unit. Prior to making any such determination, the Commission should require SCE and SDG&E to present a comprehensive forecast of trust fund adequacy for each unit based on costs included in the DCE.

TURN's analysis highlights the massive present and future surpluses in these trust funds and the very small impact of incremental spent fuel costs on overall balances through 2056. The modeling does not show any need to redirect DOE litigation proceeds from ratepayers to the NQNDTs. Adding DOE litigation proceeds from Rounds 5 and 6 would only exacerbate the overfunding of the Trusts without any demonstration that these new funds may be needed at any point in the future. If massive new unforeseen decommissioning costs emerge in the coming decades that are not projected to be supported by future trust fund



balances, the Commission can always reconsider the opportunity to use future DOE litigation proceeds to support such costs. There will be 10 NDCTPs between this proceeding and 2056 in which the Commission can evaluate and address any projected unmet needs for decommissioning funds.

### **3. TURN's Use of Nominal Dollars Provides an Accurate Comparison of Future Trust Fund Balances to Future Incremental Costs of Spent Fuel Storage**

TURN's modeling uses nominal dollars to calculate 2056 QNDT and NQNDT balances and compare those with the annual costs of incremental spent fuel storage. This approach is consistent with the cash flow models used by SCE and SDG&E to assess trust fund adequacy and allows for an "apples to apples" comparison in future years.

In rebuttal testimony, SCE argues that TURN's calculations "creates a false impression" that 2056 surplus balances can be compared with forecasted future costs.<sup>152</sup> Specifically, SCE asserts that "any future costs would need to also be inflated to 2056 dollars for comparison purposes."<sup>153</sup> This critique does not apply to TURN's modeling in this proceeding.

As noted, the decommissioning costs in the SCE and SDG&E cash flow models are denominated in nominal dollars in all future years. These costs are a product of annual spending forecast in the DCEs and inflated by specific escalators described in SCE's testimony to calculate nominal dollar costs in all future years.<sup>154</sup> The incremental spent fuel storage costs included in TURN's analysis are in nominal dollars that reflect the appropriate escalators in all future years.<sup>155</sup> TURN obtained these nominal dollar values for each future year (starting in

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<sup>152</sup> Ex. SCE-0009, Bates page 1159.

<sup>153</sup> Ex. SCE-0009, Bates page 1159.

<sup>154</sup> Ex. SCE-0004, Bates pages 1065-1066, 1069-1071.

<sup>155</sup> Ex. TURN-301, Bates pages 301-021 and 301-022; Ex. TURN-304, SCE response to TURN Data Request 4, Q4, Bates page 304-045.

2052) from SCE and SDG&E through data requests in this proceeding.<sup>156</sup> TURN's approach appropriately escalates future costs so they can be compared against future trust fund balances. There is no reason to reject TURN's analysis on this basis.

#### **4. The Commission Should Not Ignore Future Trust Fund Returns in Determining Funding Adequacy**

In rebuttal testimony, SCE and SDG&E both argue that TURN's analysis is misleading because it considers projected escalation of decommissioning costs and forecasted investment returns on the balances held in the QNDTs and NQNDTs. Instead, both Utilities argue that funding sufficiency should be determined by evaluating current trust fund balances (with zero assumed future investment returns) to remaining decommissioning costs forecasted to be incurred over the next 30+ years.<sup>157</sup> SCE and SDG&E further argue that any projected surplus funds in the cash flow modeling should be treated as a "contingency against deviations in escalation and Rate of Return assumptions" and not assumed to be available to support any additional decommissioning costs.<sup>158</sup>

These positions taken by SCE and SDG&E in rebuttal testimony contradict decades of nuclear decommissioning policy in California and a litany of Commission decisions and are inconsistent with their testimony in prior cases. Moreover, these utilities effectively ask the Commission (for the first time in rebuttal testimony) to establish a new category of contingency to address the risk of deviations in future escalation and investment returns. No such contingency has ever been requested by the Utilities or approved by the Commission. The Commission should affirmatively reject these positions and recognize that they

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<sup>156</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q12, Bates page 306-093; Ex. TURN-306, SDG&E response to TURN Data Request 5, Q8, Bates page 306-105.

<sup>157</sup> Ex. SCE-0009, Bates page 1160; Ex. SDG&E-0105, Bates page 0105-0246.

<sup>158</sup> Ex. SCE-0009, Bates page 1160; Ex. SDG&E-0105, Bates page 0105-0245.

represent an effort to prevent any reasonable analysis of trust fund adequacy in this proceeding.

a. The Commission has Always Relied on Projected Trust Fund Returns to Determine Trust Fund Adequacy

TURN first addresses the astonishing claim that the Commission should ignore future trust fund investment returns when evaluating the adequacy of decommissioning funding and instead focus primarily on whether current year trust balances are adequate to cover projected future decommissioning costs. In rebuttal testimony, SCE argues that “a simplistic comparison of current trust balances to future decommissioning costs that does not use a discounted cash flow analysis, shows that the SONGS 2&3 trusts are underfunded.”<sup>159</sup> The Commission has never relied upon or adopted this type of analysis. Instead, the Commission has consistently relied on forecasts of future trust fund investment returns to determine whether existing funding levels are sufficient and whether additional contributions are warranted.

In D.83-04-013, the Commission established policy relating to nuclear decommissioning and determined an “external funded sinking fund” should be used for to ensure decommissioning funding adequacy with the need for annual contributions “set so that the principle plus accumulated earnings should cover the cost of decommissioning at the time decommissioning is expected to occur.”<sup>160</sup> In successive proceedings, the IOUs calculated the need for additional customer contributions based on their modeling of long-term costs, escalation rates and forecasted returns. The Commission identified the process for determining required trust fund contributions as follows:

Trust fund contribution levels and the resulting revenue requirements are calculated using complex computer models. The models are first used to estimate the decommissioning costs in current dollars. The

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<sup>159</sup> Ex. SCE-0009, Bates page 1160.

<sup>160</sup> D.83-04-013, page 3.

decommissioning costs are then escalated to the future years in which they will occur. The models then use the current trust fund balances, and estimated future earnings, to estimate the trust fund contributions necessary to pay the decommissioning costs when they occur. The models then determine the revenue requirement needed.<sup>161</sup>

In D.14-12-082, the Commission noted that the primary purpose of the NDCTP is to approve updated decommissioning cost estimates in order to establish annual revenue requirements to support contributions to the trust funds. In making these determinations, the Commission “both establishes reasonable cost estimates and, based on assumptions regarding the expected rates of return on the existing trust funds, adopts the calculated necessary contributions to maintain funding assurance.”<sup>162</sup> That Decision further explained that “contributions by the Utilities to the NDTF are calculated by application of the rates of return to the approved and escalated cost estimates.”<sup>163</sup>

In D.16-04-019, the Commission noted that SCE and SDG&E proposed to reduce customer contributions to zero for the trusts, explaining that:

The utilities justify their proposed rate reduction with their contention that the SONGS Units 2 and 3 Nuclear Decommissioning Trusts are currently sufficiently funded, with projected asset returns and inflation, to pay all decommissioning costs plus a contingency. The utilities offer their Decommissioning Cost Estimate and asset return forecasts in support of their contention.<sup>164</sup>

In D.17-05-020, the Commission again explained that “contributions to the NDTF are calculated by application of the rates of return to the approved and escalated cost estimates.”<sup>165</sup> The Commission further noted that “as the trust fund continues to grow, the existing balance will continue to receive market returns with an annual yield through a mix of investments in fixed income (bonds) and

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<sup>161</sup> D.03-10-015, page 4.

<sup>162</sup> D.14-12-082, page 3.

<sup>163</sup> D.14-12-082, page 110.

<sup>164</sup> D.16-04-019, page 16.

<sup>165</sup> D.17-05-020, page 59.

equity (stocks). Based on the current trust fund balance funds will continue to grow, without any additional ratepayer contributions.”<sup>166</sup> In D.18-11-034, the Commission noted that SCE had determined that the SONGS 1 trusts were fully funded “based on the current 2016 SONGS 1 DCE, the SONGS 1 NDTs’ liquidated values, forecast returns, and projected escalation rates.”<sup>167</sup>

SCE’s testimony in prior NDCTPs mirrors the approach outlined in the cited Commission decisions. In A.14-12-007, SCE’s testimony explained the method for calculating annual contributions to the decommissioning trusts:

There are four key elements used in determining the annual contribution amount: (1) trust fund balances, (2) current-dollar decommissioning cost studies, (3) cost escalation, and (4) projected after-tax rates of return of the trust. To determine the necessary contribution levels, annual escalation rates convert the decommissioning cost estimates from current dollars to the dollars of the year when they will be actually incurred. The estimated rate of return and taxes are used to calculate an expected growth in the decommissioning trust fund balances. The future annual decommissioning costs will be treated as annual withdrawals from the projected trust fund balances.<sup>168</sup>

Based on this approach, SCE projected no need for additional contributions to the trust funds despite the fact that the then-current trust fund balances were less than the estimated costs of decommissioning.<sup>169</sup> SCE included the same approach to calculating funding needs in A.18-03-009 (2018 NDCTP) and found a zero need for customer contributions even though the then-current trust fund balances were less than the estimated costs of decommissioning.<sup>170</sup> SCE repeated the same approach to determining funding adequacy in A.22-02-016 (2021 NDCTP), noting that “the estimated rate of return and tax rates are used to

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<sup>166</sup> D.17-05-020, page 73.

<sup>167</sup> D.18-11-034, page 23.

<sup>168</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q8 (SCE testimony in A.14-12-007), Bates page 306-019.

<sup>169</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q8 (SCE testimony in A.14-12-007), Bates page 306-020.

<sup>170</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q8 (SCE testimony in A.18-03-009), Bates page 306-022 and 306-024.

calculate an expected growth in the NDT fund balances.”<sup>171</sup> In the current application, SCE asks for a proposed annual contribution level of zero dollars “based upon the latest available DCEs, SCE’s June 30, 2024 NDT balances for SONGS 1, SONGS 2&3, and PVNGS, and reasonable projections of cost escalation and NDT fund asset returns.”<sup>172</sup>

Given this extensive history, the Commission should reject the assertion that future trust fund returns are not relevant to the determination of funding adequacy. There is no factual, legal or policy basis for abandoning decades of precedent and practice to satisfy the current preference of SCE and SDG&E to divert their shares of up to \$605 million in pending DOE litigation claims into the trust funds. Any assessment of the need for new contributions to the trusts should examine the timing and amount of potential incremental spent fuel storage costs and determine whether projected future trust fund balances will be sufficient to support these expenditures when they occur. Since incremental spent fuel storage costs are projected to commence in 2052, the consideration of trust fund investment returns over the next three decades is critical to any reasonable analysis of potential funding needs.

b. Attempts to Create A New and Undefined Level of Contingency for Financial Assumptions Should Be Rejected

In an effort to convince the Commission to ignore TURN’s trust fund modeling results that project significant excess funding available to cover many years of incremental spent fuel management costs, both SCE and SDG&E argue that forecasted surplus balances in their decommissioning trusts (which they characterize as a “funding margin”) should be treated as “a contingency against deviations in escalation and Rate of Return (ROR) assumptions.”<sup>173</sup> In making

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<sup>171</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q8 (SCE testimony in A.22-02-016), Bates page 306-027.

<sup>172</sup> Ex. SCE-0006, Bates page 1067.

<sup>173</sup> Ex. SCE-0009, Bates page 1160.

this argument, the Utilities effectively ask for the Commission to authorize an entirely new form of contingency applicable to financial assumptions. It is notable that this request makes its historical debut in rebuttal testimony in this proceeding.

TURN's review of over 30 years of Commission nuclear decommissioning decisions failed to yield a single instance of a financial contingency being requested or approved. In response to TURN data requests, both Utilities acknowledge that no similar proposal has ever been submitted to, or adopted by, the Commission.<sup>174</sup> SCE further refuses to explain what level of financial contingency would generally be appropriate and disclaims the notion that it is requesting a specific contingency level to be established in this proceeding.<sup>175</sup> SDG&E similarly declined to identify any specific level of forecasted trust fund surplus that would be adequate to address financial risks.<sup>176</sup> The absence of any actual proposal that can be evaluated or applied in a consistent manner is a red flag that highlights the distinctly unserious nature of the Utility arguments.

Neither utility either explains why a financial contingency should be adopted for the first time in this proceeding or offers a specific and consistent approach to calculating the appropriate level of contingency. Instead, both utilities suggest that a different contingency may be appropriate for each utility in every NDCTP and that the current "funding margins" in their trusts are adequate to address

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<sup>174</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q13(b), Bates page 306-095 ("SCE is not aware of the Commission adopting a specific contingency related to escalation and trust fund rate of return in previous NDCTPs. SCE has not requested the Commission adopt a specific contingency."); Ex. TURN-306, SDG&E response to TURN Data Request 5, Q1(b), Bates page 306-100 ("The Commission has not established specific trust fund margin levels for contingencies in previous proceedings.")

<sup>175</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q13(c), (d) ("SCE is not requesting the Commission adopt a specific contingency or funding level margin."), Bates page 306-095

<sup>176</sup> Ex. TURN-306, SDG&E response to TURN Data Request 5, Q1(a), Bates page 306-100 ("SDG&E does not currently assess what level of trust fund surplus is adequate to complete decommissioning as significant risks and uncertainties remain for an extended period of time, upwards of 30 years.")

this risk. The Commission should reject these arguments and affirm its historical practice of determining funding adequacy without applying any contingency level to financial assumptions.

In a data request response, SCE points to the Independent Panel report ordered in the 2009 NDCTP as supporting its current request to treat surplus trust funds as contingency for financial risks.<sup>177</sup> This reference is not persuasive. In adopting the Independent Panel report, the Commission explained that the Panel's recommendation for addressing financial risk was "conservative assumptions for cost escalation and rates of return".<sup>178</sup> Nothing in the Independent Panel report, or the Commission decision approving that report, suggests the development or application of another contingency factor applied to "financial" assumptions.

The Commission should give no weight to the new concepts floated by the Utilities in rebuttal testimony that are exclusively designed to prevent any serious inquiry into whether their share of up to \$604 million in pending DOE litigation proceeds are actually needed to support incremental spent fuel management costs. TURN's modeling shows that the forecasted investment returns will yield large future surpluses capable of supporting decades of additional fuel storage costs without additional customer contributions. The Utilities present no analysis or modeling that shows a contrary result but instead seek to invent a new category of decommissioning funding need to try and persuade the Commission to approve its proposed diversion of DOE litigation proceeds. The Commission should decline to bless a new category of contingency and affirm its longstanding approach to determining trust fund adequacy without assuming that a minimum level of surplus funding must be included in the forecast.

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<sup>177</sup> Ex. TURN-306, SCE response to TURN Data Request 5, Q13(a), Bates pages 306-094 and 306-095

<sup>178</sup> D.11-07-003, page 26.



**F. DOE litigation proceeds should be refunded to customers consistent with historic practice**

SCE's historic practice for SONGS-related litigation proceeds was to refund them directly to customers through the annual Energy Resource Recovery Account (ERRA) process. SCE customers received credits of \$33 million in 2020 and \$34 million in 2021.<sup>179</sup> TURN recommends that SCE be directed to return its share of all DOE litigation proceeds (net of litigation costs) to customers via the ERRA.

SDG&E's historic practice is more complicated. Rather than refunding DOE proceeds to its customers, SDG&E used these proceeds to reimburse shareholders for working cash that was used to pay for spent fuel management costs.<sup>180</sup> As the result of the issuance of a Private Letter Ruling by the Internal Revenue Service clarifying the eligibility of Qualified Trust funds to be used to pay for spent fuel costs that are also eligible for DOE litigation proceeds, SDG&E no longer uses working cash for this purpose and pays for these costs with QNDT disbursements.<sup>181</sup> As a result, SDG&E may refund DOE litigation proceeds directly to customers. TURN recommends that SDG&E be directed to return its share of all DOE litigation proceeds (net of litigation costs) to customers via the ERRA.

**G. State Policy Favors Providing DOE Litigation Proceeds to Customers to Address Urgent Affordability Needs**

Ratepayers of SCE and SDG&E are facing a crisis of affordability due to significant recent electric rate increases. This crisis requires urgent action by the Commission. One way to provide relief is to identify all available funds that can be used to lower near-term rates. On October 30, 2024, Governor Newsom issued Executive Order N-5-24 directing the Commission to take a series of actions to address the rising costs of electricity service in California. Amongst the actions

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<sup>179</sup> Ex. TURN-301, Bates page 301-027.

<sup>180</sup> Ex. TURN-301, Bates pages 301-027 and 301-028.

<sup>181</sup> Ex. TURN-301, Bates page 301-028.

included in the order is a directive for the Commission to “return any unused funds collected from ratepayers for underperforming programs and utility investments in the form of a bill credit, if it identifies such funds.”<sup>182</sup>

The DOE litigation proceeds have historically been provided to customers as a bill credit to offset other costs collected in rates.<sup>183</sup> Diverting DOE litigation proceeds to the NQNDTs, where they would be “unused funds”, would effectively raise customer rates and fail to provide any near-term benefits to customers. Absent a demonstration of a compelling funding need to cover identified, quantified and reasonably forecasted future decommissioning costs that exceed forecasted trust fund balances, there is no basis for allowing the utilities to deny ratepayers near-term rate relief.

#### **H. The Utility Proposals Violate Intergenerational Equity**

The Commission should be mindful that sequestering excess funds into the trust funds harms current ratepayers by denying them the timely return of funds that are unlikely to be needed for decommissioning. The approach proposed by the Utilities would inflate the already substantial surpluses in the decommissioning trust funds with a promise that unused funds would be returned to the children, or grandchildren, of current customers. Meanwhile, these funds would be invested in low-yield fixed income assets for the next three decades with returns that barely exceed inflation and are well below the discount rates used to assess benefits to residential customers, effectively resulting in a destruction of customer value over time.<sup>184</sup>

Delaying the return of these funds until the future would violate intergenerational equity. In prior cases addressing the adequacy of funding for

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<sup>182</sup> Ex. TURN-301, Bates pages 301-026 and 301-027.

<sup>183</sup> Ex. TURN-301, Bates page 301-027.

<sup>184</sup> SCE forecasts a 3.63% after-tax return on all funds held in the NQNDTs (Ex. SCE-0010, Bates page 1248). SDG&E forecasts a 3.9% pre-tax return on its NQNDT assets, which is equivalent to 3.65% after tax. (Ex. SDG&E-0104, Bates page 0104-0222)

nuclear decommissioning, the Commission has recognized the need to protect current ratepayers from excessive contributions that would be redistributed to future customers. In D.95-12-055, the Commission explained that

Our goal is to have funds on hand that appear reasonably adequate. Moreover, in our efforts to protect future ratepayers from costs incurred by today's ratepayers we do not wish to impose costs on today's ratepayers which, if funding exceeds future costs, would represent a windfall to future ratepayers.<sup>185</sup>

In D.00-02-046, the Commission reiterated this principle and explained that, under Cal. Pub. Util. Code §8322(f),

We are charged with providing assurance that required decommissioning funds are fully available when needed, but the assurance to be provided is not absolute. It must be "acceptable," i.e., reasonable. At the same time, we must seek to minimize ratepayer funding responsibility, and allocate that responsibility equitably over time consistent with Section 8325.<sup>186</sup>

In that decision, the Commission further clarified the symmetrical nature of intergenerational equity which, rather than justifying consistently higher estimates of future costs and higher near-term ratepayer obligations, supports a more balanced outcome that protects both current and future ratepayers. The decision states that

Taking a conservative approach does not mean that every single element of the forecast of funding needs should be slanted in favor of greater current ratepayer contributions to the decommissioning trusts. As the Commission clearly indicated in the last GRC, it is possible to be overly conservative in making current forecasting assumptions, and to thereby create the risk of an unjustified windfall for future ratepayers at the expense of today's ratepayers. As a matter of established policy, avoiding that outcome is part of the mix of considerations we take into account. Thus, the argument repeatedly put forth by PG&E, which in general form says that "Assumption A is superior to Assumption B because Assumption A is more conservative," fails in the absence of evidence that

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<sup>185</sup> D.95-12-055, 63 CPUC2d 570, 612.

<sup>186</sup> D.00-02-046, 2000 Cal. PUC LEXIS 239, 78.

Assumption B is not reasonably conservative.<sup>187</sup>

In the 2012 NDCTP, the Commission reiterated this same principle in stating “we also acknowledge TURN’s reminder of our oft-stated view that adoption of ‘conservative’ assumptions does not mean consistently higher estimates of future costs.”<sup>188</sup> That Decision points out that

The Commission is charged with ensuring sufficient (just not too much) funding to complete decommissioning, given the numerous uncertainties ahead. When it comes to nuclear decommissioning, both overcollection and undercollection are possible due to facts currently unknown.<sup>189</sup>

As explained in these past decisions, the Commission should avoid falling into the trap of consistently erring on the side of approving higher cost estimates or endorsing speculative contingency scenarios if the net impact would be a transfer of funds from current ratepayers to a future generation that receives any remaining surplus balances when the site licenses are finally terminated. TURN’s opposition to the SCE and SDG&E proposals properly recognizes this concern and is based on the goal of achieving an appropriate intergenerational balance.

#### IV. CONCLUSION

For the reasons described in the foregoing sections, TURN urges the Commission to adopt the findings and recommendations identified in this brief.

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<sup>187</sup> D.00-02-046, 2000 Cal. PUC LEXIS 239, 81-82.

<sup>188</sup> D.14-12-082, page 14.

<sup>189</sup> D.14-12-082, page 36.

Respectfully submitted,

MATTHEW FREEDMAN

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Attorney for

The Utility Reform Network

360 Grand Avenue, #150

Oakland, CA 94610

Phone: 415-929-8876 x304

[matthew@turn.org](mailto:matthew@turn.org)

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