

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



FILED

02/06/26

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A2412003

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

REPLY BRIEF OF THE UTILITY REFORM NETWORK

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February 6, 2026

TABLE OF CONTENTS

I. THE CONTINGENCY FACTOR FOR DECOMMISSIONING GENERAL CONTRACTOR WORK SHOULD REMAIN AT 10%..... 1

II. SONGS 1 DECOMMISSIONING COST ESTIMATE 3

A. Labor Staffing and Offshore Lease Contingency 4

B. Short-Term Incentive Plan costs 6

C. Nuclear Regulatory Commission Inspection Costs and Security Overtime..... 7

D. Insurance Credit Rating Plan credits 8

E. Contracted Services Expense..... 9

III. TRUST FUND BALANCES AND TREATMENT OF DEPARTMENT OF ENERGY LITIGATION PROCEEDS..... 10

A. The Treatment of Round 5 DOE Litigation Proceeds Is Within the Scope of This Proceeding..... 13

B. TURN’s Analysis Does Not Assume any Violation of IRS Regulations or Provisions of the Master Trust Agreements..... 16

C. TURN’s Analysis Does Not Distort Funding Adequacy by Using Nominal Dollars 18

D. The Commission Has Always Required the Calculation of Future Trust Fund Returns In Determining Funding Adequacy 19

E. The Commission has Never Adopted a Contingency for Trust Fund Return Assumptions and the Joint Utilities Fail to Present a Coherent Proposal for Such a Contingency in This Proceeding 22

F. TURN’s Revised Analysis Included in Errata Testimony Corrects the Calculation of NEIL dividends in the modeling 23

IV. CONCLUSION..... 25

TABLE OF AUTHORITIES

Statutes

IRS Code §468A 17

CPUC Decisions

D.95-12-055 23
D.07-01-003 2
D.21-12-026 1, 3, 5, 6
D.22-12-056 16
D.23-09-004 15
D.24-08-001 11, 12, 13, 14, 16, 24

SUMMARY OF RECOMMENDATIONS

TURN's reply brief offers the following recommendations consistent with its 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 and provide an additional allowance in the DCE for the identified costs of the settlement relating to COVID-19 delays. Additionally, the costs of the settlement with the DGC, which are known and previously incurred, should not be eligible to be treated as a contingency.

- (2) The 2024 DCE for the San Onofre Nuclear Generating Station Unit 1 (SONGS 1) should be adjusted as follows:
 - 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.
 - Remove all Short-Term Incentive Plan (STIP) costs and reduce the overall STIP forecast (for all SONGS units) by \$0.1 million/year.
 - 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.

REPLY 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 reply brief on the 2024 Nuclear Decommissioning Cost Triennial Proceeding (NDCTP) application of Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E). TURN responds to the joint opening brief of SCE and SDG&E (*hereafter* “Joint Utilities”) and the opening brief of the Public Advocates Office (“PAO”). TURN’s reply brief only addresses issues relating to the San Onofre Nuclear Generating Station (SONGS).

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

TURN’s opening testimony and opening brief urge the Commission to reject SCE’s request to increase the contingency factor in the DCE applied to Decommissioning General Contractor (DGC) contract costs and maintain the previously adopted 10% level.¹ The Joint Utilities oppose TURN’s recommendation and seek to increase the contingency level as proposed in testimony. TURN urges the Commission to reject the Joint Utility request and maintain the 10% contingency factor. If the Commission does not agree that the 10% contingency factor is reasonable, it should instead affirm the 8% contingency factor adopted in D.21-12-026 and provide an additional allowance in the DCE for the identified costs of the DGC settlement relating to COVID-19 delays.²

The Joint Utilities argue that the increased contingency is reasonable because the additional amounts reflect previously unforecasted costs for the “resolution of a claim brought by the DGC for recovery of costs associated with the COVID-19 pandemic.”³ The claim that increasing the contingency factor from 10% to % is

¹ TURN opening brief (CONFIDENTIAL), pages 1-6; Ex. TURN-302C, Bates Stamp pages 0302C-003 through 0302C-005.

² TURN opening brief, pages 5-6.

³ SCE/SDG&E opening brief, page 17.

attributable “solely to address the COVID-19 claim” fails to accurately reflect the dollar value impact of the change.⁴ The cost of the DGC settlement was \$ [REDACTED] million (\$2023).⁵ The impact of moving from a 10% contingency level to a [REDACTED]% level for DGC costs increases the total DCE by \$ [REDACTED] million (\$2023).⁶ The impact on the overall DCE from the use of a higher [REDACTED]% contingency factor is therefore greater than the incremental cost of the settlement. There is no basis for the entire increase given the Joint Utility claim that the settlement cost was the only factor driving the change.

Moreover, TURN disagrees that these amounts should be reflected in the contingency factor. As noted in SCE’s testimony, the Commission previously explained that contingency is used to address “a future event or circumstance which is possible but cannot be predicted with certainty.”⁷ The costs of settling the DGC claim are not future costs, were already paid, and are known with certainty. They should not be eligible for inclusion in contingency which is used exclusively for unknown and speculative future costs.

Given that the costs of this claim are known, they should be included as a recorded direct cost of the DGC contract rather than being used to adjust the contingency level. The reasonableness of this additional cost should be reviewed in the 2027 or 2030 NDCTP consistent with the milestone framework used to evaluate the reasonableness of costs of completed distributed projects. The Joint Utilities should be required to demonstrate at that time why these costs were reasonable in light of the original DGC agreement forecast.

With respect to the argument that there are material risks remaining in the project, the Joint Utilities have not made a credible claim that these risks plus the

⁴ SCE/SDG&E opening brief, page 18.

⁵ Ex. SCE-0009C, Bates Stamp page 1194

⁶ Ex. TURN-307C, SCE response to TURN Data Request 5, Q4, Bates page 307C-001.

⁷ D.07-01-003, page 28, footnote 14; Ex. SCE-0004C, Bates Stamp page 0586

costs of the DGC settlement justify the proposed % contingency factor. TURN's opening brief reviews the history of Commission approval of prior contingency factors including the 8% level found reasonable in D.21-12-026 through a litigated process.⁸ Given the advanced state of the DGC's work, which is scheduled to be complete by December of 2028, the Commission should decline to allow contingency levels to climb higher in the final years of a 'fixed price' contract.

II. SONGS 1 DECOMMISSIONING COST ESTIMATE

TURN's opening brief recommends a series of modest adjustments to the SONGS 1 Decommissioning Cost Estimate (DCE) that are described in prepared testimony. In their opening brief, the Joint Utilities assert that these adjustments are "based on nothing more than the wishful thinking that future costs will be as low as historical costs."⁹ TURN's adjustments are not based on wishful thinking but are instead grounded in actual recorded cost data at the facility that fell well below the prior and current forecast. With respect to many specific costs, the Joint IOUs failed to provide any compelling evidence or argument to support the expectation that future costs will significantly deviate from reflect recent historic trends.

In critiquing TURN's recommended adjustments, the Joint IOUs rely heavily on the fact that outside contractors with substantial expertise developed the new DCE.¹⁰ This reliance fails to explain why the prior DCE, prepared by the same contractors using the same approach as the current DCE, failed to accurately project recent spending. The Joint Utilities do not even attempt to explain why actual spending for the categories identified by TURN fell well below the levels forecasted in the prior DCE. The Commission should consider the accuracy of

⁸ TURN opening brief, pages 1-3.

⁹ Joint Utility opening brief, page 5.

¹⁰ Joint Utility opening brief, pages 3-4.

prior forecasts when determining the level of deference to provide to the current forecast.

TURN's adjustments are justified based on a review of historical variances between forecasted and recorded spending between 2021-2023 and the absence of any specific demonstration by the Joint Utilities that the historical average costs of work in the categories described in TURN's testimony and opening brief are not representative of future costs. For adjustments relating to contingency levels, TURN's adjustments are based on the failure of the Joint Utilities to demonstrate that the proposed contingency levels are reasonable in light of possible future events that cannot be predicted with certainty.

A. Labor Staffing and Offshore Lease Contingency

The Joint Utilities oppose two changes relating to contingency in the SONGS 1 DCE proposed by TURN in testimony.¹¹ TURN's first change would apply a 5% contingency factor to labor staffing costs through 2056 rather than the 10% assumed in the DCE from 2029-2056.¹² The second would eliminate any contingency for payments under the offshore lease agreement with the California State Lands Commission (CSLC) and the costs of the surety bond required under the lease.¹³

With respect to labor staffing, the Joint Utilities argue 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.¹⁴ As noted in TURN's opening brief, the Joint Utilities fail to justify the increase based on any identifiable risk and rely primarily on the fact that no organizational chart has yet been developed for the post-2028 period. The Joint Utilities do not suggest

¹¹ SCE/SDG&E opening brief, pages 6-8.

¹² TURN opening brief, page 8.

¹³ TURN opening brief, pages 9-11.

¹⁴ SCE/SDG&E opening brief, page 7.

that future labor staffing may be different from the assumptions underlying the forecast, only that the organizational chart may be different. This single fact should be seen as insufficient to justify an increase in contingency that raises the DCE forecast by \$0.645 million through 2056.¹⁵ Moreover, the opposition of the Joint Utilities stands in contrast to SCE's concession in rebuttal testimony that future information may justify a lower contingency factor as proposed by TURN.¹⁶

With respect to the 15% contingency applied to costs associated with the CSLC lease agreement, the Joint Utilities point to the fact that the base rent is tied to annual increases in the Consumer Price Index (CPI) and that the base rent and surety bond amount can be revised every five years.¹⁷ TURN addressed these issues fully in its opening brief.¹⁸ Specifically, TURN explained that the DCE already escalates the base rent using unreasonably inflated assumed CPI values that effectively add another level of contingency on top of the 15% included in the DCE.¹⁹ TURN also explained that the Utilities failed to identify any basis for additional large increases over time given the requirement that any five year-revisions to the lease payment must conform to relevant state regulations, cannot be based on arbitrary or unreasonable factors, and may be challenged by the Utilities.²⁰

Finally, TURN noted that an increase in the surety bond would require an increase in the scope of removal required under the current lease, an outcome that is not supported by any testimony or evidence provided in this proceeding.²¹ As noted in D.21-12-026, the CSLC's own Final Environmental

¹⁵ TURN opening brief, page 8.

¹⁶ Ex. SCE-0009, Bates page 1130.

¹⁷ SCE/SDG&E opening brief, page 7.

¹⁸ TURN opening brief, pages 9-11.

¹⁹ TURN opening brief, page 9.

²⁰ TURN opening brief, pages 9-10.

²¹ TURN opening brief, page 10.

Impact Report (FEIR) rejected the project alternative to fully remove the offshore conduits, which supports the view that the conduits will likely remain in place rather than be fully removed as assumed in the DCE.²² The CSLC's own FEIR assessment, which supports a much smaller scope of work, suggests that the amount of the surety bond is likely to significantly decrease from the amounts currently assumed in the DCE. Adding a 15% contingency on top of the currently inflated amounts does not constitute a prudent and reasonable assumption.

TURN's opening brief argues that, at a minimum, the Commission should find that the proposed 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).²³ 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 (and beyond), TURN urges the Commission to direct SCE to eliminate, or substantially reduce, any contingency applied to these costs.

B. Short-Term Incentive Plan costs

TURN's opening brief 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 based on the fact that no STIP costs were recorded to SONGS 1 between 2021-2023.²⁴ TURN also recommended adjusting the overall STIP forecast across all three SONGS units to reflect lower utilization (\$0.1 million vs. \$0.2 million allocated) for labor at SONGS 1.²⁵ In their opening brief, the Joint Utilities agree to remove STIP costs from the SONGS 1 forecast through 2028 and to "determine the appropriate mechanism" for post 2028 costs in "a future DCE."²⁶ The Joint Utilities do not address TURN's recommendation to reduce the

²² D.21-12-026, page 31.

²³ TURN opening brief, pages 10-11.

²⁴ TURN opening brief, pages 6-7.

²⁵ TURN opening brief, page 7.

²⁶ SCE/SDG&E opening brief, page 9

overall STIP forecast across all three SONGS units. The Commission should direct this assumption to also be revised in the next DCE.

C. Nuclear Regulatory Commission Inspection Costs and Security Overtime

TURN's opening brief summarizes recommendations for reducing the forecasted Nuclear Regulatory Commission (NRC) fees through 2054 to reflect the average number of Part 170 inspection hours recorded between 2021-2023 and reducing the forecasted security overtime in the DCE to match the average of 2021-2023 actuals.²⁷ In their opening brief, the Joint Utilities concede that TURN's recommended adjustments may be appropriate but argue that no changes should be evaluated until "after Phase II Decommissioning and Dismantlement" is completed in 2028.²⁸ Given that the next NDCTP would be prepared and submitted in 2027 (before the completion of Phase II work), the Joint Utilities essentially suggest that any adjustments should wait until the 2030 NDCTP.

The Commission should reject the proposal to wait until the 2030 NDCTP to address clear and obvious problems with the current forecast. For NRC fees, the 2024 DCE maintains the same assumptions as the 2020 DCE despite the fact that the actual number of hours recorded between 2021-2023 was 72.4% below the forecast.²⁹ For security overtime, the 2024 DCE maintains the same assumptions as the 2020 DCE despite the fact that actual costs were 33% below the forecast.³⁰

The Joint Utilities failed to meet their burden of proof to support the reasonableness of the 2024 DCE on these two cost items. If the Commission agrees with TURN, it should order the Joint Utilities to make these adjustments to the 2024 DCE. Waiting until the 2030 NDCTP to even evaluate whether to

²⁷ TURN opening brief, pages 6-7, 11-13.

²⁸ SCE/SDG&E opening brief, pages 8-9.

²⁹ TURN opening brief, pages 12-13.

³⁰ TURN opening brief, pages 11-12.

make changes would not be a reasonable outcome. The Commission has an obligation to review the reasonableness of the 2024 DCE in this proceeding rather than waiting an additional six years to determine whether the Joint Utilities have addressed systematic overforecasting problems.

D. Insurance Credit Rating Plan credits

TURN's testimony and opening brief 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 in \$2014).³¹ In their opening brief, the Joint Utilities oppose incorporating any future ICRP credits into the DCE on the basis that they are "not guaranteed" and that the values fluctuate annually.³²

TURN's recommendation relies on nine years of historical data regarding ICRP credits received by the Joint Utilities and calculates an average for purposes of projecting future receipts. As noted in testimony, the Joint Utilities received these credits in every year since 2015 (except for 2019) with an average credit value of \$0.088 million per year.³³ TURN's average value calculation includes the one year during this span when no credit was received.

Given this undisputed history, and in the absence of any evidence suggesting that future values are likely to materially differ from those received since 2015, the Commission should require the Joint Utilities to treat the ICRP credits as an offset to forecasted insurance costs in the DCE. As explained in TURN's opening brief, the opposition by the Joint Utilities contradicts the historic practice of forecasting Nuclear Energy Insurance Limited (NEIL) dividends, which are also not "guaranteed", as a cost offset in DCEs prior to the adoption of the settlement

³¹ TURN opening brief, pages 13-14; Ex. TURN-301, Bates page 301-008.

³² SCE/SDG&E opening brief, pages 5-6.

³³ 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.

in D.24-08-001 which required 50% of these funds to be returned to customers and the other 50% to be deposited into the Non-Qualified Nuclear Decommissioning Trusts (NQNDT).³⁴ The Joint Utilities did not offer any basis, in either rebuttal testimony or the opening brief, for treating ICRP credits differently than the historical incorporation of forecasted future NEIL dividends into the DCE.

E. Contracted Services Expense

TURN's testimony recommended reducing the forecast of contracted services through 2040 to match actual 2021-2023 average spending which would lower the DCE by approximately \$2.65 million (100% share, \$2014).³⁵ In their opening brief, the Joint Utilities assert that recent recorded costs are irrelevant and that the current forecast is based on "interviews with subject matter experts and a review of project-specific drivers."³⁶ These arguments should be given little weight for two reasons.

First, TURN noted that the 2020 DCE forecast was 68% higher than the actual costs incurred for contracted services between 2021-2023.³⁷ The Joint Utilities offer no explanation as to why recorded costs were lower than the prior forecast and provide no evidentiary basis for assuming that these costs will be significantly higher in future years. In essence, the Joint Utilities ask the Commission to apply no scrutiny to this assumption despite recent data that raises legitimate questions about the accuracy of its forecasting.

Second, the 2024 DCE forecasts an almost identical average annual cost for contracted services (\$0.38 million/year between 2024-2040) as the 2020 DCE.³⁸

³⁴ TURN opening brief, page 14.

³⁵ TURN opening brief, pages 15-16.

³⁶ SCE/SDG&E opening brief, page 8.

³⁷ TURN opening brief, pages 15-16.

³⁸ TURN opening brief, page 15.

The fact that the 2024 DCE makes no adjustments to the forecast suggests that the same methodology was used for calculating this cost in both the 2020 and 2024 DCEs. Given the massive gap between forecasted and recorded costs for contracted services since the 2020 DCE was prepared, and the failure of the Joint Utilities to offer any rationale as to why future costs are likely to be significantly higher, the Commission should decline to find that the 2024 DCE forecast is reasonable.

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

TURN's opening brief provides a comprehensive review of the recent history of the Commission's direction with respect to the potential deposit of Department of Energy (DOE) litigation proceeds into the SONGS Non-Qualified Nuclear Decommissioning Trusts (NQNDTs).³⁹ Based on the fact that SCE and SDG&E failed (and refused) to provide any substantive showing to support the need for any of the Round 5 or 6 proceeds to be held in the NQNDTs to support additional spent fuel storage costs, TURN urges the Commission to direct the Joint Utilities to refund all DOE litigation proceeds to customers consistent with historic practice.⁴⁰ In support of this recommendation, TURN demonstrated that the SCE and SDG&E models in this proceeding show that 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.⁴¹

The total Round 5 and 6 claims pending with DOE amount to \$605 million.⁴² Through the first four rounds of DOE claims, the SONGS co-owners have

³⁹ TURN opening brief, pages 16-20.

⁴⁰ TURN opening brief, pages 25-26.

⁴¹ TURN opening brief, pages 27-36.

⁴² TURN opening brief, page 16; Ex. SCE-0007, Bates page 1102 (Round 5 claim is \$168 million); Ex. TURN-306, SDG&E response to TURN Data Request 5, Q8, Bates page 306-105 (Round 6 claim is \$436.6 million).

received 88% of the face value of their claims.⁴³ The expected value of the pending claims represent a substantial sum of money that should be returned to SCE and SDG&E ratepayers in the near-term rather than being held for decades in NQNDTs and invested in extremely conservative assets forecasted to earn very low investment returns over time.⁴⁴ Diverting these funds to the NQNDTs should only occur if there is a compelling demonstration of funding insufficiency. No such demonstration has been made by either SCE or SDG&E.

TURN's opening brief also offers the following important points:

- The Joint Utilities failed to provide the more comprehensive showing demonstrating any need for DOE litigation proceeds as required by D.24-08-001.⁴⁵ No showing of any kind was made in this case and the Joint Utilities refused to conduct any modeling even in response to TURN data requests.
- The request by the Joint Utilities to retain DOE litigation proceeds for SONGS is inconsistent with the adopted practice of returning DOE litigation proceeds to customers for the SCE portion of the Palo Verde Nuclear Generating Station and for PG&E's Diablo Canyon and Humboldt Bay nuclear plants.⁴⁶ All of these facilities face the same risks of delays for the pickup of spent fuel by the federal government.
- The Joint Utilities have not presented any support for the view that spent fuel pickup may be delayed by more than a decade beyond the assumptions in the 2024 DCE.⁴⁷ TURN further notes that the Joint Utility opening brief argues against extending the date for the

⁴³ Ex. TURN-301, Bates page 301-018 (The 88% value reflects the net proceeds after litigation costs).

⁴⁴ TURN opening brief, page 44, footnote 184 (After-tax annual returns for NQNDTs are forecasted to be 3.63 - 3.65%).

⁴⁵ TURN opening brief, pages 17-20.

⁴⁶ TURN opening brief, pages 20-21.

⁴⁷ TURN opening brief, pages 21-23.

beginning of US DOE pickups by an additional 10 years as proposed by the Alliance for Nuclear Responsibility.⁴⁸

- The modeling of future trust fund balances by SCE and SDG&E contains key omissions and errors that artificially depress the forecasted balances over time.⁴⁹
- The Commission has repeatedly held, in NDCTP cases spanning several decades, that any determination of incremental funding need must be tied to an analysis of forecasted future costs and future trust fund balances that include investment returns.⁵⁰
- The Commission has never previously adopted a separate contingency level applicable to the financial return assumptions for the decommissioning trust funds.⁵¹ Moreover, no utility has ever requested such a contingency.
- Current state policy prioritizes affordability and requires urgent action by the Commission to return all unused and unnecessary funds back to customers to lower historically high bills.⁵²
- The Joint Utility proposal to sequester hundreds of millions of dollars of excess funding in the decommissioning trust funds for decades harms ratepayers and violates intergenerational equity.⁵³

In their opening brief, the Joint Utilities argue that depositing DOE litigation proceeds into the NQNDTs is consistent with the direction provided in D.24-08-001 and is needed to avoid restarting customer contributions. The Joint Utilities further claim that the treatment of Round 5 litigation proceeds is outside the scope of this proceeding. Finally, the Joint Utilities argue that TURN's analysis is

⁴⁸ SCE/SDG&E opening brief, pages 12-15.

⁴⁹ TURN opening brief, pages 23-26.

⁵⁰ TURN opening brief, pages 36-40.

⁵¹ TURN opening brief, pages 40-42.

⁵² TURN opening brief, pages 43-44.

⁵³ TURN opening brief, pages 44-46.

flawed because it impermissibly combines the values of multiple trust funds, uses nominal dollar values, does not include a contingency for financial assumptions, and relies on incorrect values for average historic Nuclear Electric Insurance Limited (NEIL) dividends in its modeling. TURN strongly disagrees with all the critiques offered in the Joint Utility opening brief and addressed many of these issues comprehensively in the opening brief.

In its opening brief, the Public Advocates Office (PAO) suggests that DOE litigation proceeds should be shared 50/50 between ratepayer refunds and deposits to the NQNDTs.⁵⁴ This recommendation is based on the comparison of current trust fund balances to projected “to go” decommissioning costs. TURN disagrees with the PAO recommendation because it is based on an erroneous approach to determining trust fund adequacy that has never previously been adopted by the Commission.

A. The Treatment of Round 5 DOE Litigation Proceeds Is Within the Scope of This Proceeding

The Joint Utilities argue that the Commission may not determine whether the Round 5 DOE litigation proceeds should be returned to customers because the issue is outside the scope of this proceeding and would effectively modify D.24-08-001 without providing adequate notice to all parties.⁵⁵ This new argument appears for the first time in the opening brief and was never identified in prepared testimony or in response to data requests. The Commission should reject this argument as unfounded, untimely and inconsistent with both the plain language of D.24-08-001 and the Scoping Memo in this proceeding.

In support of this argument, the Joint Utilities first assert that revisiting the treatment of Round 5 proceeds represents an improper collateral attack on D.24-

⁵⁴ PAO opening brief, pages 7-8.

⁵⁵ SCE/SDG&E opening brief, pages 22-25.

08-001.⁵⁶ This argument ignores the plain text of that decision. In D.24-08-001, the Commission authorized SCE and SDG&E to deposit DOE litigation proceeds into the NQNDTs but also ordered that “The Commission may review the disposition of these funds at any future NDCTP”⁵⁷ and further held 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.”⁵⁸ Nothing in D.24-08-001 can be read to restrict the Commission’s ability to review the “disposition” of all DOE litigation proceeds including those associated with the Round 5 claim. The Joint Utility attempt to erase or rewrite these portions of D.24-08-001 is improper and has no legitimate basis.

The Joint Utilities further argue that no notice was provided to parties that the treatment of the Round 5 DOE litigation proceeds may be revisited.⁵⁹ This claim rests on the assumption that the “disposition” of DOE litigation proceeds can only be addressed via a Petition for Modification of D.24-08-001. As explained in the previous paragraph, the Commission specifically identified a “subsequent NDCTP” as the appropriate venue for reviewing and modifying the “disposition” of DOE litigation proceeds.

In D.24-08-001, the Commission directed SCE and SDG&E to present a more comprehensive showing in subsequent NDCTPs of any need for DOE litigation proceeds to cover additional spent fuel management costs.⁶⁰ Ongoing review of this issue, with the opportunity to revise the treatment in a future NDCTP, was expressly identified in D.24-08-001. The fact that such review is occurring does not conflict with, or require a modification to, D.24-08-001.

⁵⁶ SCE/SDG&E opening brief, page 24.

⁵⁷ D.24-08-001, Ordering Paragraph 3. (emphasis added)

⁵⁸ D.24-08-001, pages 24-25.

⁵⁹ SCE/SDG&E opening brief, page 24.

⁶⁰ D.24-08-001, pages 25-26, Ordering Paragraph 5(d).

Additionally, the Joint Utilities claim that recommendations with respect to Round 5 claims are “outside the scope of the proceeding as determined in the Assigned Commissioner’s Scoping Memo and Ruling.”⁶¹ This claim is false and misleading.⁶² The Ruling explicitly includes the treatment of all DOE litigation proceeds within the scope of this proceeding. The Ruling identifies the following issue as within the scope:

Should proceeds paid by the U.S. Department of Energy litigation proceeds paid to SCE and SDG&E for spent fuel management and storage costs for SONGS continue to be deposited into SCE and SDG&E’s respective Non-Qualified Decommissioning Trust (NQDCT) as ordered in Commission Decision (D.) 24-08-001 or be refunded to their customers through each of their respective Energy Resources Recovery Accounts (ERRA)?⁶³

There is no way of reading the Scoping Ruling to reflect the interpretation offered by the Joint Utilities. The Joint Utility claim that the Commission “believed” the Round 5 proceeds to be outside the scope of the proceeding is demonstrably wrong, inconsistent with the plain wording of the Scoping Ruling, and implausible on its face.⁶⁴ Even if the Commission “believed” that the Round 5 claims could have been received during the pendency of this proceeding, the proceeds still could have been ordered returned to ratepayers as occurred in the most recent PG&E NDCTP.⁶⁵

⁶¹ SCE/SDG&E opening brief, page 24.

⁶² CPUC Rule 1.1 (“Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and *never to mislead the Commission or its staff by an artifice or false statement of fact or law.*”)(*Emphasis added*)

⁶³ Assigned Commissioner Scoping Memo and Ruling, A.24-12-003, pages 4-5, Scoping Issue 7.

⁶⁴ SCE/SDG&E opening brief, page 24.

⁶⁵ D.23-09-004, Ordering Paragraph 4.

The Joint Utilities fail to explain why they did not seek to strike the testimony of TURN addressing the treatment of Round 5 claim proceeds. Instead, the Joint Utilities responded to TURN's recommendations relating to Round 5 claims in rebuttal testimony and provided discovery responses relating to the Round 5 claim without ever suggesting that the issue was outside the scope of the case. To the extent they believed this issue to be outside the scope of the proceeding, the Joint Utilities should have filed a motion to strike or opposed the admission of TURN's prepared exhibits. No such motion or opposition was submitted. These failures should foreclose any consideration of this last-minute argument.⁶⁶

The Joint Utilities argue that the limitation on revisiting the treatment of DOE litigation proceeds applies only to the Round 5 claim but fail to explain why this same limitation would not apply to the Round 6 claim. There is no logical basis for distinguishing these claims for purposes of understanding the relevance of D.24-08-001 to the current proceeding. The mere fact that the Commission had previously been informed that the Round 5 claim was expected to be resolved during the pendency of this case has no bearing on its authority or ability to determine the appropriate treatment of the proceeds. The Commission retains the authority to require any proceeds held in the NQNDTs to be refunded to ratepayers for any reason.

B. TURN's Analysis Does Not Assume any Violation of IRS Regulations or Provisions of the Master Trust Agreements

The Joint Utilities criticize TURN's analysis showing large surplus trust fund balances by noting that, pursuant to federal tax law and the terms of the Master Trust Agreements, funds held by one Qualified Nuclear Decommissioning Trust (QNNT) cannot be transferred or used to pay for costs associated with another

⁶⁶ The Commission previously rejected claims first raised by parties in briefs that a disputed issue subject to extensive testimony was outside the scope of the proceeding (See D.22-12-056, pages 190-191)

unit.⁶⁷ TURN addressed this issue comprehensively in the opening brief.⁶⁸ The existence of these restrictions on the QNDTs under federal law and the Master Trust Agreements does 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.⁶⁹ This code section does not apply to the NQNDTs. Funds held in one NQNDT may be effectively transferred to another NQNDT pursuant to an order of the Commission. Even without any DOE litigation proceeds, TURN's modeling shows that the NQNDTs could support at least 12 years of incremental fuel storage costs for SDG&E and at least 10 years of incremental fuel storage costs for SCE.⁷⁰

Second, substantial forecasted surpluses in the SCE and SDG&E QNDTs would be available to fund incremental spent fuel storage costs in the event the NQNDTs are depleted. TURN's opening brief demonstrates 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.⁷¹ TURN noted that any additional funding needs for SONGS 2 spent fuel storage 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 may in a future NDCTP authorize a portion of future DOE litigation proceeds to be retained to support spent fuel storage costs for a particular SONGS unit if total available QNDT balances (for each unit) and cumulative NQNDT balances are projected to be inadequate.⁷² TURN

⁶⁷ SCE/SDG&E opening brief, pages 26-27.

⁶⁸ TURN opening brief, pages 32-34.

⁶⁹ TURN opening brief, pages 32-33.

⁷⁰ TURN opening brief, pages 30, 33.

⁷¹ TURN opening brief, pages 33-34.

⁷² TURN opening brief, page 34.

recommends that a comprehensive forecast of trust fund adequacy for each unit be presented as part of any such analysis.

For these reasons, the Commission should find that the Joint Utility reference to IRS and Master Trust Agreement restrictions is not relevant to the consideration of TURN's modeling and recommendations in this proceeding.

C. TURN's Analysis Does Not Distort Funding Adequacy by Using Nominal Dollars

The Joint Utility opening brief argues that TURN's modeling is inaccurate because it shows future trust fund surpluses in 2056 using nominal dollars and "does not account for the future inflation of future costs, which must be done to create an apples-to-apples comparison."⁷³ The Joint Utility critique mischaracterizes TURN's analysis and incorrectly suggests that TURN used conflicting dollar values in its calculations. TURN addressed this critique in its opening brief.⁷⁴

TURN's modeling uses nominal dollars to calculate 2056 QNDT and NQNDT balances and compares those balances with the annual costs of incremental spent fuel storage in comparable nominal dollars. All decommissioning and spent fuel storage costs are escalated in future years using the assumptions identified in the testimony of each utility and in the same manner that each utility incorporates these costs in its own modeling.⁷⁵ TURN's approach is therefore entirely 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. Importantly, the escalation of incremental spent fuel storage costs to nominal

⁷³ SCE/SDG&E opening brief, page 27.

⁷⁴ TURN opening brief, pages 35-36.

⁷⁵ Ex. SCE-0004, Bates pages 1065-1066, 1069-1071.

dollar values in future years was performed by SCE and SDG&E and provided in response to TURN data requests.⁷⁶

The Joint Utilities appear most concerned that TURN's analysis shows large surpluses in future dollars and may be misunderstood by current decisionmakers. This concern is unreasonable in light of the standard practice for modeling decommissioning trust fund adequacy. Because TURN compares the future trust fund surpluses to potential incremental costs using a consistent escalation methodology, the results are robust and consistent with accepted modeling practice and financial analysis.

D. The Commission Has Always Required the Calculation of Future Trust Fund Returns In Determining Funding Adequacy

The Joint Utilities suggest that the SONGS 2&3 trusts are underfunded when comparing current balances to remaining future decommissioning costs without applying a discounted cash flow analysis.⁷⁷ In its opening brief, PAO similarly observes that a comparison of current trust fund balances with "to go costs" shows that the SONGS 2&3 trusts are underfunded.⁷⁸ Based on this comparison, PAO suggests that additional DOE litigation proceeds could be used to "make the Nuclear Decommissioning Trusts whole".⁷⁹

The comparison of current trust fund balances with "to go" decommissioning costs does not provide a useful measurement of trust fund adequacy and cannot be relied upon to determine the need for additional contributions from any source. This comparison ignores the growth in future trust fund balances due to investment returns and is fundamentally inconsistent with standard practice in California nuclear decommissioning proceedings overseen by the Commission.

⁷⁶ 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.

⁷⁷ SCE/SDG&E opening brief, page 28.

⁷⁸ PAO opening brief, pages 7-8.

⁷⁹ PAO opening brief, page 8.

Relying on this simplistic and inaccurate comparison to determine funding needs would repudiate decades of Commission decisions addressing the correct and legally required method for determining the sufficiency of decommissioning trust funds.

TURN's opening brief provides a review of Commission precedents since the 1980s that explain the fundamental importance of modeling future trust fund investment returns to determine whether existing funding levels are sufficient and whether additional contributions are warranted.⁸⁰ TURN's brief also cites to numerous examples from prior NDCTPs where SCE's own testimony explained the role of projected investment returns in determining trust fund adequacy.⁸¹ Based on the consistent approach used by the Utilities, and uniformly approved by the Commission, there should be no dispute that a simplistic comparison of current trust fund balances to future costs that does not include projected investment returns is fundamentally unsound and deficient.

The Joint Utility opening brief acknowledges the importance of future returns in the section opposing the use of the Settlement Scenario. Specifically, the Joint Utilities argue that the accelerated timing of disbursements under the Settlement Scenario would adversely affect trust fund adequacy, explaining that "removing these funds from the trust earlier than necessary will negatively impact the trusts as there would be less time for the funds to accumulate earnings."⁸² This unremarkable observation affirms the importance of future investment returns to ensuring funding adequacy over time.

The Commission should reject PAO's simplistic analysis, which ignores future trust fund returns, as incorrect and contrary to standard practice. PAO did not

⁸⁰ TURN opening brief, pages 37-40.

⁸¹ TURN opening brief, page 39 (*citing* SCE testimony in A.14-12-007, A.18-03-009, A.22-02-016, and A.24-12-003).

⁸² SCE/SDG&E opening brief, page 11.

perform any modeling to support its observation that the SONGS 2&3 trusts are currently underfunded. Instead, PAO relied on a simple table provided by SCE in response to a data request seeking a comparison of current trust fund balances with remaining decommissioning costs.⁸³ This comparison does not incorporate escalation assumptions or future trust fund returns and therefore does not provide the basis for any recommended level of near-term contributions.

Additionally, PAO's recommendation that both Utilities deposit 50% of the DOE litigation proceeds in their QNDTs does not consider the funding adequacy of the SDG&E trusts. SDG&E's rebuttal testimony shows that, under the simplistic comparison relied upon by PAO, all three of the SDG&E's trusts are currently overfunded relative to remaining costs.⁸⁴ The recommendation to divert 50% of SDG&E's share of the DOE litigation proceeds to the NQNDTs is not supported by PAO's own logic.

The Commission must affirmatively 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. SCE and SDG&E should only be permitted to retain DOE litigation proceeds if there is a demonstration that future trust fund balances, after accounting for investment returns over time, will be insufficient to support anticipated future costs specifically denominated and included in the cash flow modeling used for this purpose. Because 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.

⁸³ Ex. CA-0400, Bates page 0011.

⁸⁴ Ex. SDG&E-0105, Bates page 0105-0246.

E. The Commission has Never Adopted a Contingency for Trust Fund Return Assumptions and the Joint Utilities Fail to Present a Coherent Proposal for Such a Contingency in This Proceeding

The Joint Utilities attempt to justify their request to divert DOE litigation proceeds to their trust funds by claiming that forecasts of excess funding in the current trusts represent a “contingency against variability in escalation and rate of return” rather than constituting “a surplus”.⁸⁵ The Joint Utilities claim that this “contingency” should be included in any financial analysis “to address unanticipated financial events”.⁸⁶ TURN strongly disagrees and urges the Commission to reject the creation of a brand-new contingency for this purpose. TURN’s opening brief further notes the lack of any precedent supporting the novel justifications offered by SCE and SDG&E.⁸⁷

The request by SCE and SDG&E for the Commission to authorize an entirely new form of contingency applicable to financial assumptions contradicts decades of practice and policy. 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. Neither SCE nor SDG&E could identify a single historical example supporting their characterization of a funding margin as contingency or authorizing a particular level of excess funding to account for financial risks.⁸⁸ The Commission should not use this proceeding to establish an additional type of contingency that was neither proposed in direct testimony nor supported by any analysis.

⁸⁵ SCE/SDG&E opening brief, page 28.

⁸⁶ SCE/SDG&E opening brief, page 28.

⁸⁷ TURN opening brief, pages 40-42.

⁸⁸ 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.”)

Apart from asserting that the current “funding margins” in each of the SONGS trusts represents a contingency, neither utility was able to identify a transparent or consistent approach to determining what level of financial contingency would be appropriate.⁸⁹ It is therefore impossible for the Commission to even determine what level of excess would be sufficient under the Joint Utility proposals. As noted in TURN’s testimony and brief, SDG&E’s SONGS trusts have significantly greater overfunding than SCE’s trusts.⁹⁰ The SONGS 1 trusts maintained by SCE and SDG&E are disproportionately overfunded compared to the SONGS 2 and 3 trusts.⁹¹ It would be arbitrary and unreasonable to find that the disparate levels of overfunding between various individual trusts all reflect the correct level of “contingency” needed to support potential variances in investment returns.

TURN strongly urges the Commission to give no weight to the request to treat projected trust fund surpluses as a contingency and assume that excess funds will not be available to support additional future decommissioning costs. The incoherent claims included in the Utilities’ rebuttal testimony are not serious proposals and would virtually guarantee long-term excess funding that would not be returned to customers for several generations. As noted in TURN’s opening brief, the Commission has repeatedly upheld the importance of protecting current ratepayers and not taking actions with respect to nuclear decommissioning that would “represent a windfall to future ratepayers.”⁹²

F. TURN’s Revised Analysis Included in Errata Testimony Corrects the Calculation of NEIL dividends in the modeling

The Joint Utility opening brief argues that TURN “miscalculates the average Nuclear Electric Insurance Limited (NEIL) dividends included in its model.”⁹³

⁸⁹ TURN opening brief, page 41.

⁹⁰ TURN opening brief, page 30.

⁹¹ TURN opening brief, page 34.

⁹² D.95-12-055, 63 CPUC2d 570, 612.

⁹³ SCE/SDG&E opening brief, page 29.

Specifically, the Joint Utilities state that TURN used nominal 2024 dollars and did not correctly escalate to reflect constant dollar values over time.⁹⁴ In addition, the Joint Utilities point to challenges reconciling the figures in TURN's testimony with its modeling assumptions. These critiques appeared in rebuttal testimony from both Utilities.

TURN addressed these critiques through a revision to its modeling through errata testimony and described the relevant changes in its opening brief.⁹⁵ The revision relied on written responses provided by SCE and SDG&E to data requests served by TURN after reviewing the critiques in rebuttal testimony. The data responses from each Utility provided the correct calculation of average 2021-2024 dividends in 2023 dollars.⁹⁶ The revised modeling results provided in TURN's errata testimony incorporate the updated and correct NEIL values for purposes of forecasting future trust fund balances.⁹⁷ The Commission should be aware that these corrections to TURN's modeling results did not materially affect the results.⁹⁸ The changes and corrections in TURN's errata testimony are not acknowledged in the opening brief of the Joint Utilities.

Additionally, the Joint Utilities argue that "NEIL dividends are not guaranteed or easily forecasted" and should therefore not be included in TURN's trust fund modeling.⁹⁹ This criticism is unwarranted. Prior to the settlement agreement adopted in D.24-08-001, which resulted in 50% of NEIL dividends being return to

⁹⁴ SCE/SDG&E opening brief, page 29.

⁹⁵ Ex. TURN-301, Bates pages 301-020 and 301-021; TURN opening brief, pages 28-29.

⁹⁶ 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.

⁹⁷ Ex. TURN-301, page 23 (revised modeling results include corrected NEIL values); Ex. TURN-309C (TURN workpapers reflect revised NEIL values).

⁹⁸ Ex. TURN-300, Bates page 300-023 (showing 32.6 years of additional spent fuel costs could be supported with SCE excess QNDT+NQNDT balances); Ex. TURN-301, Bates page 301-023 (corrected modeling shows 30.73 years of additional spent fuel costs could be supported with SCE excess QNDT+NQNDT balances)

⁹⁹ SCE/SDG&E opening brief, page 30.

ratepayers and 50% deposited into the NQNDTs, SCE forecasted future NEIL dividends through 2053 and applied them as financial credits to insurance costs included in the DCE.¹⁰⁰ Assuming zero NEIL dividends over the next 30 years would be unreasonable given the fact that, over the past seven years, SCE received an average of \$11.6 million (\$2023) per year and SDG&E received an average of \$2.73 million (\$2023) per year.¹⁰¹ There has not been a single year since 2018 when no NEIL dividends were received.¹⁰²

TURN's modeling incorporates an extraordinarily conservative forecast of future NEIL dividends by using the corrected average values received from 2021-2024 and not applying any escalation to reflect any inflation through 2056.¹⁰³ By not applying any escalation over the course of more than 30 years, TURN significantly underestimates the likely value of NEIL dividends to the NQNDTs. The Commission should find that this approach is reasonable and that categorically excluding the impact of depositing 50% of future NEIL dividends into the NQNDTs would be unreasonable.

IV. CONCLUSION

For the reasons described in the foregoing sections, TURN urges the Commission to adopt the findings and recommendations identified in its opening and reply briefs.

¹⁰⁰ Ex. TURN-304, SCE response to TURN Data Request 3, Q19, Bates page 304-037.

¹⁰¹ Ex. TURN-306, SCE response to TURN Data Request 5, Q15(c)(i), Bates page 306-098; SDG&E response to TURN Data Request 5, Q5(b)(i), Bates page 306-104.

¹⁰² Ex. TURN-301, page 17, Bates page 301-017.

¹⁰³ Ex. TURN-301, page 21, Bates page 301-021.

Respectfully submitted,

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Dated: February 6, 2026