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MAIL DATE
June 16, 2006

Decision 06-06-040 June 15, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authorization: (1) to Replace San Onofre Nuclear Generating Station Unit Nos. 2 & 3 (SONGS 2 & 3) Steam Generators; (2) Establish Ratemaking for Cost Recovery; and (3) Address Other Related Steam Generator Replacement Issues.	Application 04-02-026 (Filed February 27, 2004)

ORDER MODIFYING D.05-12-040 IN CERTAIN RESPECTS, GRANTING LIMITED REHEARING, AND DENYING REHEARING IN ALL OTHER RESPECTS

I. SUMMARY

We issue this order in response to an application for rehearing (Application) of Decision (D.) 05-12-040 (Decision) filed by The Utility Reform Network (TURN) and the California Earth Corps (CEC). The Application makes seven broad allegations of error, each of which discusses a number of points. For the most part, we deny the claims made in the Application. However, in two respects, we grant limited rehearing to address issues that came to light during our review of the Application's claims:

1. Limited rehearing will be granted to take into account the correct results of the net present value calculation, which were not included in the Decision.
2. Limited rehearing will be granted to determine amount of the GHG adder.

Except for these specific issues, our careful consideration of the Application shows that the Decision is not in error in any other respect, and the Application's remaining claims will be denied. In certain areas we will modify the Decision to make its intent clearer.

II. BACKGROUND

The Decision resolves an Application filed by Southern California Edison Company (Edison). Edison requested that the Commission approve its plans to perform a steam generator replacement project (SGRP) at its San Onofre Nuclear Generating Station (SONGS). SONGS is jointly owned by Edison, San Diego Gas and Electric Company (SDG&E) and others.

The Decision evaluates the SGRP to determine its cost-effectiveness. The Decision's measure of cost-effectiveness is a calculation of the net present value of the project. If the SGRP has a positive net present value, its benefits outweigh its costs, i.e., the project is cost-effective. (Decision, at p. 9.) The Decision calculates the project's net present value under eight different scenarios. Each scenario's value was adjusted to reflect three different ownership shares for Edison.[1] The Decision found that the high-gas-cost scenario, "Scenario 3," should be used to evaluate the SGRP's cost-effectiveness. The Decision also noted that the net present value of the SGRP would be increased if a greenhouse gas (GHG) adder were used to quantify the SGRP's emission benefits. The Decision approved the SGRP based on Scenario 3's positive net present value, with or without the GHG adder.

In addition, the Decision addressed certain aspects of how the cost of the SGRP would be reflected in rates. Relevant here, the Decision concluded that any stranded cost issues caused by the resumption of direct access should not dealt with in isolation. Rather, stranded cost issues for all of Edison's generating facilities should be considered together if direct access resumes or similar market changes occur. The Decision also rejected a proposal to use this proceeding to cap Edison's recovery of operation and maintenance (O&M) costs and capital addition costs in future rate

[1] If SONGS' other owners do not participate in the SGRP, their ownership share will decline. Edison's share will then increase correspondingly.

proceedings. Finally, the Decision approved an Environmental Impact Report (EIR) for the SGRP, pursuant to the California Environmental Quality Act (CEQA).

III. DISCUSSION

A. Record and Cost-Effectiveness Issues

The Decision concludes that the SGRP is cost-effective based on Scenario 3, which assumes a 16% higher gas cost than the gas cost used in the base case. (Decision, at pp. 64-66.) According to the Decision, under Scenario 3 the SGRP has a net present value of between $296.7 and $114.7 million. The Decision also notes that if a GHG adder were used to quantify the benefit of avoiding the production of greenhouse gasses the net present value of the project would increase by between $307.9 million and $257.1 million. (*Ibid.*) After analyzing the claims of various parties, the Decision does not adjust the net present value calculation to reflect claimed "risks and effects" of the SGRP. (Decision, at pp. 17-20, 67.)

The Application asserts that this approach is error for three reasons. First, the Application claims that the number used for the GHG adder has been calculated incorrectly, and deviates from the adders used in other Commission decisions. Second, the Application asserts the Decision failed to reduce the SGRP's net present value to reflect the claimed negative effects of the SGRP. Third, the Application disputes the Decision's conclusion that the SGRP should be evaluated using a high natural gas price scenario. These three claims are discussed in turn, below.

1. Quantification of GHG Benefits And Net Present Value

The Decision states that a GHG adder would increase the net present value of the SGRP by between $307.9 million and $257.1 million. (Decision, at p. 67.) The Application asserts: "These numbers are not substantiated, are not consistent with the values contained in the record, and do not appear to take into account the Commission's finding that SONGS will continue to operate past 2009 even if the SGRP does not occur." (Application, at p. 4.) By way of contrast, the Application notes that Edison calculated

the GHG adder to be $160 million if SONGS shut down in 2009, based on an $8/ton adder. TURN/CEC assert that the $8/ton adder is required by *Consistency in Assumptions* (2004) __ Cal. P.U.C. 2d __, Cal.P.U.C. Dec. No. (D.) 05-04-024, 2005 Cal. PUC LEXIS 244 (D.05-04-024).

The Application is incorrect to claim that an $8/ton adder is required in this proceeding. TURN/CEC misread both the Decision and D.05-04-024. The Decision, at page 37, makes clear that prior decisions on GHG adders are not binding in this case because those decisions addressed different issues. Analysis of D.05-04-024 confirms this. That decision states that there is a range of values for GHG adders, from $5 to $69 a ton. The $8/ton adder adopted in that decision is "levelised" so it can be used to make decisions that will have effects over the period of time from now to 20 years from now. This $8/ton adder captures, for this purpose, "a trend of $5 per ton in the near term, $12.50 per ton by 2008, and higher values thereafter." (*Consistency in Assumptions, supra*, [D.05-04-024], at p. 28 (slip. op.), 2005 Cal. PUC LEXIS 244, at p. *12.) It would not make sense to require the use of this "levelized" number for the SGRP because avoided emissions will not begin until 2012. (Decision, at pp. 30, 66.) In this respect, the Application should be denied.

Currently, however, the Decision does not explain how the GHG adder was calculated. Our intent was to calculate the GHG adder on the assumption that units 2 and 3 would shut down in 2012 without the SGRP, using accurate information. Edison introduced calculations into the record based on an $8/ton adder and a $25/ton adder. (Exhibit SCE-15R2.) While helpful in establishing a range, these numbers are not precise. Having considered this issue in light of the rehearing request, we believe the most accurate values are contained in the report, which underlies D.05-04-024: "Methodology and Forecast of Long Term Avoided Costs for The Evaluation of California Energy Efficiency Programs," prepared by the "E3" consulting group on October 25, 2004 ("E3 Report"). Those values start at $11.82/ton in 2012 and rise to $21.067/ton in 2024. If we are to use those numbers, parties should be given an

opportunity to comment. Thus limited rehearing is granted to determine the GHG adder based on the discussion in this order.

Our consideration of this question also reveals that the cost-effectiveness table in the Decision does not reflect the Decision's findings. (See, Decision at pp. 64-65.) The numbers in Decision's "Table of Results" were calculated assuming that units 2 and 3 would shut down in 2009-2010 without the SGRP. The Decision adopts a shutdown date of 2012 for use in the cost-effectiveness model. (Decision, at p. 30 (Unit 2 shut down in 2012), 66 (Units 2 and 3 to be shut down together).) As a result, limited rehearing should be granted to calculate the net present values for the SGRP based on a shutdown date of 2012, and to consider the determination to approve the project in light of those values.

2. Quantification and Consideration of Security And Other Factors

The Application claims that the Decision is in error because it does not consider negative safety and environmental factors in the cost-effectiveness calculation. According to the rehearing Application, the Decision is inconsistent. The discussion of public safety factors states that the Commission will consider "both the GHG adder and the safety, public health, and environmental risks and effects associated with SONGS in out cost-effectiveness evaluation of the SGRP." (Decision, at p. 38.) The Decision's later concludes, at page 68: "Since the record does not quantify any other safety, public health, and environmental risks and effects associated with SONGS, we do not include these factors in the NPV [cost-effectiveness] calculation." According to TURN/CEC, "[i]f the Commission intends to consider [the other factors] … it must do so." (Application, at p. 6.) The Application also challenges the conclusion that these "other factors" were not quantified and states that they must be included in the cost-effectiveness calculation. (Application, at p. 5.)

These claims do not demonstrate error. The Decision properly considers CEC's testimony on public safety issues—and reaches a different conclusion. (See,

Decision at pp. 17-20.) The cost-effectiveness analysis considers three public safety scenarios provided by CEC's witness in Section VII. D. The Decision concludes that CEC's first Scenario is "the most likely," but that CEC's proposed "enhanced security requirements will be imposed in the next few years." (Decision, at p. 19.) As a result, "the first scenario would apply whether or not the SGRP is performed." (*Ibid.*) The Decision also goes on to say that there is "no basis in the record for estimating the probability of the occurrence of future increased security requirements or their timing." (Decision, at p. 20.) Further, the Decision finds that "the costs estimated by CEC are illustrative examples rather than estimates based on known requirements." (*Ibid.*)

Following this analysis, the Decision concludes that it should "not adopt CEC's cost estimates" as inputs for the cost-effectiveness model. Instead, "the possibility of future increased security requirements" is used as further support for the conclusion that O&M costs and capital additions must be increased above the amounts forecast by Edison. (Decision, at p. 20.)

Nevertheless, the application is correct where it points out that the Decision's summary of these conclusions at page 67 is incomplete. We will modify the Conclusion section to accurately reflect the previous discussion. The Decision in fact considers other factors to the extent that parties quantified them, but concludes that they should not be made part of the cost-effectiveness calculation.

3. Long Term Gas Prices

Scenario 3 assumes that natural gas prices will be one standard deviation higher that the prices used to establish the "base case." The base case was provided to the Commission in February 2004, using data from autumn of 2003. (Ex. SCE-4, at cover page, p. 62.) Edison's witness testified that the base case contained a conservatively low gas price. (Tr., vol. 4, at p. 574.)

The Decision justifies its determination to rely on the scenario using higher gas prices by stating that since 2003, "natural gas prices throughout the United States have increased dramatically for various reasons…" (Decision, at p. 66.) The Decision

takes official notice of two decisions and a resolution that "confirm increasing natural gas price trends." Those orders are *Petition of Pacific Gas and Electric Company* (2005), D.05-10-015 (slip op.), *Emergency Petition of Southern California Gas Company et al.* (2005), D.05-10-043 (slip op.), and Res. E-3942.

The Application asserts that the Commission used "irrelevant and impermissible extra-record evidence" to select Scenario 3. (Application, at p. 17.) Also, TURN/CEC assert that D.05-10-105 and D.05-10-043 do not provide convincing evidence that natural gas prices will be higher in 2012 because they focus on short-term prices. The rehearing Application further claims that Res. E-3942 cannot be relied upon because no evidence shows that the forecast made in that resolution is relevant to this proceeding. The Application notes that the Decision elsewhere denies an Edison motion to add its recent gas price forecasts for 2005 to 2014 to the record.

These claims should be denied for several reasons. First, the Application incorrectly describes the effect of the Decision's review of D.05-10-015, D.05-10-043, and Res. E-3942. The Decision uses the information made available in those proceedings to evaluate the record developed here. In this case, Scenario 1 made a cost-effectiveness calculation using assumptions about gas prices based on 2003 data, and Scenario 3 made a different cost-effectiveness calculation assuming that future gas prices would be higher. The Decision does not choose to replace the calculations made in Scenarios 1 or 3 with information from D.05-10-015, D.05-10-043, or Res. E-3942. Rather, because those proceedings signaled a significant increase in gas prices, the Commission chose Scenario 3's high forecast.[2]

Nothing in the record suggests that choosing Scenario 3 was an unreasonable or arbitrary choice. Notably, parties did not disagree with the gas cost assumptions built

[2] That forecast put, for example, 2020 gas prices at $5.13/MMbtu, while Res. E-3942 relies on a figure of between $6.85 and $7.15 per MMbtu. (Compare, Ex. SCE-4, at p. 63 (table), Res. E-3942, Appendix B, (right hand table).)

into Scenario 3.[3] The record also shows that parties were aware that the Commission ultimately could choose any of the cost-effectiveness scenarios to evaluate the cost-effectiveness of the SGRP. The assigned ALJ specifically asked Edison to prepare a complete summary of possible scenarios stating, "…there is a wide range of outcomes the Commission may choose to adopt. I would like to have as many of them as possible explored in exhibits that are available to all the parties." (Tr., vol. 4, at p. 493-494.)

Second, we firmly reject the claim that referring to past decisions is somehow "improper." The rehearing Application does not allege that the Commission is unable to take official notice of past decisions and resolutions in the manner set forth in the Decision. (Cf., Pub. Util. Code, § 1731, subd. (b).) And Rule 73[4] of the Commission's Rules of Practice and Procedure states: "Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California." Clear authority establishes that Commission decisions can be judicially noticed. (*Hartwell Corp. v. Superior Court* (2002) 27 Cal.4th 256, at p. 263, fn. 4.) The fact that the Commission might take official notice of its three orders was made known to the parties when the Alternate Decision of President Peevey was circulated for Comment. TURN clearly had an adequate opportunity to present information on the propriety of taking official notice of these three orders, because TURN's Comments address this question, at pp. 7-8. CEC did not comment on the Alternate.

For similar reasons, the Decision's reference to past decisions and a resolution is not inconsistent with the denial of Edison's motion to update the gas price information in the record. Edison's motion was denied because it did not make sense,

[3] As Edison noted in its Reply Brief, parties did not focus on natural gas prices. (Edison Reply Brief, at p. 38.) Parties instead presented evidence that gas prices are an important factor in the cost-effectiveness analysis of the SGRP. Aglet witness Weil testified that a small percentage change in fuel costs can produce a larger percentage change in net benefits. (Ex. Aglet-1, at p. 5.)

[4] The Rules of Practice and Procedure are codified at Title 20 of the California Code of Regulations, with section numbers corresponding to the section number of the rules. In this document, each section of the Rules of Practice and Procedure (and corresponding section of Title 20) is referred to as a "Rule."

after 16 months of administrative litigation, to update the numerical basis of only one portion of the record. The Decision found that, in fairness, the Commission could either completely update the record (precipitating re-litigation of the case) or render a decision based on the information already adduced. To avoid re-litigation, the Decision used the information already obtained. (Decision, at p. 77.) The Decision is consistent with this approach. As explained above, it does not replace record evidence with new gas price information, as Edison sought to do in its motion. Rather, the Decision relies on Scenario 3, already part of the record, to evaluate the SGRP.

Third, we reject the Application's contentions on the relevance of gas price information. Notably, the Application for rehearing does not challenge the proposition that gas prices have risen since 2003, or that they will remain high during the time period relevant to the cost-effectiveness calculation. TURN/CEC only assert that D.05-10-015 and D.05-10-043 do not cover the years that are most relevant to the SGRP, i.e., "beginning in 2012," and that Res. E-3942 (which does cover that time period) should be ignored because there is nothing to "demonstrate[] the relevance of this forecast in this proceeding." (Application, at p. 18.)

To the contrary, the two decisions and one resolution referred to in the Decision contain data suggesting that natural gas prices rose unexpectedly in recent years, and may well remain high in the future. D.05-10-014 and D.05-10-043 both discuss gas price increases caused by hurricane activity in the Gulf of Mexico and a more general outstripping of supply since 2002. (*Response to Emergency Petition of Southern California Gas, et al.* (2005) D.04-10-043, at p. 9 (slip op.).) These pieces of information do not relate only to "short term" gas prices, as TURN/CEC allege. (Application, at p. 18.) Finally, because Res. E-3942 provides gas price projections to 2024, the rehearing Application is incorrect when it claims that the Decision improperly relies on near term gas price information.

B. Ratemaking Issues

1. Compensation for Steam Generator Defects

Edison is replacing the unit 2 and 3 steam generators at SONGS because their tubes are degrading. In the underlying proceeding, TURN argued that the manufacturer, Combustion Engineering (CE) used a particular alloy in the tubes, which caused this degradation. TURN asserts that Edison should have sued CE to obtain compensation for this alleged manufacturing defect. In the underlying proceeding, TURN outlined both a breach of warranty claim and a fraud claim that it argues Edison should have pursued. (E.g., Opening Brief of TURN, at pp. 3-34.) TURN asserts that the failure to bring these claims was unreasonable, and recommends that a portion of the cost of the SGRP be disallowed.[5]

The Decision reviews TURN's claims and determines not to adopt TURN's recommendation. (Decision, at p. 48.) The rehearing Application claims this determination is in error. The Application claims: "the Decision does not identify any standard applicable to determining whether SCE should have attempted to hold CE accountable…." (Application at p. 9.) The Application also alleges that the Decision does not provide enough analysis to support its conclusion. (Application, at p. 10.)

In other proceedings we have established a "definition of reasonable and prudent where the reasonableness of a management action depends on what the utility knew or should have known." (*Costs Related to 1997 New Years Flood* [D.06-01-036] (2006) __ Cal.P.U.C.3d __, 2006 Cal.PUC LEXIS 31, at p. 3 (slip op.).) Under this standard, "[t]he reasonable and prudent act is not limited to the optimum act, but includes a spectrum of possible acts consistent with the utility system need, the interest of the ratepayers, and the requirements of governmental agencies of competent jurisdiction." (*Recovery of Costs Related to Southern California Wildfires* [D.05-08-037], *supra,* at p.

[5] More specifically, TURN recommended that a penalty be imposed on Edison in an amount based on two settlements with CE reached by other utilities. TURN allowed that this penalty "could be deducted from the amount of [SGRP] costs permitted to be placed into rate base." (Opening Brief of TURN, at p. 45.)

10, 2005 Cal.PUC LEXIS 526, at p. *14, citing *Southern California Edison Company* [D.87-06-021] (1987) 24 Cal.P.U.C.2d 476, 486, 1987 Cal. PUC LEXIS 588, at pp. *28-29.) We believe that particular formulation should guide us in this proceeding.[6]

Although it is not stated explicitly, the Decision applies this standard. The Decision reviews TURN's allegations, and then chronologically discusses Edison's actions from the mid-1980s to 1996, when a court ruling established CE's warranty had expired in 1983/4. (Decision, at pp. 39-47.) Based on that discussion, the Decision concludes that Edison's approach was reasonable. (Decision, at p. 48.) TURN/CEC dismiss this discussion as "irrational and arbitrary" and "inchoate … and incomplete." (Application, at pp. 10, 13.) These strenuous claims of error are based on mischaracterizations of the Decision. For example, the Application claims that the Decision concluded that "the failure of the steam generators is due primarily to CE" (Application, at p. 9), when that statement represents only not what we decided but what "most of the parties believe…." (Decision, at p. 51.) As we stated, we believe that Edison's actions, considered in toto, were reasonable. In order to make this point clearer, we will modify the Decision so it contains more discussion on this topic.

2. Stranded Cost Recovery

The costs of the SGRP will be recovered as part of Edison's generation revenue requirement. This revenue requirement is recovered from "bundled customers." In the underlying proceeding, TURN expressed concern that some of the SGRP costs could become stranded if the legislative suspension of direct access expired or a core/non-core market structure was adopted. TURN proposed that SGRP costs be treated the same way as costs for new generation projects. Under TURN's proposal, current

[6] We reject the claim that under this standard we are legally required to find that Edison acted unreasonably simply because past decisions reached that conclusion based on different facts. (Application, at pp. 7-9, citing, *SoCal Edison Co.* [D.82-12-055] (1982) 10 Cal.P.U.C.2d 155, *Southern California Edison Company* [D.85-03-086] (1985) 17 Cal.P.U.C.2d 470.) This is a factual enquiry. It is unremarkable that the Decision reaches a different result.

bundled customers who later choose different service would remain responsible for costs associated with the SGRP for at least 10 years. (Decision, at p. 59.) The Decision rejected this proposal as beyond the scope of the proceeding. According to the Decision, this matter should be addressed in "any consideration of the reopening of direct access." (Decision, at p. 60.)

The Application claims this approach is in error. The Application is wrong. TURN/CEC ignore an important difference between this proceeding and proceedings involving the construction of new facilities. The Application recognizes that the policy it advances was developed by the Commission for "new resource additions." (Application, at p. 13, quoting *Long Term Procurement Plans* [D.04-12-048] (2004) __ Cal.P.U.C.3d __, __, at p. 61 (slip. op.).) Yet the application simply assumes that this policy should apply to the SGRP, even though SONGS is an existing resource. In fact, the Commission stated in *Long Term Procurement Plans*, *supra*, that it chose to address stranded cost issues for new resources for reasons related to the financing of new construction. (*Id.*, at p. 58.) Thus there is no reason to assume, as TURN does, that this policy necessarily must apply when existing resources, such as SONGS, require further investment so they can continue to provide capacity.

Moreover, there is nothing erroneous about the conclusion that this issue is not yet ripe. The Decision points out that stranded cost issues are likely to arise with respect to all existing facilities—not just SONGS—if the market changes. (Decision, at p. 60.) Thus, the Decision determines to consider all of these issues at the same time. The Application's use of the phrase, "somehow inappropriate" implies that there is something wrong with this determination. Yet the Application does not explain why it is improper to address stranded cost issues for all existing resources at the same time. The Application's attempt to characterize the Decision as containing an "implicit assumption" on how SONGS costs will be recovered in the future is also misplaced. The Decision expressly defers consideration of these issues to another proceeding. TURN/CEC cannot

read into the Decision "implicit" statements about how that future proceeding will be resolved.

Finally, the Application asserts that this Decision is in error because R.03-10-003 is not addressing the treatment of SONGS costs with respect to its rules for Community Choice Aggregation, which is expected to result in the departure of bundled customer loads. (Application, at p. 14.) If TURN/CEC believe that proceeding should address a particular issue, they should bring the issue up in that proceeding. There are parties in R.03-10-003 who are not participating in this proceeding. We should not make procedural determinations about that rulemaking in this docket.

We will, however, modify the Decision in two respects. First, language will be added to make the distinction between existing plant and newly constructed plants clear. Second, the Decision will be clarified to indicate that stranded costs can be caused by certain types of market changes, not just direct access.

3. Spending Caps for O&M and Capital Additions

The Decision "decline[s] to place a cap on O&M costs and capital additions." (Decision, at p. 4.) Nevertheless, the Decision contains an attachment, which states the annual amounts of the proposed spending cap and three paragraphs discussing the spending cap amounts. (Decision, at pp. 73-74.)

The Application claims the language in the Decision discussing the spending cap should be stricken to avoid confusion. The rehearing Application points out that there is no reason to explain a spending cap that is not adopted. We agree. The discussion of the spending cap on pages 73-74, and Attachment A will be deleted. New language will be added to discuss the decision to review these matters in subsequent proceedings.

IV. CEQA Issues

A. Meaningful Environmental Assessment

TURN and CEC claim that the EIR for this project was prepared "too early" and does not provide "meaningful" review. (Application, at p. 20.) This claim does not

demonstrate error. The EIR was prepared in time for the Commission's decision on the SGRP, consistent with CEQA's requirements on the timing of an EIR. (See, Cal. Code Regs., tit. 14, § 15004. (Further citations to Title 14 of Cal. Code Regs. will refer to the "CEQA Guidelines".) That section contains one of CEQA's primary requirements: an EIR must be prepared *before* a project is approved, and the EIR must be considered as part of the decision to approve the project or not. (CEQA Guidelines, § 15004, subd. (a), Pub. Resources Code, § 21061.) We exercised our authority to prepare the EIR so it was available prior to the issuance of the Decision. There is simply nothing erroneous or improper about this timing. It would have been manifestly improper had we approved the SGRP in 2005 and waited until a later time, e.g. 2008, too conduct the EIR, as the Application suggests.

In addition, the EIR does not exhibit the flaws of a document that is "too early." An EIR is too early when it "engage[s] in sheer speculation as to future environmental consequences." (*Lake Co. Energy Council v. Co. of Lake* (1977) 70 Cal.App.3d 851, 854-855.) An EIR should not be prepared so far in advance of a project that its analysis is "meaningless and financially wasteful." (*Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 395-396.) Here, the EIR identified the "potentially significant environmental effects" of the SGRP. The document proposed mitigation measures and alternatives that would minimize those environmental consequences. Edison was required to use the environmentally superior alternatives identified in the EIR for two phases of the project (Decision, at Ordering Paragraph 20) and required to perform mitigation and subject itself to a mitigation monitoring plan. (Decision, at Ordering Paragraphs 19, 21.) These specific requirements demonstrate that the EIR contained meaningful analysis.

B. Slope Stability

More specifically, the Application asserts that the EIR is inadequate because it does not present decisionmakers with geotechnical studies on slope stability "so that the feasibility of the various [transportation] routes can be evaluated." (Application, at p.

20.) The Application claims this applies to "various routes" without identifying any. Review of the EIR identifies only one area of concern: an approximately 1,000 yard portion of the replacement generator transportation route running along the coastline in the San Onofre Bluff area. An aerial photograph of this area is provided in the EIR as Figure D.5-2. The EIR identifies slope stability issues in this area as potential significant effects. At page D.5-14, the EIR points out that the potential effects of transportation could include landslides, road settling and ground cracks. To mitigate these effects, Edison must, ten months before transportation of the replacement generators, obtain and review up-to-date geotechnical studies. If necessary, Edison must make road improvements. (*Ibid.*)

This approach presented us with the information we needed to perform the required "meaningful evaluation" of the proposed project. The problem is identified, and a specific mitigation measure is proposed. CEQA Guidelines section 15151 requires only that an EIR contain "a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences."

Specifically, the EIR's study of environmental consequences, "need not be exhaustive[.]" The Application appears to be seeking "exhaustive" information as opposed to "sufficient" information, and should be denied. This is made clear by the response to comments from the Coastal Commission. The EIR points out that the project will not start until 2008, at the earliest. Thus, current slope conditions could be quite different from the conditions Edison will face when the project begins. (See Final EIR, Response to Comments E-3, at p. 52, Response to Comments CC 5-33, at p. 133.) Information that will be stale in 2008 would not allow us to "intelligently take account of environmental consequences." (CEQA Guidelines, § 15151.)

Finally, the EIR correctly notes that this approach is consistent with *Oceanview Estates Homeowners Ass'n, Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 400-401. That case holds that mitigation measures, "need not specify

the precise details of a design. Having recognized a significant environmental impact and having determined the mitigation measures necessary to reduce the impact" the environmental document may, "leave the details to the engineers." (*Ibid.*) While the Application claims this case is not on point, the EIR's approach follows this language. The EIR "recognizes" that slope stability issues are a significant impact and determines the "mitigation measures necessary" to address them, namely road improvements based on current geotechnical information.[7]

C. Location of Original Generator Disposal Site

The Application asserts we were unable to make an "adequately informed decision" on the SGRP because the EIR does not identify the locations where the Original Steam Generators (OSGs) will be stored or disposed. This claim appears to be redundant. The storage and disposal locations for the OSGs will be the same. (The OSGs will be prepared for transportation and disposal at a location "within the Owner Controlled Area, west of I-5…." [Final EIR, at p. B-34].)

The EIR describes how the OSGs will be removed to a portion of the SONGS facility, dismantled, and shipped to a disposal site. The most likely disposal site is in Utah. (Final EIR, Response to Comments CC4-5, at p. 96.) In response to the Coastal Commission's similar comment on the Draft EIR, the Final EIR points out: "The CPUC does not have jurisdiction over low level radioactive waste management regulations and responsibilities, and evaluation of those issues is beyond the scope of this

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[7] *Stanislaus Natural Heritage Project v. Co. of Stanislaus* (1996) 48 Cal. App.46th 182, cited by the Application, does not require a different result. That case found that an EIR was inadequate because it did not completely identify all of a project's impacts. The *Stanislaus Natural Heritage* EIR only discussed the water use impacts of a development project for the first 5 years of its life, leaving 20 years of water use issues unanalyzed. As a result, the County approved the project without knowing either where the water would come from or "what significant environmental effected might be expected when the as yet unknown water source (or sources) is ultimately used." *Stanislaus Natural Heritage Project v. Co. of Stanislaus, supra*, 48 Cal. App. 4th, at p. 195. Here, rather than ignoring or deferring analysis of the impact, the EIR discussed the potential problems in the area, and "provided decisionmakers with the information they needed to make an informed decision about the entire project." *Riverwatch v. Co. of San Diego* (1999) 76 Cal. App. 4th 1428, 1451.

CEQA document." (Final EIR, Response to Comments E-2, at p. 51.) Nevertheless, the EIR did evaluate potential radiation exposure impacts that could occur as a result of transporting the original generators away from the SONGS site. That evaluation "determined that compliance with existing applicable regulations would be adequate to reduce the … impacts to a less than significant level." (*Ibid.*)

The Application makes no attempt to explain why this level of disclosure is legally insufficient, and should be denied on this point. As explained above, and EIR must provide "sufficient" information, not "exhaustive" information. (CEQA Guidelines, § 15151.) In addition, the Application does not claim that the NRC will fail to ensure that the disposal of the original steam generators will take place without a significant adverse environmental consequence. As a result, adding more information to the EIR would not change the analysis, and would not improve the quality of our decisionmaking. The Application's unsupported claim of error should be denied.

D. Operation and Safety of SONGS

Finally, TURN/CEC assert the EIR is inadequate because engineering studies on the effect of the SGRP on the containment building will be prepared as part of the NRC's review of the project, but were not available as part of the EIR's environmental review. (Application, at p. 21, citing Final EIR, at p. B-36.) The EIR concluded that potential environmental impacts from this portion of the project would be less than significant, in large part because the NRC would ensure that changes to the containment facility would not compromise safety. (Final EIR, at pp. D.12-19 to D.12-21.)

This aspect of the project, too, is covered by federal regulation. Authority for both "construction and operation of any nuclear power plant" lies with the NRC. (42 U.S.C., § 2021, subd(c).) In *Pacific Gas and Electric Co. v. State Energy Resources and Development Com.* (1983) 461 U.S. 190, 212-213, the Supreme Court definitively found that federal regulation had occupied the field on matters of nuclear safety. The court specifically stated that it "would be clearly impermissible for California to attempt" to regulate, "the operation of nuclear power plants." (*Id.*, at pp. 214-215.) The Application

makes no attempt to disagree with the information disclosed in the EIR—that this aspect of the project will have no significant adverse environmental consequences because of NRC's oversight. Rather, the Application simply seeks additional, background information on the construction and operation of the plant. As a result, the Application does not demonstrate any error in the Decision, and should be denied.

V. Procedural Issue—Rule 77.6

According to the Application, the Draft Alternate Decision of President Peevey ("Draft Alternate"), which was adopted as the Decision, was not circulated for comment for the required 14 days. The rehearing Application states that the Draft Alternate was posted on the internet, and served on the parties, 13 days in advance of the Commission meeting where it was adopted. In its Response, Edison contends that although the Draft Alternate was not served on parties until 13 days prior to Commission action, the Draft Alternate was in fact "posted … on its [the Commission's] website" for the full 14 days. (Response of Edison, at p. 3.)

Section 311, subdivision (e) gives the Commission authority to adopt rules governing the circulation of alternates, so long as a minimum period of review is provided for. When the Draft Alternate was circulated, this statutory minimum was 10 days. (It was altered to 30 days, effective January 1, 2006.) Rule 77.6, subdivision (e), of the Commission's Rules of Practice and Procedure states that if parties are given less than 14 days to comment on an alternate, the matter will be held for at least one meeting. Strict application of that rule here makes little sense. Parties were allowed at least 13 days to comment on the Draft Alternate. If Edison's contention is correct, parties had electronic access to the Draft Alternate for 14 days but did not receive formal service until 13 days prior to the Commission meeting at which the Draft Alternate was adopted. TURN, in fact, successfully filed Comments on the Draft Alternate, and does not allege that it was unable to make or file comments on any particular issues by the delay of service. Nothing in the Application alleges that any harm resulted from the late service of the Draft alternate.

In this situation, we should exercise our authority to "permit deviations" from the Rules of Practice and Procedure. (Rule 87.) Section 311, subdivision (e) makes it clear that the length of time for review of an alternate is to be established pursuant to the Commission's rules. Allowing a slight deviation from the rule in this case, where no harm has been demonstrated, does not conflict with the statute.

VI. Other Minor Errors In the Decision

Review of the Decision identified other errors, which will be corrected.

The Description of the Comments and Reply Comments on the Alternate is inaccurate. Both Edison and SDG&E filed opening comments on the Draft Alternate, but these comments are not mentioned in the Decision. In addition, Edison and SDG&E both filed reply comments, although the Decision states no reply comments were filed. The Decision will be modified to correct these inaccuracies. In addition, the Decision states that Commissioner Peevey is the assigned Commissioner in this docket. Commissioner Brown is the assigned Commissioner and the Decision will be modified to correct this inaccuracy. Finally, the reference to D.05-10-105 on page 66 will be changed to D.05-10-015.

VII. CONCLUSION

After full consideration, we conclude that, for the most part, the claims made in the rehearing Application do not show that the Decision is in error. Several claims identified areas of the Decision that should be modified to make the Decision more understandable. Finally, two other issues should be resolved by granting a limited rehearing. That rehearing should (1) take into account the correct net present value calculations for the SGRP; and (2) determine the best source for a GHG adder calculation. We will grant limited rehearing for this purpose. Rehearing of D.05-12-040, as modified, is in all other respects denied.

THEREFORE, IT IS ORDERED that:

1. Limited rehearing is granted to, consistent with the discussion in this order:

   (i) take into account the correct net present value calculations for the SGRP; and

   (ii) calculate the GHG adder using an accurate source of data.

2. After this order issues, the assigned Administrative Law Judge shall, either at a prehearing conference, or by order, provide parties with any data or calculations needed to undertake the rehearing on net present value calculations and the GHG adder. The assigned Administrative Law Judge should determine whether formal evidentiary hearings are necessary to resolve these issues.

3. D.05-12-040 is modified as follows:

   a. On page 67, a new third sentence shall be added to the first full paragraph, immediately following the reference to footnote 48. The new sentence shall state: "As discussed in Section VII. D., above, we have concluded that CEC's cost estimates for increased security should not be included separately in the net present value calculation for several reasons, and instead should be considered as an additional factor supporting the conclusion that some increase in future O&M costs and capital additions beyond the amount forecast by SCE is appropriate."

   b. A new clause is added at the beginning of the second sentence of the first paragraph in Section VIII, on page 39, which sentence now begins, "SCE argues…." The new clause shall read: "Not wanting to be disadvantaged should it be required to litigate."

   c. A new sentence is added to the first paragraph in Section VIII, on page 39, following the second sentence, which ends, "…recovery would have been." The new sentence shall read: "On the confidential record SCE provides

further information regarding its approach to tube degradation."

d. New discussion is added to the first paragraph in Section VIII, on page 39. The new discussion shall appear at the end of the paragraph and shall read:

"We have established a "definition of reasonable and prudent where the reasonableness of a management action depends on what the utility knew or should have known." (*Costs Related to 1997 New Years Flood* [D.06-01-036] (2006) __ Cal.P.U.C.3d __, 2006 Cal.PUC LEXIS 31, at p. 3 (slip op.).) A good formulation of this standard is: "The reasonable and prudent act is not limited to the optimum act, but includes a spectrum of possible acts consistent with the utility system need, the interest of the ratepayers, and the requirements of governmental agencies of competent jurisdiction." (*Recovery of Costs Related to Southern California Wildfires* [D.05-08-037], *supra*, at p. 10, 2005 Cal.PUC LEXIS 526, at p. *14, citing *Southern California Edison Company* [D.87-06-021] (1987) 24 Cal.P.U.C.2d 476, 486, 1987 Cal. PUC LEXIS 588, at pp. *28-29.)"

e. A new sentence and a citation are added to the last partial paragraph on page 45, which paragraph begins, "The 1987 settlement …." The new sentence shall be inserted following the second sentence which ends, "…corrosion at that time[,]" and shall read: "The public and confidential records contain evidence that leads us to reject TURN's contention that Edison should have know of the degradation problem at this time." (Tr., vol. 6, at p. 658 (amount of degradation difficult to predict but would remain in margin), Tr., vol. 7, at pp. 836, 850, 881 (confidential).)

f. New discussion is inserted at the end of the first full paragraph on page 47, which paragraph begins, "The above history…." The new discussion shall replace the last sentence which begins, "Therefore, we…."and shall state:

"As discussed below, the record does not show that litigation or settlement would have resulted in SCE's recouping of any significant amount of compensation for

the tube degradation. We note that another settlement SCE agreed to with CE gave discounts on services purchased in the future. It is unknown if those discounts would have been available without the settlement. Evidence in the confidential record further shows that SCE's view of the significance of the tube degradation problem was justified. (Tr. vol. 7, at pp. 722, 881.) Thus, at the time SCE faced the prospect of uncertain results from litigation in combination with a problem that it did not believe was as serious as TURN claims. (We reject the contention that SCE could have predicted the outcome of federal regulatory proceedings regarding the facility's license period.) Therefore we agree with the explanation that SCE would have pursued claims against CE regarding the steam generators if it reasonably believed it had a valid claim. (Tr., vol. 7, at p. 704, 705 (confidential).)

g. The sentence beginning, "This in turn supports…" in the first partial paragraph on page 48 is replace with a sentence that shall read:

"The fact that other parties who were financially interested in the result concurred with Edison's course of action supports the contention that Edison's approach was reasonable at the time."

h. The first full paragraph on page 60 is restated to read:

"TURN's recommendation is based on decisions addressing new plant, not existing plant. The stranded cost issue is not unique to the SGRP, and is beyond the scope of this proceeding. We do not believe the revenue requirement for SONGS should be considered in isolation. Therefore, we will not address it herein. It is more appropriately addressed in connection with any consideration of the reopening of direct access or other similar market changes, where all elements of Edison's revenue requirement can be considered."

i. Attachment A to D.05-12-040 is deleted.

j. The two full paragraphs on page 73, beginning "Our estimates for O&M costs…." and ending, "…cap on our estimates[]" and the paragraph spanning pages 73 to 74, beginning "The O&M costs…" and ending "…rates are set[]" are replaced with the following text: "We have

determined not to use this proceeding to limit the amounts that may be authorized as O&M costs and capital additions costs in future proceedings that determine the revenue requirement associated with SONGS. It is more appropriate to review and approve these costs in ratemaking proceedings where we traditionally adjudge the reasonableness of utility costs. These costs may be subject to change and we decline to place limits on them in this proceeding. In our future proceedings we will remain cognizant of the effect of passing high O&M costs and capital additions costs on to ratepayers will have on the cost-effectiveness of the SGRP."

k. Finding of Fact 184 is deleted.

l. Finding of Fact 185 is deleted.

m. Conclusion of Law 7 is deleted.

n. Ordering Paragraph 14 is restated to read: "In future SCE ratemaking proceedings that determine the revenue requirement associated with SONGS operations and maintenance (O&M) costs and capital additions, the amounts authorized in rates will not be capped based on amounts used for the cost-effectiveness calculation made in this proceeding. Those future proceedings will be conducted in light of the fact that higher-than-expected O&M costs or capital additions costs could have an effect on the cost-effectiveness of the SGRP"

o. The single paragraph in Section XVIII on page 78 is deleted and replaced with: "The alternate decision of President Peevey was provided by electronic means, and served on parties on or before December 2, 2005. This achieved substantial compliance with Rule 77.6 of the Rules of Practice and Procedure, except that the formal comment period was reduced by one day due to late service. Comments were filed on December 8, 2005 by The Utility Reform Network, Western Power Trading Forum, the Commission's Office of Ratepayer Advocates, Aglet Consumer Alliance, Southern California Edison Company and San Diego Gas and Electric Company. Reply comments were filed by Southern California Edison Company and San Diego Gas and Electric Company. To the extent changes were necessary as a result of the filed

comments, they were made in this order. Since the alternate decision was mailed only one day late, and parties were able to file comments, we see no reason not to exercise our authority to allow a one-day deviation from Rule 77.6 to allow the timely rendering of a decision on this matter today. We authorize this pursuant to Rule 87, in order to prevent delay of almost a month in rendering this decision. We note that this deviation does not contravene Public Utilities Code section 311(g), which sets a minimum ten day comment period."

p. A new Finding of Fact 211 is added at page 100, stating: "The formal comment period on the alternate decision of President Peevey was reduced by one day due to the late service of the alternate."

q. A new Finding of Fact 212 is added at page 100, stating: "Parties were able to file comments on the alternate decision and there is no benefit to delaying this decision for almost a month until our next meeting."

r. A new Conclusion of Law 73 is added at page 108, stating: "The Commission should exercise authority pursuant to Rule 87 to deviate from its own rules for the purpose of allowing a one-day reduction in the comment period on the alternate decision of President Peevey."

s. A new ordering paragraph, 32a is added stating: "Pursuant to Rule 87 of our Rules of Practice and Procedure, a deviation from Rule 77.6 is authorized to allow the timely rendering of a decision today."

t. The single sentence in Section XIX, on page 79, is restated to read: "Geoffrey F. Brown is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding."

u. The reference to D.04-10-105 in the fifth sentence of the second paragraph of page 66 is deleted and replaced with D.04-10-015.

4. In all other respects, rehearing of D.05-12-040, as modified herein, is denied.

This order is effective today.

Dated June 15, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Commissioner Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.