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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.

Investigation 12-10-013

And Related Matters

Application 13-01-016
Application 13-03-005
Application 13-03-013
Application 13-03-014

RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE SETTING STATUS CONFERENCE

This ruling sets forth a summary of the process to move the proceeding to a conclusion. The parties were unable to reach agreement on modification of the prior settlement adopted in Decision (D.) 14-11-040, as reflected in the party comments filed on August 15, 2017. The assigned Commissioner and assigned Administrative Law Judge (ALJ) will set a status conference to address outstanding issues for additional evidentiary hearings to reassess the costs allocated between ratepayers and shareholders in this proceeding.

This ruling sets a status conference for November 7, 2017 at 11 a.m. at the Commission offices at 320 West 4th Street, Ste. 500, Los Angeles, CA 90013. The parties are to serve and file position statements addressing the preliminary issues

identified below, any additional issues to be considered, party positions, schedule, and number and location for public participation hearings no later than 5 p.m. on October 30, 2017.

Background¹

Pursuant to Public Utilities Code Section 455.5, the Commission issued an Order Instituting Investigation (OII) on October 25, 2012, initiating a multi-part investigation into the actions and expenses of Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E) (collectively the Utilities) associated with extended outage of San Onofre Nuclear Generating Station (SONGS). The scoping memo for the proceeding identified three phases. Testimony and briefing were submitted by the parties for Phases 1, 1A, and 2 of the proceeding. A proposed decision (PD) was issued for Phase 1 and 1A that was not voted on by the Commission. Phase 3 had not commenced as of March 20, 2014 when SCE, SDG&E, The Utility Reform Network (TURN), Office of Ratepayer Advocates (ORA), Friends of the Earth (FOE), and Coalition of California Utility Employees (CCUE) (collectively the Settling Parties) served notice of a settlement conference to held on March 27, 2014.

The Settling Parties filed and served a Joint Motion for Adoption of Settlement Agreement (Settlement) on April 3, 2014 (Joint Motion). Parties provided comments and reply comments on the Joint Motion. Several non-settling parties, including Ruth Hendricks, Alliance for Nuclear

¹ For additional background see the Joint Ruling of Assigned Commissioner and Administrative Law Judge Reopening Record, Imposing Ex Parte Contact Ban, Consolidating Advice Letters, and Setting Briefing Schedule issued May 9, 2016 (May 9 Joint Ruling) and the Joint Ruling of Assigned Commissioner and Assigned Administrative Law Judge Directing Parties to Provide Additional Recommendations for Further Procedural Action and Substantive Modifications to Decision 14-11-040 issued on December 13, 2016 (December 13 Ruling).

Responsibility (A4NR), and Women Energy Matters (WEM) opposed the proposed settlement agreement. On September 5, 2014, the assigned Commissioner and the ALJs issued a Ruling Requesting the Settling Parties to Adopt Modifications to the Proposed Settlement Agreement. This ruling included information about the greenhouse gas (GHG) research and reduction program that was the subject of a late-filed *ex parte* between then-President Peevey and the University of California. The Settling Parties voluntarily accepted the requests and amended the proposed settlement agreement (Settlement). Ruth Henricks, A4NR, and WEM continued to oppose the proposed Settlement. On November 25, 2014, the Commission issued D.14-11-040 approving the modified Settlement between SCE, SDG&E, TURN, ORA, FOE, and CCUE.

On February 9, 2015, Edison late-filed a Notice of *Ex Parte* Communication regarding a meeting that occurred on or about March 26, 2013 between Edison's then-Executive Vice President Stephen Pickett and the Commission's then-President, Michael Peevey, at an industry conference in Warsaw, Poland regarding ratemaking treatment for SONGS post-shutdown costs. The notes taken during this meeting (the Bristol Notes) provided by SCE in the supplemental notice of late *ex parte* communications appear to propose a framework for a potential settlement of the SONGS OII.²

On August 5, 2015, based on SCE's admissions, the then-assigned ALJ ruled that SCE committed 10 separate violations of Rule 8.4 by failing to report

² On April 10, 2015, Harvey Morris, an Assistant General Counsel in the Commission's Legal Division, served a copy of the attached notes by email to a number of individuals, including the service list in this proceeding. SCE then filed a supplement to its February 9, 2015 late filed *ex parte* Communication with the Bristol Notes attached. A copy of the handwritten notes is attached to this Ruling as Attachment A.

oral and written communications between SCE and Commission decision makers, which met the definition of *ex parte* communication as set forth in the Commission's Rules of Practice and Procedure (Rules).³ The ruling also ordered SCE to show cause why it should not be held in contempt of the Commission and sanctioned for 10 violations of Rule 8.4 as well as Rule 1.1, the Commission's Ethics Rule.

A4NR on April 27, 2015, as amended on May 26, 2015, and ORA on August 11, 2015, both filed Petitions for Modification (PFM) of D.14-11-040 alleging that had SCE properly and timely filed the *ex parte* notices, the terms of the Settlement Agreement (Settlement) would have been more favorable to ratepayers. On June 24, 2015, TURN filed its response to A4NR's PFM, stating that it no longer supported the Settlement.⁴

On December 8, 2015, the Commission issued D.15-12-016 which affirmed eight violations of Rule 8.4 of the Commission's Rules by SCE stemming from its failure to report, before or after, *ex parte* communications that occurred between SCE and a Commissioner. D.15-12-016 also found that SCE twice violated Rule 1.1, the Commission's Ethics Rule, as a result of the acts and omissions of SCE and its employees, which misled the Commission, showed disrespect for the Commission's Rules, and undermined public confidence in the agency. The Commission imposed a fine of \$16,740,000 for the violations, and ordered SCE to create and maintain a website tracking all non-public individual communications related to these consolidated proceedings by SCE representatives with

³ Unless otherwise noted all references to Rules refer to the California Public Utilities Commission Rules of Practice and Procedure.

⁴ TURN Response June 24, 2015 at 2-4.

Commissioners, their advisors, or other Commission decision makers.⁵ In D.15-12-015, the Commission addressed only SCE's violations of the Commission's *Ex Parte* and Ethics Rules, and reserved addressing the pending PFMs of D.14-11-040, application for rehearing of D.14-11-040, and procedural or other matters subject to future action by the Commission in this proceeding.⁶

On December 15, 2015, after the issuance of D.15-12-016, the University of California at Los Angeles (UCLA) filed a late *ex parte* notice regarding the GHG Research and Reduction program. The reported communications lasted over a series of several weeks and commenced in May of 2014 between representatives of UCLA and then-Commission President Peevey.⁷

The May 9 Ruling reopened the record, relieved parties of their obligation to support the Settlement, and set a briefing schedule to address how to proceed with the PFMs.⁸ In response to the May 9 Ruling, the Utilities filed an implementation summary on June 2, 2016. Parties filed opening briefs on July 7 and reply briefs on July 21, 2016.

The December 13 Ruling directed the parties to meet and confer and to provide further recommendations for procedural action and substantive modifications to D.14-11-040 no later than April 28, 2017. On April 26, 2017 all parties participating in the meet and confer sessions filed a Joint Motion to extend the meet and confer deadline from April 28, 2017 to August 15, 2017. On May 26, 2017 the assigned ALJ issued a ruling granting the extension to no later

⁵ D.15-12-016, Ordering Paragraphs (OPs) 1 and 2.

⁶ D.15-12-016, OPs 3 and 5.

⁷ UCLA's Late Filed Notice of *Ex Parte* Communication dated December 15, 2015.

⁸ For a more detailed summary of the background information in this proceeding please see D.14-11-040, D.15-12-016, the May 9 Ruling, and the December 13 Ruling.

than August 15, 2017. On August 15, 2017 SCE, SDG&E, TURN, ORA, Coalition of Large Energy Consumers (CLECA), Direct Access Customer Coalition (DACC), and WEM⁹ were the only parties to file further recommendations as to how to proceed procedurally and substantively with the PFM. The filing parties' positions are summarized below.

Summary of Parties Position from August 15, 2017 Filings

SCE, SDG&E, TURN, ORA, A4NR and CLECA, DACC, and WEM submitted comments on August 15, 2017 in accordance with the December 13 Ruling. SCE and SDG&E recommended that the Settlement be affirmed or in the alternative that an additional disallowance, no more than a fraction of \$365 million should be considered.¹⁰ TURN recommended that all collection of rates under the Settlement be suspended while litigation resumes or a new settlement is reached among the parties. If the Commission does not want to resolve the outstanding issues through litigation, TURN recommends additional modifications to the Settlement for consideration by the Commission. ORA recommends a prehearing conference (PHC) be set to determine next steps, hearing dates and briefing schedule. A4NR recommends that the Phase 1 and 1A PD be voted upon, that a Phase 2 PD be issued, and that a Phase 3 PHC be scheduled to proceed with the last Phase of the proceeding as anticipated in the initial scoping memo issued on January 28, 2013. CLECA, DACC, and WEM provided recommendations similar to TURN, first, recommend the Commission set aside D.14-11-040 adopting the Settlement and that the proceeding return to the litigation as it stood before the Commission adopted the Settlement. As an

⁹ CLECA, DACC, and WEM filed comments jointly on August 15, 2017.

¹⁰ The \$365 million represents the difference between the settlement result and ORA's initial litigation position after taking any additional reductions reflected in the Utilities filings into account.

alternative, CLECA, DACC, and WEM recommend the Commission consider nine modifications to “rehabilitate” the Settlement.

Discussion

The May 9 Ruling reopened the record in the proceeding to review whether the Settlement complied with Commission Rules in light of SCE’s unlawful *ex parte* communications. The Ruling relieved settling parties of their obligation to support the Settlement. The parties also were directed to file initial and reply briefs assessing whether the Settlement meets the Commission’s standard for approving such agreements in Rule 12.1(d).¹¹ Parties to the settlement responded with briefs arguing the Settlement did not meet the standards set forth in Rule 12.1(d). The parties were provided further opportunity to discuss possible settlement or modification to the Settlement as set forth in the December 13 Ruling. On August 15, 2017 no parties, other than the Utilities, filed comments supporting the settlement. Given the new facts that have come to light since issuance of D.14-11-040, the Commission is compelled to revisit whether the Settlement complies with Rule 12.1(d).

The parties have already provided extensive pleadings addressing whether the Settlement complies with Rule 12.1. Accordingly, the Commission has an adequate record before it to decide this issue. However, if the Commission determines the Settlement does not satisfy Rule 12.1 we require additional support in the record to address the appropriate cost allocation for the premature shutdown of SONGS Units 2 and 3. Therefore, the most efficient way to proceed is take additional testimony, hold evidentiary hearings, and allow for further briefing to ensure we have a full record as to the appropriate cost

¹¹ May 9 Ruling at 8.

allocation between ratepayers and shareholders. Once the record is complete the Commission will address the Settlement's compliance with Rule 12.1 and any cost allocation issues as necessary in a proposed decision. The testimony, hearings and briefing will be limited to the issues identified in this ruling.

As stated in D.15-12-016, "It is the Commission's intent to highlight to SCE and all parties that we are committed to achieving full compliance with our governing laws and rules. Anything less damages the agency's regulatory mission and undermines the public's confidence in due process, fair hearings, and just and reasonable rates."¹² The previously adopted Settlement is no longer supported by many parties. Any future decision in this proceeding will rest upon information that is in the record and available to all parties.¹³

"The Commission must ensure the integrity of its processes and ensure that its decisions serve the public interest."¹⁴ The parties were provided an opportunity to renew negotiations and come up with modifications to the prior Settlement on their own. The parties were unable to reach an agreement on any such modifications. We stated in the December 13 Ruling that, "[i]f the parties (or a sub-set of the parties representing a broad range of interests) cannot by April 28, 2017, reach an agreement on modifications to D.14-11-040, the Commission will carefully consider all of its options in ruling on the pending petitions for modification. These options include, but are not limited to,

¹² D.15-12-016 at 52.

¹³ *Sangamon Valley Television Corp. v. United States*, 269 F. 2d 221 (D.C. Cir. 1959), the Court vacated the order granting the license on the basis "that whatever the proceeding may be called it involved not only allocation of TV channels among communities but also resolution of conflicting private claims to a valuable privilege, and that basic fairness requires such a proceeding to be carried on in the open." *Id.* at 224.

¹⁴ December 13 Ruling at 33.

entertaining additional written testimony, holding evidentiary hearings, and supplemental briefing in this proceeding.”¹⁵ We therefore will move forward with the status conference to discuss the preliminary issues set forth below.

Preliminary Issues for Evidentiary Hearings

For the reasons set forth above, the Commission will reconsider whether the Settlement meets the requirements of Rule 12.1(d), and if not we will determine the appropriate allocation of costs associated with the failure of the SGRP. The Commission will take into account the Settlement as adopted, the failure of the parties to reach agreement on modifications to the Settlement as suggested in the December 13 Ruling, subsequently disclosed unlawful *ex parte* contacts between SCE and then-President Michael Peevey,¹⁶ the pending PFMs of D.14-11-040, additional expert testimony, party briefs and comments, reports and decisions issued by the Commission and other entities since adoption of the Settlement, and the additional record developed in this proceeding since the May 9 Ruling reopened the record in the proceeding.¹⁷

We have determined that to promote the efficient administration of this OII and resolution of the pending PFMs and the proceeding, an expedited schedule will be adopted to address the following preliminary issues:

1. Determination of cost allocation between shareholders and ratepayers for costs resulting from the SGRP failure.

¹⁵ Joint Ruling, December 13, 2017 at 40.

¹⁶ The unlawful *ex parte* communications occurred prior to the Settling Parties filing of the Joint Motion to adopt the Proposed Settlement, but were not disclosed until after the Commission adopted the modified Settlement in D.14-11-040.

¹⁷ Following the status conference the assigned ALJ will issue a ruling identifying what documents judicial notice will be taken of in this record. The parties may comment what documents beyond those specifically identified in this ruling should be judicially noticed in their status conference issue statements.

2. Determination of how to address the \$25 million for the contribution to the University of California for research regarding reduction of GHG emissions in light of now documented previous *ex parte* contacts between former President Peevey and the University of California.

The parties may comment on the preliminary issues set forth above and whether any additional issues should be considered in their issue statements.

For purposes of resolving the outstanding PFMs the assigned Commissioner and ALJ will rely on judicially noticed materials, previously filed testimony and the existing record in this proceeding. The only exception to this will be the expert testimony and briefing to be provided by the parties on the limited issue of SONGS Units 2 and 3 cost allocation in the following areas:

- Whether to disallow a percentage of base plant, and if so what percent.
- Whether to refund costs related to the replacement steam generators collected in rates prior to February 2012.
- Whether to allow for a rate of return on any base plant eligible for recovery in customer rates.
- Whether an additional \$86.95 million in refunds relating to 2012 expenses incurred at SONGS should be approved.
- Whether the utilities should be directed to provide refunds for foregone sales revenues associated with SONGS between February 2012 and June of 2013.
- Whether to disallow recovery of \$54.4 million in nuclear fuel contract cancelation costs.
- Whether the utilities should be required to compensate ratepayers for the amount Mitsubishi Heavy Industries (MHI) was found to be liable under the replacement steam generator contractor (\$138 million).

- Whether SCE should be responsible for the award of legal costs to MHI and its own legal costs for the International Chamber of Commerce (ICC) arbitration.

Schedule

A preliminary schedule for further proceedings is proposed below. This matter is long overdue for resolution and therefore an expedited schedule will be implemented. We will take judicial notice of the formal reports submitted by SCE to the Nuclear Regulatory Commission (NRC) concerning SONGS Units 2 and 3, reports issued by the NRC concerning SONGS Units 2 and 3, the *Final Award in ICC Arbitration Case No. 19784/AGR/RD*, the complete record set forth in Application (A.) 04-02-026,¹⁸ and other relevant documents to be identified. Given the extensive information available to the Commission and the parties as to the events leading up to the shut-down of SONGS Units 2 and 3 we direct the parties to focus testimony on expert opinion as to allocation of costs that resulted from the failure of the SGRP. The parties may provide comment on the preliminary schedule listed below in their status conference statements.

¹⁸ SCE filed A.04-02-026 seeking approval of the SGRP. The Commission adopted D.15-12-040 on December 15, 2005 approving the SGRP. The Unit 2 steam generators were replaced on January 2010, and the Unit 3 steam generators were replaced in January 2011. Unit 3 was taken offline on January 31, 2012, and Unit 2 was taken out of service on January 10, 2012. *See* OII Regarding SONGS Units 2 and 3 issued on November 1, 2012 at 3.

Event	Date¹⁹
Party Status Conference Issue Statements	October 30, 2017
Status Conference (Los Angeles)	November 7, 2017
Party Memorandum Statement of Facts (stipulation of undisputed facts)	November 30, 2017
Utilities file an updated settlement implementation summary (initial implementation summary served and filed June 2, 2017)	November 30, 2017
Party Concurrent Testimony Served	January 10, 2018
Party Concurrent Reply/Rebuttal Testimony Served	January 31, 2018
Final Date for Submission of Prehearing Motions	February 5, 2018
Status Conference –Argument Discovery Motions (Los Angeles)	February 7, 2018 (TBD)
Evidentiary Hearings (Los Angeles)	February 26-March 1, 2018 10am-3:30pm (TBD)
Public Participation Hearing (Los Angeles/San Diego)	February/March (TBD)
Concurrent Opening Briefs Filed	March 15, 2018
Reply Briefs Filed	March 29, 2018
Proposed Decision	TBD

At the initial status conference in this proceeding, SCE agreed to establish a public web page to make available pleadings, data request responses, testimony, and monthly reports required by the OII. On January 16, 2013, SCE notified the Service List of this proceeding that the web page had been established and was accessible through the following link:

<http://www3.sce.com/sscc/law/dis/SongsOIIDocLibrary.nsf/viewByCategory.xsp>.

¹⁹ Other than November 7, 2017, the dates presented are not set and are for illustrative purposes only to give the parties an idea of how the assigned Commissioner and ALJ intend to expedite the schedule.

In addition, the web page is searchable by key word, and includes a link to the NRC's webpage dedicated to SONGS. SCE is directed to continue to make information in this proceeding available at this public web page. SCE is also directed to submit all new information including the updated Settlement implementation summary and testimony served in this proceeding to the Commission's Supporting Documents online system.

As a co-owner, SDG&E continues to have a duty to monitor SCE's responses in this OII and to supplement them or challenge them based on its own obligation to ensure safe and reliable service and its obligation to the Commission under Rule 1.1. SDG&E shall continue to make its quarterly reports required by the OII available to the public through its website. SDG&E shall also submit its quarterly reports, updated Settlement implementation summary, and any testimony served in this proceeding to the Commission's Supporting Documents online system.

Coordination of Issues by Parties

We continue to ask parties to build coordination and cooperation. To the fullest extent possible, we urge parties to jointly plan their analysis with the goal to avoid repetition, present joint analysis of issues, and consider joint presentations of witnesses and unified cross-examination. We encourage a single or unified presentation by topic or issue but do not expect parties to waive or forgo significant dissenting viewpoints. We also expect parties to coordinate and cooperate in preparing and submitting a joint stipulation of facts as to activities leading up to the closure of SONGS. Parties may utilize the significant number of reports, ICC Award, and existing record in this proceeding and A.04-02-026 to prepare their stipulation of facts.

All parties shall conform to the Commission's Rules, comply with ALJ and assigned Commissioner rulings, conduct themselves in a professional manner, and ensure that all documents to be filed with the Commission are effectively and timely filed electronically with the Commission's Docket Office.

Ex Parte Ban

Any and all *ex parte* communications with any decision maker or Commissioner advisors regarding all issues in this proceeding continue to be prohibited. Further, all communications with any Commissioner or Commissioner advisors regarding procedural matters continue to be prohibited. Questions or clarifications from parties regarding procedural matters shall be communicated to the assigned ALJ by e-mail and the party sending the e-mail communication shall copy all parties listed on the proceeding service list.

IT IS RULED that:

1. A Status conference in this proceeding is set for November 7, 2017, at 11 a.m. at the Commission offices, 320 West 4th Street, Ste. 500, Los Angeles, CA 90013, to discuss the parties' positions, scope of issues for evidentiary hearings, schedule, and other relevant issues raised by the parties.
2. The parties are directed to serve and file issue statements prior to the November 7, 2017 status conference on or before 5 p.m. October 30, 2017.
3. All parties shall conform to the Commission's Rules of Practice and Procedure, comply with Administrative Law Judge and assigned Commissioner rulings, conduct themselves in a professional manner, and ensure that all documents to be filed with the Commission are effectively and timely filed electronically with the Commission's Docket Office.

4. *Ex parte* communications between parties and decision makers continue to be prohibited.

Dated October 10, 2017, at San Francisco, California.

/s/ MICHAEL PICKER
Michael Picker
Assigned Commissioner

/s/ DARCIE L. HOUCK
Darcie L. Houck
Administrative Law Judge