

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

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

Investigation 12-10-013
(Filed October 25, 2012)

**PROTESTOR RUTH HENRICKS' MOTION TO ASSIGNED
COMMISSIONER MICHEL PETER FLORIO FOR RECONSIDERATION
OF ALJ MELANIE M. DARLING'S 21 FEBRUARY 2013 RULING ON
MOTION FOR ORDER SETTING DEADLINE FOR COST
APPLICATION, ORDERING REASONABLENESS REVIEW,
AMENDING PHASE 1 SCHEDULE, TERMINATING SGRP COST
COLLECTION, AND ORDERING RATEPAYER REPARATIONS**

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February 27, 2013

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I.

INTRODUCTION

Ruth Henricks brings this motion for reconsideration of her motion to require a reasonableness review of the costs Southern California Edison (SCE) incurred in replacing 4 steam generators at the San Onofre nuclear power plant, stop the collection of such costs in rates, and order reparations of such costs collected in rates after the date a related cost application was required to be filed. This motion seeks to remove any doubt that Ms. Henricks has exhausted her administrative remedies before the Public Utilities Commission (Commission) to

stop the collection and order reparations of the unreasonable rates for the costs of four defective steam generators, and to require findings that such costs were reasonable *before* rates payers are made to pay.

II.

BACKGROUND

The San Onofre nuclear power plant began commercial operation in 1984, under ownership by SCE and San Diego Gas & Electric (SDG&E). (Decision 05-12-040 Page 43) It was originally licensed to operate until 2013. (Exhibit 1 to Declaration of Michael J. Aguirre¹, D. 05-12-040 Page 41) The steam generators experienced annealing and tube wear problems from the beginning. (Ex. 1, D. 05-12-040 Page 45)

Eventually, tube degradation threatened to shut down the San Onofre plant by 2009. In December 2005, SCE induced the Commission to approve a plan to correct the tube degradation problem by replacing the existing 4 steam generators with 4 new ones claimed to be free of tube defects:

Each of the two units has two steam generators manufactured by Combustion Engineering, Inc. (CE). In each steam generator, the heat from water circulated through the reactor is used to turn another stream of water into steam to power turbines that turn electric generators. SONGS is currently licensed by the Nuclear Regulatory Commission (NRC) to operate until 2022. **SCE estimates that SONGS will likely be required to shut down because of the**

¹ All exhibit numbers referenced pertain to the exhibits to the Declaration of Michael J. Aguirre in support of this motion, filed herewith.

degradation of the steam generators in 2009. As a result, SCE is requesting approval of the SGRP in this application. Hearings were held from January 30 through February 11, 2005. The application was submitted on June 21, 2005. (Ex. 1, D. 05-12-040 Page 4) (Emphasis added)

SCE represented to the Commission that it would submit the costs for the 4 replacement steam generators to a Commission reasonableness review. (Ex. 1, D. 05-12-040 Pages 48-49) In approving the steam generator replacement plan, SCE agreed the Commission would not be relinquishing its authority to review the reasonableness of the project's recorded costs and construction practices. (Ex. 1, D. 05-12-040 Pages 48-49)

Specifically, SCE proposed to file an Application with the Commission to establish the reasonableness of the SGRP construction costs, **six months after** San Onofre returned to commercial operations. (Ex. 1, D. 05-12-040 Pages 48-49) In addition, SCE proposed to file an Application to establish the reasonableness of the costs of removal and disposal of the original steam generators six months after the last removal and disposal costs were incurred. (Ex. 1, D. 05-12-040 Pages 48-49)²

The Commission accepted SCE's steam generator replacement project cost estimate of \$680 million as reasonable. (Ex. 1, D. 05-12-040 Page 48-49)

However, the Commission ruled that if the SGRP costs exceed \$680 million, or the Commission later finds that it has reason to believe the costs may be unreasonable

² SCE represented it would also file its Cost Application for removal and disposal costs six months after completion.

regardless of the amount, the *entire* SGRP cost shall be subject to a reasonableness review. (Ex. 1, D.05-12-040 Page 48-49)

As for removal and disposal costs of the 4 old steam generators, the Commission determined equities required SCE to recover through depreciation 20% of the estimated costs of removal and disposal of the original steam generators (\$22.2 million) over the 2006-2011 period. (Ex. 1, D. 05-12-040 Page 57-58) SCE was required to depreciate the remaining amount (\$89 million) over the remaining life of the San Onofre plant. (Ex. 1, D. 05-12-040 Page 57-58)

While the Commission accepted SCE's estimate of \$680 million for SGRP costs, including removal and disposal of the original steam generators, it did so with an important proviso:

But if total costs exceed \$680 million, or the Commission later finds that it has **reason to believe the costs may be unreasonable regardless of the amount, the entire SGRP cost shall be subject to reasonableness review.** This approach fairly balances ratepayer and shareholder interests. It provides SCE with an effective incentive to keep costs below \$680 million, while ratepayers are protected with a reasonableness review if SGRP costs exceed \$680 million. Therefore, we find that SCE's SGRP cost estimate is reasonable for use in determining the cost effectiveness of the SGRP. (Ex. 1, D. 05-12-040 Page 12)

A binding order of the Public Utilities Commission directs that after completion of the steam generator replacement project, SCE was required to file an Application for inclusion of the costs thereof permanently in rates. (Ex. 1, Decision 05-12-040 Page 4) If a reasonableness review of the costs SCE incurred

to replace the 4 steam generators at the San Onofre is performed, **it will be done in connection with the Application.** (Ex. 1, Decision 05-12-040 Page 4)

III.

MOTION (1) TO ENFORCE 15 DECEMBER 2005 ORDER, (2) TO STOP COLLECTION AND (3) FOR REPARATIONS

Ms. Henricks brought a motion to enforce the 15 December 2005 order by requiring SCE to file its Cost Application, to undergo a reasonableness review, to stop SCE from collecting steam generator replacement rates, and to require SCE to make reparations of rates SCE has collected in violation of the 15 December 2005 order. Ms. Henricks' motion was based on the grounds that SCE had completed the steam generator project as of February 2011. In its 27 December 2011 Supplement to Advice 2648-E, SCE admitted “[t]he SONGS Unit 2 steam generator replacement was completed on April 11, 2010” and “the SONGS Unit 3 generators replacement was completed on February 18, 2011.” (Ex. 4, Advice 2648-E-A, 27 December 2011, Pages 7 and 8) Further, SCE reported to its investors in its 2010 SEC 10-K Report that the replacement of the generators was completed by February 2011:

“SCE completed the replacement of the steam generators at San Onofre Unit 2 and Unit 3 in April 2010 and February 2011, respectively.”
(Ex. 5, SCE 10K)

IV.

ADMINISTRATIVE LAW JUDGE RULING

In response to Ms. Henricks' motion, the Commission's assigned Administrative Law Judge ruled that the Commission did not set a "particular" date for SCE to file its cost application; the reasonableness review would be premature and disruptive:

The Commission did not specify any particular date for the filing. After discussions with the Commission's Energy Division about final shipment of removed parts, SCE stated it would file the application in March 2013, an intention SCE affirmed at the PHC. SCE shall file the application on or before March 15, 2013.

**

However, the request to include the SGRP cost reasonableness review in Phase 1 of the OII should be denied because it is premature and would disrupt the orderly accumulation of evidence of SCE's actions and expenses at SONGS as set forth in the Scoping Memo. The SGRP costs, and post-outage repairs and related expenses, are most efficiently examined together, particularly after SCE determines whether it will seek to restart either unit later this year.

Lastly, the Henricks motion for a halt to interim collection of a portion of the costs in rates, beginning in 2011 following Commission approval of SCE's Advice Letters, should be denied due to improper form and lack of evidence. In Ordering Paragraph 9 of D.05-12-040, the Commission authorized SCE:

to include the revenue requirement associated with the balancing account balance for steam generator replacement for each unit in rates, subject to refund if a reasonableness review is performed, on January 1 of the year following commercial operation of each unit. SCE shall file an advice letter to implement the above.

Therefore, any modification to this previous Commission decision must occur as a result of a Petition for Modification which conforms with Rule 16.4 of the Commission's Rules of Practice and Procedure. The motion does not meet this requirement nor does it provide new evidence which could support such a petition. (Ex. 3, ALJ Ruling 21 February 2013: "Ruling")

This ruling contains legal errors, all of which are highly prejudicial to ratepayers because they allow SCE to collect the costs of the steam generator replacement program without a determination that the rates are reasonable, and they fail to require SCE to pay back costs of the project collected while SCE was violating the 15 December 2005 order by failing to file its project Cost Application as required.

A. The "Particular Date for the Filing" of the Cost Application is Based on the Completion Date of 18 February 2011

The 15 December 2005 order provides: After completion of the SGRP, SCE will be required to file an application for inclusion of the costs thereof permanently in rates. (Ex. 1, D.05-12-040 Pages 3-4; See also Page 110) Specifically, SCE proposed to file an Application to establish the reasonableness of the SGRP construction costs "**six months after** SONGS returns to commercial operations." (Ex. 1, D.05-12-040 Page 48-49) The "Unit 2 steam generator replacement was completed on April 11, 2010," and the "Unit 3 steam generators replacement was completed on February 18, 2011. (Ex. 4, SCE Advice Letter 2648-E-A, Pages 7 and 8)

SCE also admitted in its 2010 SEC 10-K Report it had completed replacement of the steam generators by February 2011:

“SCE completed the replacement of the steam generators at San Onofre Unit 2 and Unit 3 in April 2010 and February 2011, respectively.” (Ex. 5, SCE 10K)

The use of the words “shall” and “will” made the duty of SCE to file the Application mandatory. (Ex. 1, D.05-12-040 Pages 3-4; See also Page 110) *Fresno Nat'l Bank v. Superior Court of San Joaquin County*, (1890) 83 Cal. 491, 494-495. The Oxford English Dictionary defines “mandatory” as “obligatory, compulsory; not discretionary.”

Moreover, in its own words SCE said it would file within 6 months of completing installation of the steam generators. Thus, SCE at a minimum was required to file a Cost Application for steam generators costs in August 2011 -- six months after the February 2011 completion of the steam generator replacement. The ALJ's 21 February 2013 Ruling is void of any analysis of what date the parties intended SCE to perform the mandatory duty to file the Cost Application. See, *Walker v. Hauss-Hijo*, 1 Cal. 183, 185-186 (Cal. 1850)

The intention of the Commission would also be discerned from the fact that a reasonableness review is the means by which the Commission's duty to protect ratepayers from unreasonable rates is exercised. SCE has been putting costs of the steam generator replacement program into costs since 2006.

SCE thus far has recovered, or proposes to recover, costs for the 4 new steam generators in the amount of \$302.70 million. SCE thus far has recovered, or proposes to recover, in rates through Advice Letters sent to the Commission \$39.55 million for the costs of removal and disposal of the old steam generators. Thus far, SCE proposes to recover, or has recovered, a total of \$342.25 million for the steam generator project:

No.	Date	Advice Letter	Purpose
1	12/28/05	1951-E Ex. 6	Modifies Preliminary Statement, Part YY, Base Revenue Requirement Balancing Account (BRRBA), to reflect the recovery of 20% of SCE's ownership share of the estimated removal and disposal costs for the San Onofre (Units 2 & 3) original steam generators pursuant to Ordering paragraph No. 12 of D.05-12-040. Shows the 1 January 2006 annual revenue requirement of <u>\$3.03 million</u> , reflecting SCE's current ownership share in nominal dollars.
2	11/30/06	2067-E Ex. 7	Sets forth SCE's 2007 revenue requirement related to 20 percent of SCE's ownership share of the estimated removal and disposal costs for the SONGS 2 & 3 original steam generators pursuant to Ordering Paragraph No. 12 of D.05-12-040. Shows the 1 January 2007 annual revenue requirement of \$3.18 million reflecting SCE's current ownership share (75.05 percent), as well as an increase of \$.14 million to reflect SCE's proposed ownership share (78.21 percent). If SCE's A.06-03-020 to acquire Anaheim's share of SONGS 2 & 3 is approved for 1 January 2007 the annual revenue requirement will be <u>\$3.32 million</u> .

3	11/30/07	2187-E Ex. 8	This Advice filing sets forth SCE's 2008 revenue requirement related to 20 percent of SCE's ownership share of the estimated removal and disposal costs for the SONGS 2 & 3 original steam generators pursuant to Ordering Paragraph No. 12 of D.05-12-040. Shows the 1 January 2008 annual revenue requirement of <u>\$3.60 million</u> reflecting SCE's current ownership share (78.21 percent)
4	11/24/08	2292-E Ex. 9	This Advice filing sets forth SCE's 2009 revenue requirement related to 20 percent of SCE's ownership share of the estimated removal and disposal costs for the SONGS 2 & 3 original steam generators pursuant to Ordering Paragraph No. 12 of D.05-12-040. Shows the 1 January 2009 annual revenue requirement of <u>\$3.78 million</u> reflecting SCE's current ownership share (78.21 percent)
5	6/30/09	2355-E Ex. 10	To establish two (2) balancing accounts for San Onofre Unit 2 and Unit 3 SGRP in accordance with Ordering Paragraphs 7 and 8 of D.05-12-040. In addition, this advice filing revises the Generation Sub-account of the Base Revenue Requirement Balancing Account (BRRBA)
6	11/16/09	2402-E Ex. 11	Sets forth SCE's 2010 revenue requirement related to 20 percent of SCE's ownership share of the estimated removal and disposal costs for the San Onofre Units 2 & 3 original steam generators pursuant to Ordering Paragraph No. 12 of D.05-12-040. Shows the 1 January 1, 2010 annual revenue requirement of <u>\$3.84 million.</u>
7	11/10/10	2521-E Ex. 12	To implement the 2011 Forecast San Onofre Unit 2 Steam Generator Replacement (SGR) revenue requirement in rate levels on 1 January 2011 in compliance with D.05-12-040. Shows the 2011 Forecast SONGS Unit 2 SGR Revenue requirement of <u>\$56.694 million</u>

8	11/22/10	2529-E Ex. 13	Sets forth SCE's 2011 revenue requirement of <u>\$4.06 million</u> related to 20 percent of SCE's ownership share of the estimated removal and disposal costs for the SONGS 2 & 3 original steam generators pursuant to Ordering Paragraph No. 12 of D.05-12-040.
9	12/27/11	2648-E- A Ex. 4	To submit revised tariff schedules reflecting the consolidated revenue requirement and other rate changes effective January 1, 2012, as discussed in Advice 2648-E. This advice letter supplements and replaces Advice 2648-E in its entirety. Revised tariff sheets reflecting the revenue requirement and rate changes discussed herein are attached hereto as Attachment A. Shows 2012 revenue requirement for replacement of Units 2 and 3 of <u>\$115.239 Million.</u>
10	12/31/12	2834-E Ex. 14	To consolidate the effect of revenue requirement changes authorized by the CPUC in various decisions in customer rates on January 1, 2013. Shows 2012 revenue requirement for replacement of Units 2 and 3 of <u>\$130.766 Million.</u> The total 2013 forecast for Units 2 and 3 of removal and disposal costs of <u>\$17.924 million</u>

SCE was authorized to recover through depreciation a total of 20% (\$22.2 million) of the estimated costs of removal and disposal of the original steam generators for both units over 2006-2011. (Ex. 1, Decision 05-12-040 Pages 2-3) SCE completed installation of the Unit 2 and 3 steam generators by February 2011.

SCE began collecting rates for removal and disposal of the old steam generators beginning in 2006. SCE was authorized to recover 20% of the estimated costs of removal and disposal of the original steam generators (\$22.2 million)

over 2006-2011. SCE began recovering steam generator purchase costs in January 2011. Over 87% of the amount that could be charged was set in motion by SCE as of February 2011. Under the December 2005 order, the remaining amount (\$89 million) was to be “depreciated over the remaining lives of SONGS after the SGRP is performed.”

The most reasonable interpretation of when the Commission intended SCE to file its Cost Application for the costs incurred in the replacement project was no later than August 2011 – six months after SCE’s admitted February 2011 completion. SCE’s own words can be read to set that deadline. An analysis of the costs and the recovery of costs in rates was fully in place by August 2011.

B. Reasonableness Review Would Not Be Premature

The 15 December 2005 order provides that “If a reasonableness review is performed, it will be done in connection with the application.” (Ex. 1, Decision 05-12-040 Page 4) SCE is filing its Cost Application on 15 March 2013 for the steam generator project. It has been the absence of the Cost Application that has postponed the reasonableness review. The filing of the Application should not be used to further delay the reasonableness review.

The use of the word “premature” is not a valid basis for modifying the Commission order directing that the filing of the Cost Application would trigger a reasonableness review. Any modification of the order that disconnects the

reasonableness review from the Cost Application must occur as a result of a Petition for Modification in conformance with Rule 16.4 of the Commission's Rules of Practice and Procedure. No such motion has been brought, or granted.

C. Reasonableness Review Would Not Disrupt the Orderly Accumulation of Evidence

Setting a schedule for a reasonableness review would help to bring order and logic to the proceeding. As it now stands, the parties in Phase I will be examining the “nature and effects of the steam generator failures.” (Ex. 2, Scoping Ruling) Whether SCE knew about design defects in the steam generators before they were installed, thereby risking their failure within a period much shorter than the assumed life for the cost effectiveness model, is critical to determining whether costs incurred for the steam generators was reasonable.

The Commission consolidated with the OII the post-2011 costs, but did not consolidate the pre-2011 costs. (Ex. 16, D.12-11-051, 29 November 2012, Page 821) Instead, the Scoping Memo and the ALJ ruled the pre-2011 costs – those pertaining to the SGRP – would be part of a Phase 3 consideration. Specifically, “whether the claimed SGRP expenses are reasonable” will be included in Phase 3. (Ex. 3, 21 February 2013 ALJ Ruling, page 2)

Why examine that question twice: Once for the post-2011 period, and once for the pre-2011 period (the SGRP)? Also, why make an artificial distinction between the costs to buy the steam generators, the costs to remove the old steam

generators, and the operation and maintenance costs? It appears that in Phase I, only the post-2012 operations and maintenance costs would be subject to refund. Again, why plow the same field twice?

Moreover, SCE and SDG&E have raised legal issues about the current approach, which relies on Code provisions that SCE and SDG&E argue must push rate refunds into 2015. Including the reasonableness review *now* would provide a clear and substantial basis for ordering recoveries for ratepayers.

D SCE Has Already Decided to Restart Unit 2

The 21 February 2013 ALJ Ruling erroneously states that SCE will decide whether it will seek to restart either unit later this year. SCE has already made that decision. SCE applied to the NRC in October 2012 to restart. SCE has also announced in its 3rd Quarter 10-Q that it is ready to restart and all repairs were made to the Unit 2 steam generators. (Ex. 15, SCE 3rd Quarter 10-Q, 1 November 2012) As of September 30, 2012, the repairs to restart Unit 2 at the reduced power levels described above have been substantially complete, according to SCE.

E. The Motion Was In Proper Form, and Was Supported By Proper Evidence

Ms. Henricks' Motion to stop the collection of rates and to order reparations of rates was in proper form. As set forth above, SCE was required to file its Cost Application by August 2011 and to undergo the reasonableness review provided in

the 15 December 2005 order. SCE should not be permitted to recover in rates under the Advice Letter procedure because the Commission anticipated that SCE would, in good faith, comply with the 15 December 2005 order and file a timely Cost Application. SCE failed to file. Thus, Ms. Henricks' Motion is in proper order, and this Motion for Reconsideration should be granted.

V.

CONCLUSION

All charges demanded or received by any public utility for any commodity furnished must be just and reasonable. *Pub. Util. Code* § 451 No public utility can change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except on a showing before the PUC and a finding by the PUC that the new rate is justified. *Pub. Util. Code* § 454(a) A reasonableness review is a “specialized proceeding” in which the utility must prove by clear and convincing evidence rates are reasonable *Utility Consumers' Action Network v. Public Utilities Com.*, (2010) 187 Cal. App. 4th 688, 698

The Commission issued an Order requiring a reasonableness review determination when SCE filed its Cost Application for the steam generator replacement project at the San Onofre nuclear power plant. SCE will be finally filing its Cost Application on 15 March 2013. Accordingly, the reasonableness review question should be set for hearing and the schedule modified. SCE should

have filed its Cost Application in August 2011, but instead delayed its filing while it charged ratepayers the full costs of the project in consumer rates. SCE should be ordered to stop collecting those costs in rates, and should be ordered to pay back those costs collected in rates after August 2011.

Respectfully Submitted,

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