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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  
(Filed October 25, 2012)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE DETERMINING THE SCOPE, SCHEDULE, AND NEED FOR HEARING IN PHASE 1 OF THIS PROCEEDING**

Pursuant to Rule 7.3(a) of the Commission's Rules of Practice and Procedure and following the prehearing conference (PHC) held on January 8, 2013, this scoping memo sets forth the schedule, issues and procedural requirements for Phase 1 of this proceeding.

**Background**

On November 1, 2012, the Commission issued this Order Instituting Investigation (OII). The Commission will investigate the ongoing shutdown of nuclear generation at the San Onofre Nuclear Generating Station (SONGS), and the resulting effects on the provision of safe and reliable electric service at just and reasonable rates. Specifically, this investigation will consolidate and consider issues raised by the operations, practices, and conduct of Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) related to and following the extended outages of SONGS Units #2 and

#3. The Commission will examine the causes of the outages, the utilities' responses, and the future operation of the SONGS units as part of a review of SCE's actions, and to assess what costs, if any, are appropriate for recovery from ratepayers.

In addition to SCE and SDG&E, eleven parties filed responses to the OII and/or PHC statements which included requests to clarify or expand the scope of the proceeding, and posited possible proceeding schedules

### **Consolidation of Other Proceedings**

In this OII, the Commission intends to consolidate, in whole or part, other future proceedings which, when filed, will undertake review of post-outage expenses, including:

- SCE's upcoming application for review of 2012 Operation and Maintenance (O&M) costs and capital expenditures (Capex) recorded in the SONGS Memorandum Account (SONGSMA) established by SCE's 2012 General Rate Case (GRC), Decision (D.) 12-11-051 ;
- SCE's future application for review of costs related to the Steam Generator Replacement Project (SGRP), as set forth in D.05-12-040, modified by D.11-05-035; and
- SCE's upcoming 2013 Energy Resource Recovery Account application for review of 2012 replacement power procurement costs.

### **Scope of the Proceeding**

Pursuant to Pub. Util. Code § 455.5, the Commission will determine whether it should remove the value of any portion of the SONGS facility from rate base (used in determining utility rates), disallow rate recovery of any expenses related to the operation of SONGS, and/or make any findings of fact, conclusions of law, or orders directing SCE to take specific actions as a result of the non-operation of SONGS.

At the January 8, 2013 PHC, the procedural schedule was discussed and developed based on currently known information. This is an evolving OII and some key facts (e.g., third party cost recovery, future actions by Nuclear Regulatory Commission (NRC), and repair/replacement options for the steam generators) have yet to be determined. Additionally, since none of the applications the Commission intends to consolidate with this OII have yet been filed, the scope will be amended to include the issues in those proceedings when known.

We have determined that to promote the efficient administration of this OII, it will be divided into multiple Phases, each with its own PHC and Scoping Memorandum. There may be some timing overlap to the Phases, as information becomes available.

This Scoping Memorandum establishes Phase 1 in which the Commission will address the following:

1. Nature and effects of the steam generator failures in order to assess the reasonableness of SCE's consequential actions and expenditures (e.g., was it reasonable to remove fuel from unit #3).
2. Whether 2012 SONGS-related expenses recorded in the SONGSMA are reasonable and necessary, including,
  - 100% of O&M, including segregated safety-related costs;
  - 100% of cost-savings from personnel reductions and other avoided costs;
  - 100% of maintenance and refueling outage expenses; and
  - 100% of capital expenditures.

3. A review of the reasonableness and effectiveness of SCE's actions and expenditures for community outreach and emergency preparedness related to the SONGS outages.
4. Other issues as necessary to determine whether SCE should refund any rates preliminarily authorized in the 2012 GRC, in light of the changed facts and circumstances of the unit outages; and if so, when the refunds should occur.

Broadly stated, the scope of the future Phases of this OII are envisioned as follows:

- Phase 2 – whether any reductions to SCE's rate base and SCE's 2012 revenue requirement are warranted or required due to the extended SONGS outages;
- Phase 3 – causes of the SG damage and allocation of responsibility, whether claimed SGRP expenses are reasonable, including review of utility-proposed repair and/or replacement cost proposals using cost-effectiveness analysis and other factors; and
- Phase 4 – if needed, whether SCE's 2013 revenue requirement should be adjusted to reflect lower-than-forecast O&M, Capex, replacement power costs, and other SONGS expenses.

These Phases will be scoped in more detail in the future and may somewhat vary as new information is obtained. A PHC will be held before we scope each future Phase of the OII to provide an update on the status of the SGRP, SCE's position on the future operation of SONGS, any settlement negotiations, and to address any preliminary matters prior to the start of evidentiary hearings.

Issues related to the future operation of SONGS as a reliability source shall be considered in the Long-Term Procurement Planning (LTPP) proceeding, Rulemaking (R.) 12-03-014. If SDG&E or SCE are unable to comply with bundled

plan provisions adopted in prior LTPP decisions addressing electric procurement in 2013 and 2014, either utility may file a motion in this OII for additional procurement guidance.

**Schedule**

The preliminary schedule for Phase 1 discussed at the PHC has been extended to allow for briefing on legal issues and because evidentiary hearings could not be scheduled prior to May. Therefore, we have provided all parties with additional time to prepare Reply and Rebuttal testimony. As a result, our expectation is that the testimony will be clear and focused, and narrow the facts to be determined.

<b>The schedule for Phase 1 of this proceeding is as follows:</b>	<b>Date</b>
Utility Testimony Served	January 9, 2013
Opening Briefs on Legal Questions Filed	February 25, 2013
Reply Briefs on Legal Questions Filed	March 7, 2013
Parties’ Reply Testimony Served	March 29, 2013
Rebuttal Testimony Served	April 22, 2013
Evidentiary Hearings	May 13-17, 2013
Concurrent Opening Briefs Filed	June 14, 2013
Reply Briefs Filed (anticipated submission date)	June 24, 2013
Proposed Decision	July 2013

The assigned Commissioner or Administrative Law Judge (ALJ) may modify the schedule as necessary. The goal is to resolve this matter as soon as possible, and it is anticipated that the resolution will not exceed 18 months from the date of filing the investigation, pursuant to Pub. Util. Code § 1701.5.

**Briefing Legal Questions**

In their responses to the OII, SCE and SDG&E argue that the Commission is legally precluded from ordering any reduction in rates as a result of an extended outage until the utility’s next GRC. Additionally, SCE and SDG&E

argue that the Commission may not order refunds of any expenses related to the SONGS outages recorded in the SONGSMA because it would constitute “impermissible retroactive ratemaking.” Even if the Commission were authorized to make such an order, the utilities contend no refunds could occur prior to the 2015 GRCs.

The Division of Ratepayer Advocates (DRA) and The Utility Reform Network disagree with the utility arguments and ask the Commission to order legal briefing on these issues. We agree.

SCE and SDG&E, and all other interested parties, may file opening briefs no later than February 25, 2013 to address the following issues:

1. Does the Commission have legal authority to reduce SCE’s and SDG&E’s electric rates to reflect the value of any portion of the SONGS facility which has been out of service for more than nine months and, further, to exclude from rate recovery any expenses related to that facility? If so, from what date in 2012 is the Commission authorized to remove value from rate base and exclude 2012 expenses from rate recovery pursuant to Pub. Util. Code § 455.5? Is the Commission required to delay such an order until the utilities’ 2015 GRCs?
2. Does the Commission have legal authority to order SCE and SDG&E to refund rates collected by the utilities upon finding that some 2012 expenses related to post-outage operations at SONGS recorded in the SONGSMA were not reasonable and necessary? If so, is there any legal basis to delay such an order?

Reply Briefs may be filed no later than March 7, 2013.

## **Discovery**

In order to minimize costs of the proceeding, all parties shall make sincere and reasonable efforts to provide complete responses to data requests and to avoid duplication of discovery. All parties are reminded of Rule 1.1 which

charges parties to “maintain the respect due the Commission” and “never mislead the Commission or its staff by an artifice or false statement of fact or law.” This includes intentional omissions.

We will follow the general rule of ten working days to respond to data requests. This rule will apply to all parties. If a longer response time is required, the party preparing the response shall so notify the requesting party and indicate when the response will be sent. Such notice should be provided as soon as possible, but no later than ten days after receipt of the request. If parties have discovery disputes they are unable to resolve by meeting and conferring, either party may move to compel or limit discovery pursuant to Rule 11.3. If any party determines that a previous data request response is incorrect, out of date, or in error in some way (e.g., due to subsequent party action), then the party shall correct the response and serve notice to the Service List that a correction has been made to the particular data request.

At the Prehearing Conference, 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>.

In addition, the web page is searchable by key word, and includes a link to the NRC’s webpage dedicated to SONGS.

SDG&E states that, as a non-operating owner of SONGS, it does not have first-hand knowledge of some information that both SCE and SDG&E were ordered to provide by the OII. Thus, SDG&E asks to be relieved of the task of

jointly providing certain operating information, or having responsibility for operating choices made by SCE.

We acknowledge, for example, that as Operating Agent, SCE is the contractual party with the vendor of the steam generators, Mitsubishi Heavy Industries, Inc. (MHI), and has standing to enforce contractual warranties. SCE is the utility with primary responsibility for providing information that is within its own records as Operating Agent. However, as a co-owner, SDG&E has 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. SDG&E shall make its quarterly reports required by the OII available to the public through its website.

### **Coordination of Issues by Parties**

As we mentioned at the PHC, for this proceeding, we 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.

All Parties shall conform with the Commission's Rules of Practice and Procedure (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.

### **Collaboration With the California Energy Commission (CEC)**

CEC Chair, Robert Weisenmiller, is the state's liaison between the NRC and Governor Jerry Brown. Collaboration with CEC could be very useful in this OII.

The Commission and its staff have successfully worked in a collaborative relationship with the CEC and its staff in several proceedings, including R.01-10-024, R.04-04-026, R.06-02-012 and R.06-05-027. This has promoted good communication between agencies sharing responsibilities for several matters, including the Renewable Portfolio Standards Program. The collaborative relationship will continue in this proceeding.

The CEC/CPUC collaborative staff is not a party, unlike the Commission's DRA. Collaborative staff may provide written or oral comments to the ALJs, assigned Commissioner, or any Commission decision-maker. That communication is not subject to the *ex parte* rules, and neither the communication, nor a notice of the communication, needs to be formally filed and served.

On the other hand, collaborative staff may provide written comments or proposals (e.g., "white papers") to the ALJs or assigned Commissioner which it would like more widely circulated. Collaborative staff may, but is not required to, serve such comments or proposals on the service list of this proceeding. The ALJ will ensure that written comments or proposals served by collaborative staff are included in the record, and that parties have an opportunity to provide comments and reply comments. Collaborative staff's comments and proposals may be discussed at hearing and workshops, if held, in the same way that any party's views are discussed.

Consistent with past practice, the Commission's Executive Director and

the CEC's Executive Director may continue to jointly review and refine the terms of the staff collaboration, as necessary.

### **Category of Proceeding and Need for Hearings**

The OII categorized this proceeding as ratesetting. No party appealed that determination pursuant to Rule 7.1(c). The OII preliminarily stated that this matter would require evidentiary hearings, and such hearings are set by this scoping memo for Phase 1.

### **Other Issues and Pending Matters**

Some parties asked the Commission to make available online some or all of the record of Application (A.) 04-02-026, where the Commission gave preliminary approval to SCE for its SGRP. This matter is being explored and we will issue a notice or ruling in the future addressing this issue.

Joint Parties moved to expand the scope of the OII to include review of SCE's and SDG&E's community relations and outreach related to SONGS. These activities would be included in our review of 2012 O&M expenses recorded in the SONGSMA. However, to ensure that review of community outreach is considered in conjunction with local emergency preparedness activities, this Scoping Memorandum and Ruling explicitly authorizes review of SCE's actions and expenditures for community outreach related to the SONGS. To that extent, Joint Parties' motion is granted.

SCE and SDG&E jointly moved for a blanket protective order to govern access to information produced by the utilities which each might claim is either proprietary or "confidential." Several parties oppose the joint motion. At the PHC, we instead directed the utilities to follow the Commission's more usual process generally described in Rules 11.4 and 11.5, and make a motion to file

non-redacted documents under seal or to seal the evidentiary record as to certain portions of hearing exhibits. Therefore, the joint motion is denied.

Proposed public versions of documents shall be carefully prepared to redact only the actual claimed confidential information, not whole paragraphs and pages surrounding the information. Motions made pursuant to Rule 11.4 and 11.5 shall include a list of the specific redactions to the "Public" version of the document and the specific legal authority for limiting public access.

Regarding information for the record which a utility claims contains "market sensitive" information, the utilities shall follow the process set forth in D.06-06-066, as modified by D.07-08-032.

### **Final Oral Argument**

A party in a ratesetting proceeding in which hearing was held has the right to make a Final Oral Argument (FOA) before the Commission, if the FOA is requested within the time and manner specified in the Scoping Memo or later ruling. (Rule 13.13.) Parties shall use the following procedure for requesting FOA.

Any party seeking to present FOA shall file and serve a motion at any time that is reasonable, but no later than June 24, 2013, the date post-hearing Reply Briefs are due to be filed and served. The motion shall state the request, the subject(s) to be addressed, the amount of time requested, recommended procedure and order of presentations, and anything else relevant to the motion. The motion shall contain all the information necessary for the Commission to make an informed ruling on the motion, providing for an efficient, fair, equitable, and reasonable FOA.

### **Intervenor Compensation**

A party who intends to seek an award of compensation pursuant to

§§ 1801-1812 should file and serve a notice of intent to claim compensation no later than February 7, 2013, 30 days after the January 8, 2013 PHC. The notice of intent shall conform with the requirements set forth in Rule 17.1, subsections (c), (d), and (e). Responses may be filed pursuant to Rule 17.1(g). Under the Commission's Rules, future opportunities may arise for such filings but such an opportunity is not guaranteed.

In this proceeding, parties intending to seek an award of intervenor compensation must maintain daily record keeping for all hours charged and a sufficient description for each time entry. Sufficient means more detail than just "review correspondence" or "research" or "attend meeting". In addition, intervenors must classify time by issue. When submitting requests for compensation, the hourly data should be presented in an Excel spreadsheet found on the Commission's webpage under "Intervenor Compensation Program." As reflected in the provisions set forth in § 1801.3(f) and § 1802.5, all parties seeking an award of intervenor compensation must coordinate their analysis and presentation with other parties to avoid duplication.

### ***Ex Parte* Communications**

In a ratesetting proceeding involving hearings, *ex parte* communications are permitted only if consistent with certain restrictions and are subject to reporting requirements. (§ 1701.3(c); Rules 8.1 through 8.5.)

### **Filing, Service and Service List**

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service. Parties must file certain documents as required by the Rules or in response to rulings by either the assigned Commissioner or the ALJ. All formally filed documents must be filed with the

Commission's Docket Office and served on the service list for the proceeding. Article 1 of the Rules contains all of the Commission's filing requirements. Rule 1.10 sets forth the rules for electronic filing, which replaces only the filing requirements, not the service requirements.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure for all documents, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, we require concurrent e-mail service to ALL persons on the service list for whom an e-mail address is available, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: I.12-10-013. In addition, the party sending the e-mail should briefly describe the attached communication; for example, Brief Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

The preliminary service list created by the OII has been revised to exclude those who have not requested continued service of documents and to add identified parties and others seeking "Information Only" status. The Official Service List for this proceeding is available on the Commission's web page. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list,

and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's web site meets that definition.

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or in San Francisco at (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

### **Presiding Officer**

The assigned Commissioner is Michel Florio. Pursuant to Rule 13.2(b), ALJ Melanie Darling is designated as the presiding officer.

### **IT IS RULED that:**

1. The final categorization of these proceedings is ratesetting and hearings are required for the purpose of Article 7 of the Commission's Rules of Practice and Procedure (Rules).
2. The Order Instituting Investigation (OII) will be divided into multiple Phases, each with its own pre-hearing conference (PHC) and Scoping Memorandum.
3. The issues for Phase 1 of the OII are as set forth in the body of this ruling unless amended by a subsequent ruling or order of the Presiding Officer.
4. Issues related to the future operation of San Onofre Nuclear Generating Station (SONGS) as a reliability source shall be considered in the Long-Term Procurement Planning proceeding, Rulemaking 12-03-014.
5. The procedural schedule for Phase 1 is as set forth in the body of this ruling unless amended by a subsequent ruling or order of the Presiding Officer.

6. Phase 1 evidentiary hearings will be held on May 13, 2013 through May 17, 2013 at the Commission Courtroom, Stat Office Building, 505 Van Ness Avenue, San Francisco, CA 94102, as needed.

7. Parties may file opening briefs no later than February 25, 2013 to address the legal issues related to the authority of the Commission to order a refund of rates as set forth in the body of this ruling. Reply Briefs may be filed no later than March 7, 2013.

8. Responses to data requests shall generally be made within ten working days. If a longer response time is required, the party preparing the response shall so notify the requesting party and indicate when the response will be sent.

9. Any party who determines that a previous data request response is incorrect, out of date, or in error in some way (e.g., due to subsequent party action), shall correct the response and serve notice to the Service List that a correction has been made to the particular data request.

10. All Parties shall conform with the Commission's Rules of Practice and Procedure, comply with Administrative Law Judge (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.

11. The Commission and its staff may work in a collaborative relationship with the California Energy Commission and its staff in this proceeding. The Collaborative staff are not a party, and may provide written or oral comments to the ALJ, assigned Commissioner, or any Commission decision-maker. That communication is not subject to the *ex parte* rules, and neither the communication, nor a notice of the communication, needs to be formally filed and served.

12. The ALJ will ensure that written comments or proposals served by Collaborative staff are included in the record, and that parties have an opportunity to provide comments and reply comments.

13. The November 16, 2012 motion by Joint Parties to Add Scoping Memo Issues is granted to the extent it clarifies that a review of 2012 community outreach expenses related to the SONGS outages will occur in Phase 1.

14. The January 4, 2013 joint motion by Southern California Edison Company and San Diego Gas & Electric Company for Protective Order is denied.

15. Requests for Final Oral Argument are due no later than June 24, 2013.

16. *Ex parte* communications are permitted with restrictions and are subject to reporting requirements as set forth in Rules 8.2-8.5.

17. A party who intends to seek an award of intervenor compensation should file and serve a notice of intent to claim compensation no later than February 7, 2013, 30 days after the January 8, 2013 PHC. The notice of intent shall conform with the requirements set forth in Rule 17.1, subsections (c), (d), and (e).

18. At the conclusion of hearings, the Presiding Officer will adopt a page limit for opening briefs and reply briefs.

19. Consistent with Rule 1.10, an electronic service protocol is in effect.

20. Pursuant to Rule 13.2, Administrative Law Judge Melanie M. Darling is the Presiding Officer.

Dated January 28, 2013, at San Francisco, California.

/s/ MICHEL PETER FLORIO  
Michel Peter Florio  
Assigned Commissioner

/s/ MELANIE M. DARLING  
Melanie M. Darling  
Administrative Law Judge