BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Joint Application of Southern California Edison Company (U 338-E) and San Diego Gas & Electric Company (U 902-E) to Find the 2014 SONGS Units 2 and 3 Decommissioning Cost Estimate Reasonable and Address Other Related Decommissioning Issues.	)	Application 14-12-007 (Filed December 10, 2014)

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S OPENING BRIEF

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1. INTRODUCTION

Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission" or "CPUC") and the briefing schedule established by Administrative Law Judge Maribeth Bushey,[1] the Alliance for Nuclear Responsibility ("A4NR") files its Opening Brief in the 2014 SONGS Units 2 and 3 Decommissioning Cost Estimate ("DCE") and Related Decommissioning Issues Joint Application filed by Southern California Edison Company ("SCE") and San Diego Gas and Electric Company ("SDG&E") ("Joint Application"). A4NR's Opening Brief makes use of the common briefing format prepared by SCE with input from the parties. Any gaps in the numbering below reflect issues from the common briefing format on which A4NR has no position.

2. ARGUMENT/DISCUSSION

2.1. Reasonableness of SONGS 2&3 Decommissioning Cost Estimate

2.1.1. Reasonableness of Estimate -- $4.411 Billion

SCE and SDG&E have failed to meet their burdens of proving by a preponderance of evidence that the DCE is reasonable. Despite the requirements of Cal. Pub. Util. Code §§ 8326 and 8327, the DCE relies upon conspicuously outdated, non-conservative assumptions about the time spent nuclear fuel ("SNF") is likely to remain at the SONGS site. The time SNF will stay at SONGS is a material factor in the cost of decommissioning Units 2 and 3: the DCE attributes 29% ($1,276,196,000) of the total cost to spent fuel management.[2] The failure of SCE and SDG&E to establish the reasonableness of this core assumption renders the DCE incapable of supporting any *"changes in electrical rates or charges"* under Cal. Pub. Util. Code §8327.

[1] Transcript, p. 525, lns. 19 – 22.
[2] Exhibit-01, Appendix A-1, Table 1-1.

2.1.2. Reasonableness of SDG&E-only Estimate

Because the SDG&E-only estimate is a derivative of the larger DCE of $4.411 billion, it suffers the same fatal deficiency caused by failing to establish the reasonableness of the DCE's SNF assumptions. The SDG&E-only estimate cannot serve as a basis for any *"changes in electrical rates or charges"* under Cal. Pub. Util. Code §8327.

2.2. Reasonableness of SCE's Proposed SONGS 2&3 Decommissioning Strategy, Plans and Assumptions

2.2.2.4. DOE Acceptance of Spent Fuel

Cal. Pub. Util. Code §8326(a)(2) requires both SCE and SDG&E to include in the DCE a *"description of changes in regulation, technology, and economics affecting the estimate of costs"* of decommissioning SONGS 2 & 3, and §8326(b)[3] requires that the decommissioning costs estimate *"be periodically revised."*

The Joint Application builds its DCE on the indefensibly stale and non-conservative assumption that the federal government will begin taking delivery of SNF in 2024. As the Commission noted in D.14-12-082, the 2024 date used in the 2012 NDCTP was derived from *"DOE information which has not been updated for at least one triennial cycle"*[4](i.e., the 2009 NDCTP).

> *We find there is little more than speculation in the record to support the projected date when DOE will begin to accept SNF for long-term storage ... We agree that 2024 is optimistic ... even if we are skeptical of a near-term political solution at the NRC, the courts or in the U.S. Congress.*[5]

[3] Unless otherwise noted, all statutory references in this Opening Brief are to the Cal. Pub. Util. Code.
[4] D.14-12-082, p. 22.
[5] *Id.,* pp. 22 – 23.

A remarkable feature of the current DCE's assumption about a 2024 DOE acceptance date is that SCE and SDG&E abandon even the passive adjustment made in the 2012 NDCTP to reflect the passage of time (without progress) since the previous assumption had been made.[6] Effectively, while offering no evidence of progress on SNF issues nationally, SCE and SDG&E would have the Commission believe that we are nearly four years closer to a DOE acceptance date than when the 2012 NDCTP filing was made.

SCE and SDG&E take this demonstrably stale assumption, bootstrap it into a scenario where all Unit 2 and Unit 3 SNF has been transferred to DOE by 2049,[7] and ceremoniously proclaim SONGS decommissioning to be fully funded and trust contributions no longer needed.[8] SCE's prepared testimony, however, is candid about just how shaky its assumption of a 2024 DOE acceptance date is:

- *In light of the ongoing uncertainty regarding the timing of DOE's performance, SCE continues to assume that DOE will open its repository and commence accepting fuel from U.S. commercial nuclear facilities in 2024...*[9]
- *It would be wholly speculative to make any other assumption at this time, and the assumption made here is reasonable for purposes of estimating decommissioning costs at this time.*[10]
- *SCE acknowledges that it will be important to update this assumption in future decommissioning cost estimates as additional information becomes available.*[11]

[6] SCE witness Thomas Palmisano explained that the 2012 NDCTP had adjusted an earlier assumed DOE acceptance date of 2020 (Transcript, SCE-Palmisano, p. 61, lns. 5 – 17; p. 85, ln. 26 – p. 86, ln. 6.) and that the DCE in this proceeding *"reflects what we saw, what we assumed in late 2013 if you will."* Transcript,SCE-Palmisano, p. 86, lns. 16 – 18.
[7] Exhibit-01, Appendix A-3, Table 3.
[8] As stated by Edison International CEO Ted Craver in his July 31, 2014 prepared remarks for a quarterly earnings call with financial analysts: *"The bottom line is that we have $2.9 billion in present value costs versus $3.1 billion in present value of the trust funds, which leads us to conclude that San Onofre decommissioning is now* ***fully funded*** *and future contributions are not needed."* Exhibit-38, p. 1, incorporating by reference A4NR Protest, p. 2.
[9] Exhibit-01, p. 14, lns. 13 – 15.
[10] *Id.*, p. 14, lns. 17 – 19.

- *It is important to note that the ES/CBI DCI is not an engineered estimate for each decommissioning activity. In addition, this estimate is necessarily based on assumptions regarding certain project costs that remain unknowable at this time, such as the timing and rate of the removal of the spent fuel from the SONGS site by DOE.*[12]

- *SCE recognizes, however, that due to DOE's lack of progress in siting and constructing its repository,* ***this schedule is likely to be extended in future updates*** *to the SONGS 2 and 3 decommissioning cost estimate.*[13] (emphasis added)

- *DOE currently has no plans, program, or schedule in place for acceptance of utility spent fuel. However, for purposes of this decommissioning cost estimate, certain simplifying assumptions must be made regarding the schedule and rate of DOE performance.*[14]

- *Additionally, SCE is reviewing available information from DOE to determine if the DOE start date assumption requires updating. The DCE will be revised accordingly as new information becomes available.*[15]

SCE witness Robert Bledsoe testified that there is a greater than 50% likelihood that the SONGS 2&3 SNF removal schedule will be extended in future updates to the DCE.[16] Insisting that "*Edison never characterized it as an optimistic assumption,"*[17] Mr. Bledsoe said, *"We believe the assumption was a reasonable assumption at the time it was made. We believe that if there is – if time continues to progress and there is no new information from the Department of Energy, that it is likely that we will need to change that assumption."*[18]

The unmistakable result of embedding in the DCE a 2024 date, which the Commission has previously labeled "*optimistic"* and based on *"little more than speculation,"*[19] is to

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[11] *Id.,* p. 14, lns. 19 – 20.
[12] *Id.,* p. 23, lns. 11 – 14.
[13] *Id.,* p. 25, lns, 7 – 9.
[14] Exhbit-01, Appendix A-1, p. A-1-26.
[15] *Id.*
[16] Transcript, SCE-Bledsoe, p. 312, ln. 15.
[17] *Id.,* p. 314, lns. 26 – 27.
[18] *Id.,* p. 314, lns. 10 – 16. Mr. Bledsoe's testimony is ambiguous as to whether *"at the time it was made"* refers to 2008, when the 2020 estimate was made for the 2009 NDCTP; or 2012, when the estimate was passively extended to 2024; or late 2013, when the decision was made to use the 2024 date for this proceeding.

undermine the Commission's oft-stated *"strong preference"* regarding intergenerational equity.[20] SCE's prepared testimony does not hesitate to identify the intended solution should revisions in the DOE 2024 acceptance date trigger additional SNF storage costs at SONGS:

> *The SONGS Participants responsible for decommissioning will periodically review the amount of cash contributions required for the decommissioning fund to ensure that withdrawals do not inhibit the ability of the licensee to complete NRC License Termination, Spent Fuel Management, and Site Restoration.* ***The SONGS Participants will obtain authorization as necessary through the ratemaking processes to provide for future contributions if required.*** (emphasis added)[21]

Testimony from SCE's economist, Dr. Paul Hunt, highlights the intergenerational equity concerns that would accompany premature distributions of trust proceeds to customers:

> *Well, in this instance I think the Commission should strive to limit as much as possible the responsibility of customers who did not receive power from the SONGS units to pay for decommissioning. So that would argue for – to – you would be – you would be very concerned about distributing money prematurely if it resulted in an obligation on future customers.*[22]

The combination of the DCE's assumed 2024 DOE acceptance date with SCE's and SDG&E's dual requests to suspend current contributions to the decommissioning trust will transfer the risk of extended SNF storage costs to future customers. This potential for intergenerational inequity can only grow as time passes, with the proportion of SCE and SDG&E customers "*who did not receive power from the SONGS units"* actuarially certain to increase. On cross-examination, Dr.

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[19] D.14-12-082, p. 22.
[20] *Id.,* p. 14, citing D.95-12-055, 63 CPUC2d 570 at 612.
[21] Exhbit-01, Appendix A-3, p. A-3-7. Similar language appears in SCE's Irradiated Fuel Management Plan submitted to the NRC on September 23, 2014, along with a statement that an annual report to the NRC will include, "*if the funds accumulated do not cover the projected cost, a plan to provide additional funding assurance using one of the methods allowed by NRC regulations."* Exhibit-38, A12, pp. 5 – 7.
[22] Transcript, SCE-Hunt, p. 166, lns. 15 – 24.

Hunt agreed that 20 years from now there will be fewer customers who received electricity from SONGS than will be the case five years from now.[23] He could not, however, explain how his concerns about intergenerational equity might overlap with the uncertainty about how long SCE and SDG&E must provide onsite storage of SNF: *"I don't know. I've not contemplated that particular question."*[24]

A prudent approach to establishing the DCE would be to utilize more current assumptions about the time that SNF is likely to remain onsite at SONGS, and to confirm that the Nuclear Decommissioning Trusts are adequately funded to meet such obligations before declaring a contributor's holiday at the expense of future ratepayers. Although the U.S. Nuclear Regulatory Commission's Generic Environmental Impact Statement ("GEIS"), issued with the 2014 adoption of the 10 C.F.R. 51.23 continued storage decision, is cited for other purposes in Exhibit-01 as *"Reference 9,"*[25] the Joint Application does not explain why SCE and SDG&E did not utilize the SNF storage information (and much longer timeframes) contained in that document. In the words of the GEIS:

> *The NRC has analyzed three timeframes that represent various scenarios for the length of continued storage that may be needed before spent fuel is sent to a repository. The first, most likely, timeframe is the short-term timeframe, which analyzes 60 years of continued storage after the end of a reactor's licensed life for operation. The NRC acknowledges, however, that the short-term timeframe, although the most likely, is not certain. Accordingly, the GEIS also analyzed two additional timeframes. The long-term timeframe considers the environmental impacts of continued storage for an additional 100 years after the short-term timeframe for a total of 160 years after the end of a reactor's licensed life for operation. Finally, although the NRC considers it highly unlikely, the GEIS includes an analysis of an indefinite timeframe, which assumes that a repository*

[23] Transcript, SCE-Hunt, p. 167, ln. 22.
[24] *Id.,* p. 168, lns. 15 – 16.
[25] Exhibit-01, Appendix A-2, p. A-2-29.

does not become available.[26]

SCE's Rebuttal Testimony calculated that a ten-year delay in the DCE's assumed 2024 DOE acceptance date would add $149 million (2014 dollars) to the cost of SNF storage.[27] If SCE succeeds in moving all SNF into dry casks by June 1, 2019, this cost increase would only affect dry storage costs, which SCE otherwise estimates would be $396,267,000 (2014 dollars) during the 6/1/2019 thru 12/31/2049 period[28] – at which point SCE assumes that all SNF would have been removed from SONGS. A ten-year delay would increase dry storage costs by some 38%. SCE witness Robert Bledsoe testified that the $149 million cost sensitivity could be scaled upward or downward linearly, with a one-year delay costing $14.9 million and a 100-year delay costing $1,490,000,000.[29]

Rather than the roughly 38 years of post-operation SONGS 2&3 onsite SNF storage SCE assumes, A4NR believes a reasonable estimate for trust-sizing would extend at least to the median of the *"long-term timeframe"* evaluated in the NRC GEIS, if not the full 160 years. Extending the SNF storage period to reflect the 80-year median would cause a conclusion that dry storage costs have been underestimated by $625.8 million.[30] Using the full *"long-term timeframe"* analyzed by the NRC GEIS increases this funding deficit to $1,817.8 million.[31]

These are material amounts. They do not include several other potential cost drivers identified in the record that could become unavoidable if SNF stays onsite at SONGS for an

[26] Exhibit-38, p. 1, incorporating by reference A4NR Protest, p. 4, which quoted NRC GEIS for Continued Storage of Spent Nuclear Fuel, Executive Summary, p. xxx.
[27] Exhibit-07, p. 25, ln. 20.
[28] Exhbit-38, p. 7, A13.
[29] Transcript, SCE-Bledsoe, p. 281, ln. 24 – p. 283, ln. 26.
[30] (80 – 38) X $14.9 million = $625.8 million.
[31] (160-38) X $14.9 million = $1,817.8 million.

extended period. The DCE attributes a zero cost factor to two of these, premised on explicit assumptions that (1) DOE will accept SCE's canistered spent fuel despite the present lack of a formal commitment and (2) that no dry transfer facility will be necessary to transfer SNF canisters for transport.[32] A third significant potential cost driver is not in the record, and mentioned here only for argument : the 20-year limitation of the Coastal Development Permit issued by the California Coastal Commission to expand the SONGS 2&3 ISFSI, and a required new analysis in 2035 of alternative offsite and onsite locations for SNF storage prior to delivery to DOE *"including potential locations that are landward and/or at a higher elevation within areas made available by the decommissioning of SONGS Units 2 and 3."*[33]

None of these three potential cost drivers is incorporated into A4NR's criticism of the reasonableness of the DCE's SNF cost assumptions, but each is mentioned here to emphasize the pragmatism of sizing the decommissioning trusts based on a more realistic assumption about the time the trusts will be expected to fund SNF management.

2.3. Process for the Review and Approval of SONGS 2&3 Decommissioning Costs

2.3.2. Reasonableness Review of Costs for Completed Activities

2.3.2.1. Reasonableness Review Standard

[32] Exhibit-38, pp. 7 – 8, A15. SCE witness Thomas Palmisano testified, *"The language in the DOE standard contract is somewhat vague. It does talk about a DOE-provided canister. To date DOE has not developed a design. They've had a couple aborted attempts. So industrywide virtually all the manufacturers and utilities have gone with these multipurpose canisters that could be packaged in different overpacks or disposal mechanisms. And quite frankly, the work that's got to be done with the DOE is to get them to accept sealed canisters out of these systems ... The assumption is there will be a mechanism for DOE to either take the current canister or for what would be called the dry transfer system if it had to be repackaged. If you look at the NRC's recent continued storage decisions, they talk about dry transfer systems. So there's options down the road, but it is an assumption that DOE will accept them in some fashion in the way they're packaged."* Transcript, SCE-Palmisano, p. 148, ln. 14 – p. 149, ln. 10.

[33] October 5, 2015, California Coastal Commission staff report attached to CDP #9-15-0228, Special Condition 2.

Despite being repeatedly spurned by the Commission, SCE again attempts to propagate the burden-shifting, abbreviated reasonableness review of decommissioning costs that it achieved years ago by settlement, on a one-time only basis, for Unit 1's Phase I. Under what SCE describes as *"a slightly modified standard"*[34] for the annual Unit 2 and Unit 3 reasonableness reviews, if recorded costs for a completed decommissioning activity *"are bounded"*[35] by the prior year's *"summary level forecast of the costs,"*[36] then SCE's expenditures for that activity "*would be presumed reasonable."*[37] The punchline: *"Any entity claiming that SCE acted unreasonably would, therefore, bear the burden of proving SCE acted unreasonably."*[38]

The Commission's most recent reproach of SCE's envisioned fantasy reasonableness review came in D.14-12-082, which disallowed all of SCE's 2009 – 2012 Unit 1 costs ($13.9 million) because of failure to satisfy even the relaxed standard applied to Unit 1. A *"paucity of direct testimony"* combined with an *"absence of supporting documentation, calculations or linkage to previous expectations"* and supplemented by *"conflicting tables of activities and costs"* justifiably earned the Commission's sanction.[39] More significantly for the current proceeding, the Commission explained that SCE's belief that D.10-07-047 *"decoupled the reasonableness review of actual decommissioning expenditures from the forecasted cost estimate"*[40] is wrong:

[34] Exhibit-01, p. 45, ln. 7.
[35] *Id.,* ln. 19.
[36] *Id.,* ln. 12.
[37] *Id.,* ln. 20.
[38] *Id.,* lns. 20 – 21.
[39] D.14-12-082, pp. 46 – 47.
[40] *Id.,* p. 45, citing SCE's Reply Brief at p. 3.

SCE erroneously concluded it only needed to identify the actual costs and why they were incurred. This conclusion ignores that costs and the managerial decision to incur the costs must be reasonable.[41]

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In that decision [D.10-07-047]*, the Commission declined to extend to other Phases and other power plants, a presumption of reasonableness for SONGS 1 Phase I costs (created by settlement) if they were less than the most previously adopted decommissioning cost estimate. Instead, we affirmed the importance of a more thorough factual review of recorded decommissioning expenses. The Commission said,*

> *At this time, we find that a full after-the-fact review of both costs and conduct best serves the interests of ratepayers and the public ...*[42]
>
> ***
>
> *...More importantly, we find that the Commission's duty to review decommissioning activities to assure the costs were prudently incurred, in addition to being reasonable, is too significant to lump into a presumption solely based on costs.*[43]

Under cross-examination in this proceeding, SCE witness Russell Worden described several of the arbitrary truncations and open-ended ambiguities that render the SCE proposed review standard unworkable:

- the annual reasonableness review would only involve projects completed during the previous calendar year,[44] and would not include the status of under-completed work.[45]
- the *"distinction between scheduling information and updates"*[46]remains ambiguous, as does whether they would be addressed by the advice letter process or the DCE approval process (*"I couldn't speculate about changes of a month or two ..."*[47]).

[41] *Id.,* p. 45.
[42] *Id.,* p. 46, citing D.10-07-047 at p. 44.
[43] *Id.,* citing D.10-07-047 at p. 48.
[44] Transcript, SCE-Worden, p. 188, ln. 28. Mr. Worden did allow for a large exception to the calendar year limit on the reasonableness review: *"We would ask the Commission to recognize circumstances in which schedule slippage or schedule acceleration would have altered the recorded expenses from one calendar year to the next. And we would include such a reconciliation in our testimony." Id.,* p. 215, lns. 15 – 21.
[45] *Id.,* p. 189, ln. 3.
[46] *Id.,* p. 190. lns. 21 – 22.

- schedule changes will unavoidably influence individual project costs (*"They are tied in some way. They always would be in some way because you would have* [to allocate] *the undistributed expenses."*[48]).
- all expenses *"would necessarily have to be identified as being under one of these line items"*[49] in the most recently approved DCE, but "*there could be unexpected expenses that we had categorized in that area."*[50]
- these variances *"would be quantitative and qualitative"*[51] because *"emergent expenses ... is* [sic] *one of the many challenges in the project ..."*[52]
- each line item target would include a pro rata 25% contingency factor.[53]
- SCE's is proposing to average overspending and underspending amongst various activities completed in that year.[54]
- there would not have to be a demonstration that averaged activities were related because, *"In my view they're all related."*[55]

Apart from the obvious cherry-picking opportunities provided by the schedule-shifting, project-redefining, cost-averaging attributes of SCE's proposal – all cemented by shifting the burden of proving reasonableness – it was not clear from Mr. Worden's testimony what amount of regulatory work reduction SCE claims would be accomplished by its proposal:

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[47] *Id.,* p. 190, lns. 23 – 24.
[48] *Id.,* p. 194, lns. 10 – 12.
[49] *Id.,* p. 199, lns. 12 – 14. *"The detailed line items in the DCE are what we would propose to follow as we organize the reasonableness showing that we propose to submit annually." Id.,* p. 204, lns. 7 – 10.
[50] *Id.,* p. 199, lns. 15 – 17.
[51] *Id.,* p. 199, lns. 21 – 22.
[52] *Id.,* p. 199, ln. 27 – p. 200, ln. 1.
[53] *Id.,* p. 208, ln. 20; p. 201, ln. 1.
[54] *Id.,* p. 213, lns. 12 – 13; p. 214, ln. 27.
[55] *Id.,* p. 214, ln. 23.

- *"Under the Edison proposal, we still retain the obligation or burden to provide detailed testimony. Our proposal does not diminish our obligation to provide detailed testimony when we make these annual showings."*[56]
- *"We would submit detailed testimony in our direct submittal when we file the reasonableness review. So it would not – I wouldn't want the record to assume or conclude that it would just be a line item and a dollar value. We would propose to submit direct testimony, and the Commission would have to conclude that we had provided sufficient detail."*[57]

In A4NR's judgment, SCE has demonstrated no public benefit that would result from the mechanical application of a presumption of reasonableness based on a manipulable comparison to an approved DCE. Nothing in SCE's testimony dispels the concerns previously expressed by the Commission in D.14-12-082 and D.10-07-047. If SCE's decommissioning expenditures for particular work projects come in beneath the amounts forecast for those activities in the most recent approved DCE, SCE will likely be well on its way to establishing the reasonableness of its costs and conduct. If so, SCE need not resort to its proposed burden-shifting, and resultant opportunity for gamesmanship, in order to do so.

2.4. Navy Easement and Related Issues

2.4.1. Site Restoration Requirements

Despite a massive reduction in the cost attributed to removing all subsurface structures in compliance with the Navy Easement (from $1,335 million to $357 million when calculated in

[56] *Id.,* p. 230, ln. 27 – p. 231, ln. 4.
[57] *Id.,* p. 207, lns. 2 – 10.

2008 dollars, a reduction of 73%[58]), the Joint Application persists in seeking relief from meeting a requirement both SCE and SDG&E admit has been fully funded by collections from past ratepayers. As Exhibit-01 describes the existing, nearly five-decades-old, legal obligation of the SONGS owners:

> *This easement currently provides that the Navy can require SCE to remove all improvements in their entirety upon termination of the easement. Most other U.S. nuclear facilities are located on privately-owned land. At these facilities, after site decontamination is completed, any remaining structures and foundations below 3-feet underground are typically abandoned in place, resulting in the avoidance of significant decommissioning costs.*[59]

Offering no environmental or ethical rationale for why the SONGS owners should be allowed to leave such sub-surface debris on public land and ignore the restoration standard in effect for the entire operating life of the plant, Exhibit-01 continues:

> *As stewards of its customers' decommissioning funds for SONGS 2 & 3, SCE desires to fulfill the decommissioning obligation in a cost-effective, environmentally responsible manner. SCE, therefore, desires to amend the Navy and CSLC*[60] *easements to allow for end states for the onshore and offshore SONGS 2 & 3 sites that meet both these objectives.*[61]

Exhibit-01's glib recital of the CSLC's past willingness to accept abandonment in place of the Unit 1 conduits, as an environmentally preferable alternative to removal, obscures the significant distinction from SCE's proclaimed intent regarding the Navy Easement: SCE offers no *"environmentally preferable"* alternative, merely non-enforcement of a compliance

[58] Exhibit-38, pp. 13 – 14, A23.
[59] Exhibit-01, p. 47, lns. 4 – 9.
[60] CSLC is an acronym for the California State Lands Commission, which granted easements for the offshore circulating water conduits for Units 1, 2, and 3. The CSLC easements require the complete excavation and removal of these conduits after the permanent closure of the plants.
[61] Exhibit-01, p. 47, lns. 15 – 18.

requirement for which it has collected ratepayer funds since 1988. It is difficult to understand how this constitutes *"stewardship"*[62] of the decommissioning funds it has collected from prior ratepayers. As with any other legally binding requirement, cost reduction gained from non-compliance might conceivably reduce the likelihood of seeking additional trust contributions from future ratepayers – but one would never call such evasion "*stewardship."* Nor can it be argued that avoidance of this sub-surface obligation is *"environmentally responsible."* Transferring liability for any future cleanup to federal taxpayers is a time-honored practice among polluters everywhere, but it would be wrong to justify this evasion as simply *"cost-effective."* The Commission should not consider such conduct reasonable or prudent.

Exhibit-01 attempts to gain cover for this unsavory stratagem by invoking Ordering Paragraph 10 from D.10-07-047, in which the Commission (on which none of the present members served) directed then Executive Director Paul Clanon to make a written request, *"along with"* SCE and SDG&E, to the Navy to *"clarify the applicable site restoration and remediation standards"* and to subsequently *"meet and confer"* with the Navy *"to attempt execution of an amended site lease contract that explicitly reflects such clarified standards."*[63] Absent from Exhibit-01's discussion is the factual predicate in D.10-07-047's Finding of Fact No.

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[62] The SONGS owners have determined that the decommissioning process *"will be guided by the core principles and fundamental values of Safety, Stewardship, and Engagement."* Exhibit-01, p. 4, lns. 11 – 14.

[63] Exhibit-01, p. 48, lns. 3, 5, 7 – 9. The July 1, 2011 letter to the Navy from Mr. Clanon, which indicated *"SCE and SDG&E have authorized the CPUC to send this letter on their behalf,"* painted a particularly stark picture on behalf of the Commission: "*... we interpret the Easement to mean SCE and SDG&E are required to remove all below-grade structures and foundations regardless of depth below grade or below the water table, even after radiological remediation is completed. Many of these foundations extend to approximately 50-60 feet below grade, 30-40 feet below the top of the water table, and 20-30 feet below sea level. SCE and SDG&E also would be required to backfill the enormous void that would be created by this excavation with fill material that does not contain detectable licensed material and that would have to be purchased and transported from offsite before final site restoration could be completed....According to an Independent Review Panel created by the CPUC to review the SONGS Units 2 and 3 decommissioning estimate, "[t]he added cost in the SONGS 2&3 decommissioning estimate to remove the material not included in the [Diablo Canyon] estimate was calculated based on the 2008 decommissioning studies to be approximately ... $1,335 million (2008 dollars)."* (footnote omitted) Exhibit-38, p. 13, A23.

7, that waste removal costs may be overestimated because the Navy *"has not yet defined the standard to which the land must be returned at the time of license termination."*[64] Based upon Exhibit-01's acknowledgment that the *"easement currently provides that the Navy can require SCE to remove all improvements in their entirety upon termination of the easement,"*[65] any prior purported ambiguity does not appear to be a barrier any longer to full compliance with the easement. The clarification provided by Exhibit-01 is that SCE prefers not to comply.

The testimony in this proceeding indicates a radical change in costs, but no change in SCE and SDG&E attitude, since Mr. Clanon's alarmist letter. The decommissioning cost attributable to removal of all subsurface structures in compliance with the Navy Easement is now estimated at $346 million in 2014 dollars,[66] and some $144 million[67] (42%) of that is due to the requirement that all clean concrete and demolition debris be disposed of at an out-of-state Class III landfill pursuant to State of California Executive Order D-62-02.18.[68] As explained by SDG&E witness Adam Levin, Executive Order 62-02.18 *"potentially prevents municipal landfill waste by governor order to be disposed of from a nuclear facility in the state of California."*[69] Mr. Levin testified that he did not know whether the SONGS plant owners have sought any variance from this Executive Order.[70]

SCE witness Nino Mascolo, who described himself as "*the lead SCE representative in*

[64] D.10-07-047, FOF 7. In the 2012 NDCTP, the Commission softened its concern to *"SCE and SDG&E lack key information to estimate waste removal costs ..."* D.14-12-082, FOF 11.
[65] *Id.,* p. 47, lns. 5 – 6. SCE's Rebuttal Testimony acknowledges, "*The Navy has indicated a desire to go through the National Environmental Policy Act process prior to extending the* [May 11, 2024] *easement term or issuing a new real estate instrument, and amending any current easement conditions."* Exhibit-07, p. 22, lns. 13 – 15.
[66] Exhibit-20, p. 11, Section B, lns. 1 – 19; Transcript, SDG&E-Levin, p. 382, ln. 4 – p. 383, ln. 2.
[67] Transcript, SDG&E-Levin, p. 406, lns. 3 – 11.
[68] Exhibit-20, p. 6, lns. 14 – 16.
[69] Transcript, SDG&E-Levin, p. 381, lns. 18 – 21.
[70] *Id.,* p. 382, ln. 3.

discussions with the Navy with regard to the plant site easement,"[71] professed to be "*an optimist ... that the Navy will accept something less than full removal."*[72] He was realistic, though, about why that may not be the case:

> *However, I have also discussed this with others that have had more experience than I have in dealing with the military, a former officer that used to work for the Department of the Navy. And they have cautioned me not to be that optimistic because this is the Navy's property. And they may not know what they want to do with this property in the future and they may very well say, 'You need to remove everything because we don't know what we,' we being the Navy, 'want to do with the property, therefore, remove it all.'*
>
> ***
>
> *... And the example given to me was* ***if this were your land, would you want somebody to leave their stuff on it?*** *So I am optimistic, however there is a strong dissenting view.*[73] (emphasis added)

A4NR believes that the Commission, on behalf of California ratepayers and taxpayers, should focus on that very question: ***"if this were your land, would you want somebody to leave their stuff on it?"*** Attempting to micromanage SCE's discussions with the Navy is unnecessary, but the Commission should feel a need to formally disavow the spurious premise which prompted its earlier entanglement. A4NR does not doubt the allure of a potential $346 million decommissioning cost reduction if SCE and SDG&E can escape their leasehold obligations, but any litterbug windfall should be balanced against the moral obligation to ratepayers who – since the trusts were first established in 1988 -- have paid the full cost of removal. The Commission need not speculate that some future round of military base closures will transform the Navy Easement into a public beach: the revulsion against surreptitious

[71] Transcript, SCE-Mascolo, p. 268, lns. 2 – 4.
[72] *Id.,* p. 276, lns. 8, 10 – 11.
[73] *Id.,* p. 276, ln. 12 – p. 277, ln. 2.

dumping on publicly owned land is universal. SCE and SDG&E propose to leave subsurface debris at SONGS that would not even be allowed in a California municipal landfill. The Commission can no more pretend not to notice than it can ignore the power of its own influence.

D.14-02-024 provides instructive guidance. The Commission approved **a $401 million increase in decommissioning costs** at the Humboldt Bay Nuclear Power Plant based in part upon meeting a newly intensified cleanup standard recommended by PG&E's Community Advisory Board. As D.14-02-024 observes:

> *In 2009, PG&E based its remediation estimates on earlier studies of likely land use and residual radiological contamination levels currently set by the NRC in agreement with the U.S. Environmental Protection Agency (EPA). However, the current federal regulatory framework provides for future EPA involvement at decommissioned NRC-licensed sites upon finding residual presence of certain contamination levels (e.g., in groundwater) in excess of EPA limits. The NRC also requires opportunities for various state and local authorities and the public to weigh in on end-state site conditions.*
>
> *To 'anticipate the direction' expected of it, PG&E states it initiated communications with these governmental entities and helped form a Citizens Advisory Board (CAB). After discussions with stakeholders and review of lessons learned at other remediated facilities, PG&E concluded it was more prudent to assume end-state Residential use and the lower EPA limits in the 2012 DPR.*
>
> *DRA argues that PG&E is merely speculating that higher standards will apply in the future. However, the Commission acknowledges uncertainty, and finds some merit in PG&E's effort to assess and incorporate an expectation of regulatory and public tendency towards higher standards of site clean-up. As more nuclear facilities begin decommissioning, we anticipate efforts to reduce the confusion and to improve coordination of state and federal requirements. Following the tragic and broad failure of radiological containment at the Fukushima nuclear facilities, we also think that public and regulatory interest is heightened and reasonably likely to lead to lower acceptable limits for residual radiological contamination in the future.*[74]

[74] D.14-02-024, pp. 23 – 24, footnotes omitted.

2.5. Amount of Decommissioning Trust Fund Contributions

2.5.1. SCE Contribution Levels

2.5.1.1. 2014

As discussed in Section 2.1.1. above, SCE has failed to meet its burden of proof that the DCE's assumptions regarding SNF are reasonable. Failing to establish the reasonableness of this core assumption renders the DCE incapable of supporting any *"changes in electrical rates or charges"* under Cal. Pub. Util. Code §8327. SCE's 2014 contribution levels should remain the same as determined by D.14-12-082.

2.5.1.2. 2015 and later

SCE's failure to meet its burden of proof that the DCE's assumptions regarding SNF are reasonable renders the DCE incapable of supporting any *"changes in electrical rates or charges"* under Cal. Pub. Util. Code §8327. SCE's 2015 and later contribution levels should remain the same as determined by D.14-12-082.

2.5.2. SDG&E Contribution Levels

As discussed in Section 2.1.1 above, SDG&E has failed to meet its burden of proof that the DCE's assumptions regarding SNF are reasonable. Failing to establish the reasonableness of this core assumption renders the DCE incapable of supporting any *"changes in electrical rates or charges"* under Cal. Pub. Util. Code §8327. SDG&E's contribution levels should remain the same as determined by D.14-12-082.

3. CONCLUSION

The Commission has long recognized that its members have a "*fiduciary responsibility ... to be good stewards of ratepayer funds"*[75] and that SCE and SDG&E each owes a *"primary*

[75] D.14-01-036, p. 67. See also D.00-07-017, COL 1, and D.03-06-070, p. 16.

fiduciary obligation to operate in the best interests of its ratepayers and shareholders." [76] It is well understood that SCE and SDG&E ratepayers are the ultimate beneficiaries of the decommissioning trusts, and that the Commission is their sole representative under the master trust agreements. A fiduciary must give *"priority to the best interest of the beneficiary."* *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 222.

The multi-decade nature of the decommissioning trusts requires a more precise delineation of "*best interest of the beneficiary"* than simply invoking an amorphous, undifferentiated class of *"ratepayers"* that is static over time. The evidentiary record in this proceeding requires the Commission, SCE, and SDG&E to carefully balance competing fiduciary duties to different generational cohorts of SCE and SDG&E ratepayers. Ratepayers who received the benefit of SONGS Units 2&3 electricity are more appropriately charged decommissioning costs than those who did not, and prematurely ceasing trust contributions while "*likely"*[77] SNF storage costs remain unfunded liabilities will violate a fiduciary duty to future ratepayers. Conversely, shirking a subsurface cleanup responsibility for which trust contributions were previously collected violates a fiduciary duty to past ratepayers.

A4NR acknowledges that the fiduciary trade-offs the Commission must make cannot achieve perfect intergenerational equity. The premature retirement of SONGS Units 2&3 created a high likelihood that costs would be absorbed by post-shutdown customers no longer receiving SONGS electricity. D.14-11-040 authorized a ten-year recovery of undepreciated capital investment in the closed Units 2&3 after electricity generation had ceased. But an

[76] D.02-12-069, p. 19.
[77] Exhibit-01, p. 25, lns. 7 – 9; Transcript, SCE-Bledsoe, p. 314, lns. 10 – 16.

inability to attain perfection should not divert Commission attention from two compelling, and easily achieved, intergenerational equity objectives: (1) SNF storage costs are better absorbed by current rather than future ratepayers, especially when these costs may be reimbursed by DOE (albeit with a several-year lag); and (2) collections from past ratepayers intended to fund subsurface cleanup should not be dishonored, even if avoiding such costs and redirecting trust proceeds to other activities might reduce the need for further trust contributions from current or future ratepayers.

As discussed in Sections 2.5.1. and 2.5.2. above, A4NR's primary recommendation is that current contribution levels be maintained until SCE and SDG&E meet their burdens of proof in a future DCE proceeding. With that proviso, and reiterating its statement at the August 12, 2015 Prehearing Conference that it does not wish to stop or slow down work on decommissioning Units 2&3, A4NR is presently indifferent whether the Commission denies the DCE outright; conditions its approval of the DCE upon a subsequent showing that SNF costs have been adequately funded; or severs the SNF portion and approves the remainder of the DCE. A4NR also recommends the Commission once again reject SCE's perennial proposal for light-handed reasonableness review, as discussed in Section 2.3.2.1. above, and clarify its previously expressed views on site restoration requirements as discussed in Section 2.4.1 above.

Respectfully submitted,

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ALLIANCE FOR NUCLEAR RESPONSIBILITY