

**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' AND COALITION TO DECOMMISSION
SAN ONOFRE'S 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 7, 2013

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I.

INTRODUCTION

Southern California Edison (SCE) SCE completed the replacement of the steam generators at San Onofre Unit 2 and Unit 3 in April 2010 and February 2011, respectively. After completion of the Steam Generator Replacement Project (SGRP), SCE was required to – but did not -- file an application for inclusion of the costs thereof permanently in rates. If the Commission finds “it has reason to believe the costs may be unreasonable” regardless of the amount, the entire SGRP cost **shall** be subject to a reasonableness review in connection with the application. (emphasis added) (Decision 05-12-040, Page 2)

No application was filed, thus no reasonableness review was conducted. Instead, advice letters were submitted avoiding the level of scrutiny required. The Scoping Memo in the instant proceedings states that, “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)...” SCE failed to submit an application to include SGRP costs in its rate base. A scheduling order needs to be issued requiring it to now do so. If it is denied, there will be nothing to remove – only to recover.

This motion seeks a scheduling order for the application, a reasonableness review, and an order immediately suspending the collection by SCE of any rates for the SGRP under Advice Letters 2521-E, 2648-E. and 2834-E. and directing SCE to account for, and return to ratepayers, all rates collected for the SGRP under those Advice Letters.

II.

FACTS

This motion is made in reference to the following facts taken from the records on file with the PUC:

- If the SGRP cost exceeds \$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 a reasonableness review. (Decision 05-12-040 Page 2)

- SCE may record in a balancing account the revenue requirement associated with the steam generator replacement for each unit as of the date of operation of each unit. (Decision 05-12-040 Page 3)
- SCE may record in a balancing account the revenue requirement associated with the removal and disposal of the original steam generators for each unit as of the date removal and disposal is completed. (Decision 05-12-040 Page 3)
- SCE may include the revenue requirement for steam generator replacement for each unit in rates on January 1 of the year following commercial operation of each unit. Implementation shall be by advice letter. (Decision 05-12-040 Page 3)
- SCE may include the revenue requirement for removal and disposal of the original steam generators for each unit in rates on January 1 of the year following completion of the removal and disposal of the original steam generators for each unit. Implementation shall be by advice letter. (Decision 05-12-040 Page 3)
- After completion of the SGRP, SCE will be required to file an application for inclusion of the costs thereof permanently in rates, regardless of whether the costs exceed \$680 million. If a reasonableness review is performed, it will be done in connection with the application. (Decision 05-12-040 Pages 3-4)

- **“SCE completed the replacement of the steam generators at San Onofre Unit 2 and Unit 3 in April 2010 and February 2011, respectively.” (SCE 10K Page 24)**

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- The 2011 Forecast SONGS Unit 2 SGR revenue requirement is estimated to be \$56.694 million. (Advice Letter 2521-E Page 2)
(However, the order required an application once the project was completed which, as noted above, SCE completed in April 2010 and February 2011, reported to its shareholders. This would have required an application as set forth in Decision 05-12-040, Pages 3-4)
- Table 6 shows the estimated change in SCE's generation revenue requirement in 2012 associated with the SONGS SGRP \$ 57.699 million for Unit 2 and \$57.540 million for Unit 3 for a total of \$115.239 million. (Advice Letter 2648-E Page 8)
(However, the order required an application once the project was completed which, as noted above, SCE completed in April 2010 and February 2011, reported to its shareholders. This would have required an application as set forth in Decision 05-12-040, Pages 3-4)
- As of 31 December 2012, the total 2013 forecast SONGS Units 2 & 3 SGR revenue requirement was estimated to be \$130.766 million. (Advice Letter 2834-E ,Table 1, Page 2)
(However, the order required an application once the project was completed which, as noted above, SCE completed in April 2010 and February 2011, reported to its shareholders. This would have required an application as set forth in Decision 05-12-040, Pages 3-4)
- This 2012 SCE GRC decision authorizes \$5.671 billion base revenue requirement for Test Year (TY) 2012 for SCE. We find that the authorized revenue requirement provides SCE with sufficient funding to provide safe and reliable service at just and reasonable rates. The adopted revenue requirement represents a 17.44% increase over the 2009 authorized revenue requirement of \$4.829 billion, a 18.57% increase over SCE's 2009 recorded base revenue requirement of \$4.783 billion, and 5.04% increase over the projected revenue requirement at present rate levels of \$5.399 billion, and a 9.9% reduction from the updated 2012 revenue requirement requested by SCE of \$6.294 billion. (D.05-12-040 Page 3)

- 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 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 (OII 12-10-013 Scoping Ruling Page 2)
- In the 962 pages of D.11-05-035, there is only one mention of D.05-12-040: "DRA argues that a \$9.2 million (\$2004) cost cap associated with turbine work that had been removed from the Steam Generator Replacement Project (SGRP) approved in D.05-12-040 should carry forward to this HPT project." (D.11-05-035 Page 36)
- On 5 February 2013, the following email exchange took place between Protestor Henricks' counsel and SCE:

From: "Michael Aguirre" <maguirre@amslawyers.com>
 To: <Case.Admin@sce.com>
 Cc: <mseverson@amslawyers.com>, "Donna Gilmore" <dgilmore@cox.net>, "Martha Sullivan" <marthasullivan@mac.com>
 Date: 02/05/2013 01:54 PM
 Subject: Question About Scope of Application For Reasonableness Review

Greetings: Did SCE file an application after completion of the SGRP for inclusion of the costs thereof permanently in rates, as provided in pertinent part in Decision 05-12-040 (15 December 2005) quoted here:

After completion of the SGRP, SCE will be required to file an application for inclusion of the costs thereof permanently in rates, regardless of whether the costs exceed \$680 million. If a reasonableness review is performed, it will be done in connection with the application. In the event the removal and disposal of the original steam generators is delayed significantly beyond the commercial operation dates of both units, it may be addressed in a subsequent application.

If so would you please refer us to where and when such an application was filed by SCE.

Thank You, Mike Aguirre

From: Walker.Matthews@sce.com [mailto:Walker.Matthews@sce.com]
Sent: Tuesday, February 05, 2013 3:07 PM
To: Michael Aguirre; mseverson@amslawyers.com
Cc: Henry.Weissmann@sce.com; Russell.Archer@sce.com;
Walker.Matthews@sce.com; Russell.Worden@sce.com
Subject: Fw: Question About Scope of Application For Reasonableness Review

Dear Mr. Aguirre:

No, SCE has not yet filed the application referenced in your email below. SCE anticipates filing the application in or about March 2013.

In the future, please direct inquiries to SCE's counsel in this matter (Henry Weissmann, Walker Matthews, and Russell Archer), rather than to SCE's Case Administration group, so that we can timely address any questions that you may have.

Sincerely,

Walker Matthews
Walker A. Matthews, III
Senior Attorney
Southern California Edison Company
2244 Walnut Grove Ave.
Rosemead, CA 91770
(626)302-6879

III.

ARGUMENT

SCE completed the replacement of the steam generators at San Onofre Unit 2 and Unit 3 in April 2010 and February 2011, respectively. After completion of the SGRP, SCE was required to file an application for inclusion of the costs thereof permanently in rates, regardless of whether the costs exceed \$680 million. If the Commission finds “it has reason to believe the costs may be unreasonable” regardless of the amount, the entire SGRP cost shall be subject to a reasonableness review. (Decision 05-12-040 Page 2) If a reasonableness review was performed, it was to be done in connection with the application SCE never filed. (Decision 05-12-040 Pages 3-4) letter written by Senator Barbara Boxer and Congressman Ed Markey as evidence of the contents of the report. Ms. Henricks has served a data request on SCE requesting production of the subject report, and upon receipt, will place the report in the record.

A. SCE Needs to File an Application

For two years, SCE filed no cost application and thereby avoided a reasonableness review. Instead, SCE used two advice letters in 2011 and 2013 to circumvent the cost application and reasonableness review required under D.05-12-040. When confronted with this glaring violation of the order requiring a cost application and reasonableness review under D.05-12-040, SCE responded with a

claim that it “anticipates filing the application in or about March 2013.” (5 February 2013 email) Ms. Henricks moves for an order setting a deadline for SCE to file the application required under D.05-12-040.

B. The Phase I Schedule Needs to Add a Reasonableness Review

Ms. Henricks also requests the PUC direct an amendment to the Phase I schedule to add a reasonableness review of the to-be-filed SCE cost application. This is the only way to ensure integrity in the process as set forth by the PUC.

C. SCE Must Suspend SGRP Rate Collection and Make Reparations

Finally, Ms. Henricks’ requests the PUC issue order immediately suspending the collection by SCE of any rates for the SGRP under Advice Letters 2521-E, 2648-E. and 2834-E. Further Ms. Henricks requests the PUC issue an order directing SCE to account for and return to ratepayers all rates collected for the SGRP under Advice Letters 2521-E, 2648-E. and 2834-E.

Collecting hundreds of millions of dollars in ratepayer funds through the vehicle of advice letters -- when a cost application was due under a PUC order -- should be met with an instant order that (1) no more rates are to be collected under the three advice letters, and (2) reparations of all rates so recovered should be returned as reparations to ratepayers. SCE should recover no SGRP costs in rates unless and until SCE files a cost application and undergoes a reasonableness review as required under D.05-12-040 *See* 2005 Cal. PUC LEXIS 294 ** 93-94

(Cal. PUC 2005) (Ratepayers paid unnecessary payments that should be returned to them through reparations); *Southern California Edison Co. v. Public Utilities Com.*, (1978) 20 Cal. 3d 813, 818-819.

Reparations are appropriate when a defendant failed to comply with PUC rules. *City of Vernon v. Southern Calif. Gas Co.*, (Dec. No. 21860) (1929) 34 C.R.C. 46 (Dec. 1929); *Batchelder-Wilson Co. v. Southern Calif. Gas Co.*, (1930) (Dec. No. 22806) 35 C.R.C. 132; *Riverside Cement Co. v. Public Utilities Com.*, (1950) 35 Cal. 2d 328, 330-331; *Atchison, T. & S. F. R. Co. v. Railroad Com. of California*, (1931) 212 Cal. 370, 374 (Reparation permitted where rates charged are either excessive). The PUC's power to award reparation is judicial in its nature and is an exercise of the PUC's capacity to measure past injuries sustained by ratepayers. The PUC has the power to inquire into SCE's failure to file a cost application as required, and to order return of all rates collected in violation of D.05-12-040. *Southern Pacific Co. v. Railroad Com. of California* (1924) 194 Cal. 734, 739-740.

The PUC has previously ordered SCE ratepayers recover reparations for rates SCE wrongfully collected. 2002 Cal. PUC LEXIS 547 (Cal. PUC 2002); 1996 Cal. PUC LEXIS 807 (Cal. PUC 1996); 1975 Cal. PUC LEXIS 849 (Cal. PUC 1975) (Reparations with interest thereon ordered). Reparation in this case is warranted. For over a year, while the failed SGRP steam generators remained

dormant, SCE has been charging SGRP costs in rates not authorized under an approved cost application confirmed by a reasonableness determination. (See OII issued in I.12.10.013)

Another factor supporting an award of reparations is evidence of SCE's installation of defective steam generators under the SGRP. The steam generators have failed and have not produced power for over a year. SCE knew the generators were not producing any power when its executives chose to use an advice letter, rather than the required cost application, to recover SGRP costs in rates for 2013. (See Advice Letter 2834-E)

There is evidence SCE was aware of problems with the replacement steam generators *before* they were installed, but chose not to make repairs because doing so might subject the SGRP to greater scrutiny by regulators. The report purportedly indicates SCE and its contractor, Mitsubishi Heavy Industries, Ltd (MHI), knew of the design problems but proceeded nonetheless. Ms. Henricks offers as secondary evidence a letter written by Senator Barbara Boxer and Congressman Ed Markey as evidence of the contents of the report. Ms. Henricks has served a data request on SCE requesting production of the subject report, and upon receipt, will place the report in the record.

The Boxer-Markey letter offered as secondary evidence of the report provided as follows:

Congress of the United States
Washington, DC 20515

February 6, 2013

We have become aware of new information contained in a 2012 Mitsubishi Heavy Industries (MHI) document entitled "Root Cause Analysis Report for tube wear identified in the Unit 2 and Unit 3 Steam Generators or San Onofre Generating Station" (Report).

We strongly urge the Nuclear Regulatory Commission (NRC) to promptly initiate an investigation concerning the troubling information contained in this Report.

The Report indicates that Southern California Edison (SCE) and MHI were aware of serious problems with the design of San Onofre nuclear power plant's replacement steam generators before they were installed.

Further, the Report asserts that SCE and MHI rejected enhanced safety modifications and avoided triggering a more rigorous license amendment and safety review process. For example, the Report states that although SCE and MHI accepted some adjustments to the replacement steam generators, further safety modifications were found to have "unacceptable consequences" and were rejected: "

Among the difficulties associated with the potential changes was the possibility that making them could impede the ability to justify the RSG [replacement steam generator] design" without the requirement for a license amendment.

The Report also indicates that SCE's and MHI's decision to reject additional safety modifications contributed to the faulty steam generators and the shutdown of reactor Units 2 and 3.

This newly-obtained information concerns us greatly, and we urge the NRC to immediately conduct a thorough investigation into whether SCE and MHI did in fact fail to make needed safety enhancements to avoid the license amendment process. All people in our nation, including the 8.7 million people who live within 50 miles of the San Onofre plant, must have confidence in the NRC's commitment to put safety before any other concern.

We believe this alarming Report raises serious concerns about SCE's and MHI's past actions. Safety, not regulatory short cuts, must be the driving factor in the design of nuclear facilities, as well as NRC's determination on whether Units 2 and 3 can be restarted. We look forward to your prompt response detailing how public safety will be assured in light of this information. If you have any questions, please have your staff contact Dr Michal Freedhoff of Rep. Markey's staff at 202-225-2836 or Grant Cope of Chairman Boxer's staff at 202-224-8832.

While the PUC defers to the NRC on safety issues, the PUC does have a legitimate interest in determining whether SCE knew of defects in the replacement steam generators and elected to ignore them in order to avoid more stringent government review. The OII should include a cost-related inquiry into the issue of whether SCE proceeded to install and operate the replacement steam generators without due regard to their apparent defects.

In addition to reparations, the PUC should consider imposing penalties on SCE decision makers who authorized the three subject advice letters under which SCE collected rates for SGRP. *Public Utility Code Section 2107* authorizes the

PUC to impose a penalty of not less than \$ 500 nor more than \$ 20,000 on any utility "which fails or neglects to comply with any part or provision of any order, decision, rule, direction, demand, or requirement of the commission," Section 2109 also indicates that "the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be the act, omission, or failure of such public utility." 2005 Cal. PUC LEXIS 294 (Cal. PUC 2005)

IV.

CONCLUSION

For the foregoing reasons, SCE needs to comply with the procedures set forth in the PUC's Decisions. An application must be ordered filed, a reasonableness review conducted, collection of rates terminated and reparations ordered to ratepayers.

Respectfully Submitted,

Dated: February 7, 2013

By: /s/ Michael J. Aguirre

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