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

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| 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 Irvine, CA) |
| And Related Matters. | Application 13-01-016<br>Application 13-03-005<br>Application 13-03-013<br>Application 13-03-014 |

# REPLY TESTIMONY OF COALITION TO DECOMMISSION SAN ONOFRE IN PHASE 2

September 10, 2013

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## I. INTRODUCTION

In accordance with the Assigned Commissioner's and Administrative Law Judges' Scoping Memo of 7/31/13, the Coalition to Decommission San Onofre (CDSO) hereby submits its Reply Testimony in Phase 2 of this Investigation into the San Onofre Outage.

CDSO~~)~~ is a grassroots project of Citizens Oversight, Inc., a 501(c)(3) public benefit corporation which encourages **increased engagement by the public in the operation of their local, state and federal government to reduce waste, fraud and abuse** by public officials. Citizens Oversight dba Coalition to Decommission San Onofre is unique in its localized, on-the-ground volunteer membership which affords ready consultation with local elected officials and community members regarding the varied impacts of the San Onofre Nuclear Power Plant, as well as the implications of this Investigation. Citizens Oversight is based in San Diego and Orange Counties and we have no office in the S.F. Bay Area; therefore effective participation in the CPUC's decision-making process requires additional time, travel and communications expenses. We lack the ratepayer-funded facilities and resources of Southern California Edison, San Diego Gas & Electric and the Commission and we are new Intervenors at the Commission. Our communities in Orange and San Diego Counties most impacted by the San Onofre Nuclear Power Plant and its admittedly defective nuclear reactors depend upon us – *unpaid community members who also have to tend to our businesses/jobs, kids, elderly parents* – to represent them in this proceeding as well as in the U.S. Nuclear Regulatory Commission's (NRC) decision-making process for the operation, and now decommissioning, of this defective nuclear power plant. Our neighbors and the media increasingly call upon us with questions about San Onofre, and a large amount of our time is demanded by essential briefings of our elected representatives at the local, state and Federal levels.

## II. CONTEXT

As context for this Testimony, CDSO directs the Commission's attention to 2 key reports:

A. The Houston Chronicle reported that the average annual compensation of utility executives nationwide increased 150% from 2000 - 2011. In Southern California, it is even more egregious -- the annual compensation for the Chair & CEO of SCE increased **15 times** from 2000 - 2011, from $764k to 10.9 Mil; and that for the SDG&E Chair/CEO increased a mere 4 times in the same time period, from almost $1 Mil to $3.9 Mil. [1]

The Investor-Owned Utilities who are the gatekeepers to our transmission grid and generation resources do NOT need any more help from this Commission. We ratepayers who fund their lavish compensation and can barely support ourselves, our families, and our small businesses, DO.

B. The report of Second Quarter 2013 Results for SCE by its parent, Edison International, on August 1, 2013. As reported in the Wall Street Journal that date:

> "As in the first quarter, strong operating results from Southern California Edison reflect higher authorized investment in our electric grid infrastructure, good cost management, and favorable tax benefits," said Ted Craver, chairman and chief executive officer of Edison International. "These results are consistent with the updated Edison International earnings guidance that we provided in June and that we reaffirmed today."
>
> "Second Quarter Earnings Detail
> Southern California Edison's (SCE) second quarter 2013 basic losses were $(0.28) per share compared to earnings of $0.59 per share in the second quarter of 2012, and includes **an impairment charge of $1.12 per share related to the early retirement of San Onofre Nuclear Generating Station (SONGS) Units 2 and 3.**
>
> **"SCE's second quarter 2013 core earnings,** excluding the SONGS impairment charge**, were $0.84 per share compared to $0.59 per share in the second quarter of 2012.** The core earnings increase was primarily due to the timing of the 2012 General Rate Case (GRC) which was approved by the California Public Utilities Commission

[1] http://www.chron.com/news/energy/item/Electric-Utility-Executive-Compensation-13532.php?appSession=003978379741089

(CPUC) in November 2012, lower operating expenses, and tax benefits, offset by severance costs.

"Year-to-Date Earnings Detail
SCE's year-to-date 2013 basic earnings were $0.51 per share, including the second quarter SONGS impairment charge of $1.12 per share, compared to $1.14 per share for the same period last year.

"**SCE's year-to-date core earnings were $1.63 per share compared to $1.14 per share for the same period last year.** The core earnings increase was primarily due to the timing of finalizing SCE's 2012 General Rate Case, lower operating expenses, and tax benefits from incremental repair deductions, partially offset by severance costs. The increased return on rate base growth was offset by the lower authorized return on equity. " [2]

So – SCE is writing down San Onofre Nuclear Generating Station Units 2 and 3 on its books, reports **a 43% increase in year-to-date core earnings for 2013 over 2012** – and it can't voluntarily take this permanently shut-down plant out of the rates paid by captive customers even as of the date it, itself, announced its permanent closure (June 7, 2013), as proposed by the Division of Ratepayer Advocates in its Motion of June 25, 2013? This is the height of hubris by this notoriously hubristic corporation.

Compare the guaranteed return expected by SCE of 5+ % to the current return on other deposits and investments guaranteed by the government: [3]

| | |
|---|---|
| Daily overnight average for the 1-year CD | 0.70% |
| One-Year Treasury Constant Maturity | 0.150 |
| 91-day T-bill auction avg disc rate | 0.020 |
| 182-day T-bill auction avg disc rate | 0.035 |
| Two-Year Treasury Constant Maturity | 0.47 |
| Five-Year Treasury Constant Maturity | 1.76 |
| Ten-Year Treasury Constant Maturity | 2.92 |

[2] http://online.wsj.com/article/PR-CO-20130801-915980.html?mod=googlenews_wsj
[3] http://www.bankrate.com/rates/

Compound this severe inequality between the government-guaranteed returns earned by most captive ratepayers of the two monopoly utility owners of the San Onofre nuclear power plant and those of these utilities' shareholders with the 50% higher residential electricity rates they pay as captive customers than the two largest municipal utilities in California (L.A. and Sacramento) [4] – and you have a seriously out-of-touch paradigm.

## III. SUMMARY OF CONCLUSIONS

The San Onofre Nuclear Generating Station (San Onofre) was not "used and useful" at any time after the emergency shutdown on January 31, 2012. Furthermore, as soon as the Root Cause Analysis had been completed by SCE for both Units 2 and 3 on May 7, 2012, it should have been clear to any reasonable manager that the plant would never run again. [5] We argued in Phase 1 that SCE did NOT exercise reasonable managerial skill in designing, fabricating, installing and troubleshooting the Steam Generator Replacement Project (SGRP) and related High Pressure Turbine (HPT) project and Phase 3, the Commission's Reasonableness Review of the SGRP, remains to be conducted. Therefore, the Commission has no basis on which to make the findings proposed by SCE and SDG&E in this Phase of the Investigation.

The calculation of net investment in fixed assets should be based on the plant without the defectively designed and failed SGRP and systems replaced contingent upon it. As a rough estimate, the base plant value, not including these failed/superfluous systems is about $1,241 - $768 [SGRP] - $24 [HPT] = $449 million net investment ~~undepreciated~~ in the core plant. The difference between $1,241 and $449 represents the loss incurred by the failure of the SGRP and should be resolved between SCE and HMI and any insurance, with the rest covered by shareholders (through loss of their equity).

Any remaining assets that have not already been fully depreciated should be depreciated at a rate to allow investors to recover their investment but not enjoy a return on the investment due to the inherent risk involved in such investments. Allowing investors to be risk-free in their investment continues to incent utilities to develop failed projects that run only for a short time, so they can have the entirety of their investment returned plus a ROI and have it returned faster than the normal depreciation schedule. This is extremely counterproductive regulatory policy which has been fully exposed by the magnitude of this failed SGRP and its consequent costs.

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[4] http://sanonofresafety.files.wordpress.com/2011/11/compareyourelectricrates2012-04.pdf

[5] Exhibit SCE-10, Timeline

The Commission needs no further reason to recognize this and cease repeating this perverse policy.

San Onofre should be removed from the rate base at the earliest date allowed under Public Utilities Code Section 455.5: November 1, 2012; and all activities subsequent to November 1, 2012, considered "decommissioning" as the plant is no longer used and useful. The defectively-designed and failed Steam Generator Replacement Project and related High Pressure Turbine project should be treated as an abandoned plant, and therefore, shareholders should not recover their equity nor any return on their equity investment regarding the defectively-designed and failed Steam Generator Replacement Project nor the related High Pressure Turbine replacements.

## IV. REPLY TO EXHIBIT SCE-36

### A. More SCE Obfuscation

At p. 3 of Exhibit SCE-36, SCE claims that it "cannot accommodate the ALJ Ruling … because SCE maintains its plant and depreciation ledger consistent with FERC[6] Uniform System of Accounts (USoA), which requires that SCE maintain its fixed asset records by FERC plant account." However, the FERC USoA regulations plainly state that the utility is not constrained to use only these account numbers: [General Instructions 3.C, emphasis added]

> "C. The numbers prefixed to account titles are to be considered as parts of the titles. **Each utility, however, may adopt for its own purposes a different system of account numbers** (see also general instruction 2D) provided that the numbers herein prescribed shall appear in the descriptive headings of the ledger accounts and in the various sources of original entry; however, if a utility uses a different group of account numbers and it is not practicable to show the prescribed account numbers in the various sources of original entry, such reference to the prescribed account numbers may be omitted from the various sources of original entry. Moreover, each utility using different account numbers for its own purposes shall keep readily available a list of such account numbers which it uses and a reconciliation of such account numbers with the account numbers provided herein. It is intended that the utility's records shall be so kept as to permit ready analysis by prescribed accounts (by direct reference to sources of original

[6] Federal Energy Regulatory Commission

entry to the extent practicable) and to permit preparation of financial and operating statements directly from such records at the end of each accounting period according to the prescribed accounts." [7]

Further, in General Instructions 16, FERC plainly states that its interest is in being able to organize data by licensed project, not at finer grains of analysis: "The purpose of this instruction is to insure that accounts or records are currently maintained by each licensee from which reports may be made to the Commission for use in determining the net investment in **each licensed project**. The instruction covers only the debit and credit items appearing in the licensee's accounts which may be identified with and assigned directly to any licensed project. In the determination of the net investment as defined in section 3 of the Federal Power Act, allocations of items affecting the net investment may be required where direct assignment is not practicable." [8]

"Project" is defined in Definitions 26 of the FERC USoA as:

> "26. Project means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights of way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit." [9]

Table II-2 in Exhibit SCE-36 provides another example of the overly granular nature of the records SCE has provided to the Commission. The subaccounts sampled here, such as "020 Motors, 20 HP and larger" do not appear to be defined by the FERC accounting system. SCE has contrived an accounting system that gets into details very quickly, like describing a valve,

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[7] FERC Uniform System of Accounts (USoA) 18 CFR sec 101
See http://www.law.cornell.edu/cfr/text/18/101

[8] Ibid, Sec. 16 Note.

[9] Ibid, Definitions 26.

instead of using a hierarchical system which is typically used by those who design the plants, so that the valve is part of a subassembly, which is part of an assembly, which is part of a subsystem, which is part of a system, which is a major component of the plant.

By analogy, say you decide to close several rooms of your home that were no longer used, such as two bedrooms and a bathroom. If you kept track of these assets by the number of nails and the number of 2x4's used, other lumber by lineal foot, number of windows, electrical outlets, how many feet of wire, sq ft of drywall used, how many elbows, tees, valves, etc. were used in the plumbing, etc., and if those assets were lumped in with the rest of the house, you would effectively make it all but impossible to determine the actual value of those rooms.

There is a hierarchical plant description that is maintained by the engineering staff rather than the accounting staff, and these two record-keeping systems need to be complementary. This is yet another example of SCE's failure to operate and manage the plant, essentially in trust for its ratepayers who pay for it, in a manner that readily affords meaningful oversight.

B. Another Black Box Analysis from SCE

At Exhibit SCE-36, page 7, SCE describes the highly subjective process it undertook in the absence of such a common-sense organization of plant information. There must be an independent, third party assessment of this process and its results by equivalent subject-matter experts, which is not possible in the short time available between the service of SCE-36 on July 22, 2013, and the deadline for serving this Reply Testimony this date – EVEN IF SCE's analysis had been disclosed in SCE-36, rather than simply its results.

At a minimum, the subject-matter experts performing this subjective review need to be named and made available during the Evidentiary Hearings. This also applies to Construction Work in Progress (CWIP), which SCE says was allocated in the same manner. [10]

During the Phase 1 Evidentiary Hearings, SCE Witnesses were repeatedly unable to answer questions or answered incorrectly. Examples follow:

- SCE Witness Perez at Transcript p. 474:
  *"MS. SULLIVAN: Q What is Edison's policy for who the appropriate witness is for the exhibits that it offers into evidence?*

[10] At p. 13, Exhibit SCE-36

*A The normal policy is that the witness that is most knowledgeable about that.*

*Q The witness that is most knowledgeable what?*

*A Most knowledgeable about the content of the testimony.*

*Q So if I may ask, why were you the witness for the letters that you don't have any knowledge of?*

*A I felt comfortable being the witness for those letters as to the general content. The fact that they were repair plans, specific details about the other letters, and the meetings that occurred, I was not there, so I could not comment on those."*

- In response to ALJ Darling's questions about "emergent expenses" related to U3 in November and December of 2012, SCE Witness Perez testified that SCE started putting Unit 3 into "preservation mode" in the last quarter of 2012 (at Transcript p. 667), but the Timeline this same witness sponsored in Exhibit SCE-10 says that efforts to place U3 in Preservation Mode began in July of 2012, Reactor Defueling began on 10/1 and ended on 10/5.

- SCE Witness Perez insisted on describing Units 2 and 3 as "in extended outage" and testified that he didn't know if the NRC has a specific definition of "shutdown", nor did he have the NRC definitions handy to reference (at Transcript pp. 698-699). During subsequent questioning by CDSO, SCE Witness Perez referenced the plant's Technical Specifications as authorized by the NRC in his materials and read the operating Modes for the plant: "Mode 1 is power operation; Mode 2 is start-up; Mode 3 is hot standby; 4 is hot shutdown; 5 is cold shutdown; 6 is refueling; and [unnumbered is] defueled." (emphasis added) And when pressed by CDSO questioning, SCE Witness Perez admitted that Unit 2 is in Mode 5 (cold shutdown) and Unit 3 is Defueled (at Transcript p. 702). In the Timeline in Exhibit SCE-10, sponsored by SCE Witness Perez, "U2 returned to Mode 5 [cold shutdown] is listed on 10/27/12, after achieving Mode 4 [hot shutdown] on 10/20/12 for purposes of testing the U2 Reactor Coolant System in Mode 3 [hot standby] returning to Mode 4 [hot shutdown] on 10/26/12. *Clearly, Unit 2 was in Mode 5, "cold shutdown" prior to 10/20/12 in order to be "returned to Mode 5" on 10/27/12 per the Timeline in Exhibit SCE-10*.

- SCE Witness Worden was wholly unfamiliar with the State of California's prescriptions for emergency preparedness planning for commercial nuclear power plants, and smugly ignorant of radiological detection readiness within the prescribed 50-mile "Ingestion Pathway Zone."

C. More Self-Serving Results

Regarding Table III-3 in Exhibit SCE-36 (Systems Required for Permanent Retirement), the point system should reflect how much of the value of unassigned assets exists in those subsystems rather than general complexity. The analysis here is misleading because some systems may have a lot of unassigned asset content in them, whereas others do not. Although a system may be "complex," that does not mean it will contain the same relative amount of the unassigned assets in them. For example, Auxilliary Feedwater may contain a lot of valves, motors, etc. that are in the unassigned asset list. It will be used 0%, and only rated at 75pts complexity. In contrast, the Electrical Distribution system is rated at 100pts complexity but does not have very many unassigned assets as components. As a result, the percentage of systems required is overly generous.

Section IV of Exhibit SCE-36, net investment in fixed assets needs to be broken down to exclude the SGRP and HPT projects, as these have NEVER been "used and useful." The calculation should be based on the plant without the defectively designed and failed SGRP and systems replaced contingent upon it. As a rough estimate, the base plant value, not including these failed/superfluous systems is about $1,241 - $768 [SGRP] - $24 [HPT] = $449 million undepreciated in the core plant. The difference between $1,241 and $449 represents the loss incurred by the failure of the SGRP and should be resolved between SCE and HMI and any insurance, with the rest covered by shareholders (through loss of their equity).

The reality is that SCE knew that the plant was expected to reach the end of its life in 2012-2016 had the SGRP not been undertaken.

**Table 1: Expected Operational Life 2005**

| Operational Parameter | No SGRP | SCE 2012 Proposal |
|---|---|---|
| Unit 2 Status | OSGs would likely have reached their tube plugging limit by mid-2012. | SCE proposes to operate at 70% power with an extensive inventory of tubes plugged. |
| Unit 3 Status | OSGs may have been able to operate until 2016, another 3 years. | Sustained tube failure due to design deficiencies that resulted in unexpected fluid-elastic instability (FEI) and therefore the Unit "will not be started indefinitely." |
| Total operational capability. | 50% | 35% |
| Will Steam generators be soon replaced? | No, per assumption (no SGRP) | No. This has not been proposed. |
| O&M Costs | >50% original O&M | >>50% original O&M because of additional testing required by NRC. |
| Mid fueling cycle outages?[11] | Midcycle outages would be required per SCE statements to perform steam generator tube inspections. | More outages than in NonSGRP case. Proposal is to run only five months and then perform inspections of steam generator tube wear, which is about twice as often as the No-SGRP case. |
| Grid Reliability | Does not contribute to overall grid reliability because the single unit will have to be shut down during each RFO and other generation will be required during that time. | |

Source: D.05-12-040 (No SGRP) and SCE Unit 2 CAL Response to NRC, 10/3/12

The HPT replacement project depended on the increased steam pressure from the new design of the new SGs, and should also be excluded from this analysis, as well as any nuclear fuel purchased in anticipation of continuing operations, as referenced near the bottom of p. 13 in Exhibit SCE-36.

[11] RFOs occur at approximately 18 month intervals for each unit, per Decision 05-12-040 page 8 (footnote #9), and each last about one month, according to the Nuclear Engineering Institute (http://www.nei.org/resourcesandstats/nuclear_statistics/fuelrefuelingoutages)

D. What Part of "You Break It, You Buy It" Doesn't SCE Understand?

In Chapter VI of Exhibit SCE-36, SCE once more advocates the ratemaking approach put forward in its Motion of July 22, 2013, to apply any reductions ordered by the Commission resulting from the defective design and failure of the SGRP, including the shutdown of the plant from January 31, 2012 until present, to the alleged "undercollections" of ERRA, which is being determined by the Commission in another proceeding. A more accurate way of describing the impact of SCE's mismanagement on ERRA is that it refused to plan for the wholly foreseeable extended outage of San Onofre as prescribed by State Law since 2006 [12]; failed to use hundreds of millions of unspent dollars its budget designated for energy efficiency and failed to fully exploit the booming rooftop solar market and readily available rooftop capcity in Southern California. [13] Instead, SCE chose to pay top dollar for fossil fuels to replace the San Onofre power and now expects to be made whole for its mismanagment, and earn a return on it, too! SCE cannot propose the application of rate reductions and rebates due to its captive ratepayers from this proceeding to the as-yet undetermined outcome of the ERRA proceeding, which should also be wholly contingent upon the Commission's ultimate findings about the SGRP failure and all costs cascading from it in Phase 3 of this Investigation. The O&M savings estimated by SCE that it would apply to ERRA (Table VI-8, SCE-36) would be reduced if the SGRP and HPT are not depreciated, as we explain above.

Additionally, SCE's proposal assumes that running San Onofre has actually been a good deal, i.e. (capital depreciation + taxes + return to shareholders) + O&M < power market prices. Since SCE has testified to this Commission that it never did any such cost effectiveness analysis to consider the future of the plant in 2012, there is no basis for making this assumption. [14]

SCE's proposal to amortize the balancing of the BRRBA and ERRA in the subsequent year and future years is obviously unfair and unjust for customers who departed the system before this treatment is implemented (but who paid rates for the defective and failed San Onofre plant as

[12] AB 1632 (Blakeslee): directed the CA Energy Commission to assess the vulnerabilities of the San Onofre and Diablo Canyon nuclear power plants due to a seismic event or plant aging, the potential impacts of such a disruption, the costs and impacts from waste accumulating at these plants, and major issues related to the future role of these plants in the state.

[13] As of Summer 2012, CPUC reported that CA generated 1,255 MW of electricity (more than 1 of the San Onofre Units); only 2% of rooftop and parking lot capacity in San Diego County had been installed.

[14] SCE Witness Thomas Palmisano in Phase I Evidentiary Hearing, at Transcript pp. 771-774 and 949-953.

well as the replacement power and all other consequential costs). It is also unfair and unjust for customers who do not stay in the system throughout the balancing period each year.

The Commission must consider the SGRP and HPT projects as dangerous failures of design, and regardless of who is at fault, this portion of the plant should be considered ABANDONED, and therefore fully the responsibility of the shareholders. The net asset value of the plant must be calculated WITHOUT the value of the SGRP and HPT projects, and any other projects related to these failed designs, which reduces the net asset value by about $800 million.

The final value of the plant should be depreciated and amortized to shareholders, allowing them to recapture their investment in the original plant. Shareholders would lose their invested equity in the SGRP and HPT project, both of which were predicated on an allegedly improved design of the steam generators in violation of NRC regulations. [15] Thus the amount to be removed from rate base is the entirety of the SGRP and HPT projects.

Any remaining assets that have not already been fully depreciated should be depreciated at a rate to allow investors to recover their investment but not enjoy a return on the investment due to the inherent risk involved in such investments. Allowing investors to be risk-free in their investment continues to incent utilities to develop failed projects that run only for a short time, so they can have the entirety of their investment returned plus a ROI and have it returned faster than the normal depreciation schedule. This is extremely bad regulatory policy which has been fully exposed by the magnitude of this failed SGRP and its consequent costs. The Commission needs no further reason to recognize this and cease repeating this perverse policy.

## V. REPLY TO EXHIBIT SCE-40

### A. The Rest of the Story

In Section II.A of Exhibit SCE-40, SCE cites court cases and Commission decisions to support its wholly self-serving proposal to claim full recovery of a failed business decision. It cites the *Bluefield* Supreme Court case from 1923 to support its position that its investors are entitled to full recovery and return on investment – however, it fails to note this key provision of this 90-yr-old ruling: (emphasis added)

[15] "In a letter sent to U.S. Sen. Barbara Boxer, D-Calif., on Friday, NRC Chairwoman Allison Macfarlane says the NRC's Office of Investigations began 'n expansive investigation of the completeness and accuracy of information that Southern California Edison provided to the NRC regarding steam generators at SONGS on Sept. 28, 2012." http://www.ocregister.com/articles/edison-495289-nrc-mitsubishi.html

"4. Rates which are not sufficient to yield a reasonable return on the value of the property used **at the time it is being used to render the service of the utility to the public** are unjust, unreasonable, and confiscatory, and their enforcement deprives the public utility company of its property, in violation of the Fourteenth Amendment.

"5. A public utility is entitled to such rates as will permit it to earn a return on the value of the property it **employs for the convenience of the public** equal to that generally being made at the same time and in the same region of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties, but **it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures**." [16]

Nor does SCE reference this key ruling by the Supreme Court in 1944: (emphasis added)

"We held in the Natural Gas Pipeline Co. case that there was no constitutional requirement '**that the owner who embarks in a wasting-asset business of limited life shall receive at the end more than he has put into it**.'" [17]

SCE also excerpts from Commission D.03-02-035 without providing the full context. The entire paragraph states: (emphasis added)

"In regulating public utilities, we **have broad authority** to set just and reasonable rates and charges for utilities, as well as **determine how costs will be recovered**. (See, e.g., Cal. Const., art. XII; Pub. Util. Code, §§451, *et seq.,* 701 & 728.) This broad authority has been liberally construed. (See Consumers Lobby Against Monopolies v. Public Util. Comm'n (1979) 25 Cal.3d 891, 905.) **Most** of our regulation has been based on cost-of-service principles. Under cost-of-service regulation, the utility is entitled to all of its reasonable costs and expenses, as well as the opportunity to earn a rate of return on the utility's rate base, which is the original cost of the property devoted to public service minus the depreciation. (See Pacific Tel. & Tel Co. v. Public Util. Comm'n (1965) 62 Cal.2d 634, 644.) We determine reasonable depreciation for the utility and have used different methods for determining the amortization periods for depreciation expenses."[18]

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[16] Supreme Court Case *"Bluefield Water Works v. Public Service Comm'n - 262 U.S. 679 (1923)"* -- *http://supreme.justia.com/cases/federal/us/262/679/case.html*

[17] Supreme Court Case *"PC v. Hope Nat. Gas Co. - 320 U.S. 591 (1944)" http://supreme.justia.com/cases/federal/us/320/591/case.html*

[18] *http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/23623.PDF,* (At pp. 665-666.)

Investors understand that there is RISK and that is the reason there is a return when the undertaking invested in is successful. When a company makes mistakes, then there may be no return on equity and the equity may be lost. "Subsidizing customers" is not the case when the plant is abandoned because the customers get no value from the plant. In this case customers are being asked to subsidize a return on investment for mistakes made by the company.

At p. 5 of Exhibit SCE-40, SCE argues that "when an asset is retired before the end of the period used for depreciation purposes, investors should be fully compensated for their original investment even though the asset did not have as long a useful life as initially anticipated. In other words, in exchange for receiving the benefit of assets that are productive after they have been fully depreciated, customers should be responsible for paying the investment cost of assets that are unexpectedly retired before they are fully depreciated." **This should only be the case if the reason the asset did not live as long as was predicted was not due to poor decision making by the company.**

B. Reality Check

Exhibit SCE-40 Section II.C is titled "Investors are Entitled to Recovery of their Funds Through Customer Rates, Regardless of When Assets are Retired"

TELL this to pension-holders who have had their pensions invalidated by bankruptcy, or 401k holders whose assets were decimated by the 2008 financial meltdown. Compare the guaranteed return expected by SCE of 5+ % to the current return on other deposits and investments guaranteed by the government: [19]

| | |
|---|---|
| Daily overnight average for the 1-year CD | 0.70% |
| One-Year Treasury Constant Maturity | 0.150 |
| 91-day T-bill auction avg disc rate | 0.020 |
| 182-day T-bill auction avg disc rate | 0.035 |
| Two-Year Treasury Constant Maturity | 0.47 |
| Five-Year Treasury Constant Maturity | 1.76 |
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Compound this severe inequality between the government-guaranteed returns earned by most

[19] http://www.bankrate.com/rates/

captive ratepayers of the two monopoly utility owners of the San Onofre nuclear power plant and those of these utilities' shareholders with the 50% higher residential electricity rates they pay as captive customers than the two largest municipal utilities in California (L.A. and Sacramento) [20] – and you have a seriously out-of-touch paradigm.

C. Out of Scope

The first sentence of Exhibit SCE-40 Section II.C references SCE's expectation that it is due recovery of "**prudently** incurred capital investments in SONGS." (Emphasis added) There's the rub. As we will more fully explicate, the SGRP and HPT capital investments were NOT prudently incurred, but constitute abandoned projects. In D.06-11-050, the Commission found regarding abandoned projects: (emphasis added)

> "Generally, utility shareholders must bear the full costs of abandoned projects. The Commission has recognized a limited exception to this principle when it has found that ratepayers may be responsible for some of the costs of an abandoned project during times of dramatic and unanticipated change **where the utility can demonstrate that it exercised reasonable managerial skill."** [21] (at p. 46)

We argued in Phase 1 that SCE did NOT exercise reasonable managerial skill in designing, fabricating, installing and troubleshooting the SGRP and related HPT project and Phase 3, the Commission's Reasonableness Review of the SGRP, remains to be conducted. Therefore, the Commission has no basis on which to make this exception in this Phase of the Investigation.

SCE cites the Commission's decision on the decommissioned Humboldt Bay Nuclear Plant as support for its position: "Although PG&E was not permitted to continue earning a return on this investment, the Commission explained that '[i]n the case of a premature retirement, the ratepayer typically still pays for all of the plant's direct cost even though the plant did not operate as long as was expected.'" D.85-08-046, p. 599. (not available online)

The seismic concerns which motivated PG&E to retire the Humboldt Bay nuclear power plant were not due to mismanagement and mistakes by the company. Per PG&E website:

> "The Humboldt Bay Power Plant was conceived in the early 1950's because the area demand for power was growing. Unit 1 which was commissioned in 1956 and Unit 2

[20] http://sanonofresafety.files.wordpress.com/2011/11/compareyourelectricrates2012-04.pdf
[21] http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/62466.PDF

which was commissioned in 1958 provided power to Humboldt County for 54 years and 52 years, respectively. The **nuclear power plant, Unit 3,** was commissioned in August 1963, and operated as a 65 megawatt natural circulation boiling water reactor with Atomic Energy Commission License #7. Unit 3 was shut down in 1976 for refueling and seismic upgrades. Repairs subsequently extended the planned shutdown period and **in that interval, there were significant changes to nuclear safety standards for reactor operation and design**. Ultimately, the decision was made that **further modifications were not economical, and that Unit 3 would not be restarted**. In 1983, PG&E announced its intention to decommission Unit 3, and in 1986, PG&E requested an NRC license amendment for SAFSTOR, a condition which would permit Unit 3 to store nuclear fuel, but not operate. This SAFSTOR license was received in 1988." [22]

The Hill Street water facility also cited as Commission decision precedent could have been improved to eliminate the existing contaminants and add fluoridation. However, the cost/benefit analysis weighed toward getting water from the larger water district, which had recently absorbed the operator of the Hill Street water facility, Golden State Water Company. [23] Thus, there was no decision by Golden State that instigated the closure, no bad decision to install new pumps, for example, that were faulty and thus the closure. From D.11-09-017 p12: "Conclusion of Law 1. It is reasonable to allow Golden State the undepreciated investment balance for Hill Street without a return on equity because the investment is no longer used and useful."

SCE itself hits on the essential failure of its argument in favor of granting it full rate recovery for San Onofre assets retired prior to being fully depreciated based on their expected useful lives – SCE must **"demonstrate to the Commission the investment was prudently incurred."** (at p.7) This demonstration has not yet occurred, and will not occur until Phase 3 of this Investigation.

SCE reinforces this point at p. 8, wherein it argues that "it would be unprecedented for the Commission to deny SCE rate-recovery of capital investments in assets that had been placed in service, **in the absence of a finding that the investment was imprudent**." (emphasis added) Again, the reasonableness review of the SGRP is scheduled to occur in Phase 3 of this

[22] http://www.pge.com/en/about/environment/pge/minimpact/humboldtbay/index.page

[23] D.11-09-017

Investigation, so any rate recovery allowed by the Commission before said reasonableness review is premature and unfounded.

D. You Break It, You Buy It

The defective design of the replacement steam generators for which the ratepayers currently bear the burden of about $800 million, and the scope, cost and impact of the utility service failure which resulted from it, are unprecedented. This more than justifies a hard-eyed reassessment of previous Commission policy. Neither the SGRP investment nor the related High Pressure Turbine investment, which relied on the SGRP to be viable, should be recoverable. These are risks that investors take when they make an investment in a company. The company did not use the money wisely, and thus the money is lost, just like in the real world.

Contrary to SCE's contention at p. 9, Units 2 and 3 did NOT provide reliable service with the installation of the Replacement Steam Generators. Their design was defective from the day they were installed, and it was just a matter of time before they would fail. Thus, this plant was never operating reliably after the SGRP, which inflicted unprecedented wear in the SG tubes in both units. In actual fact, the SGRP was never "completed and entered into service" in that it was unable to sustain safe and reliable operation at full power. SCE decided to permanently shut down the two units rather than attempt to restart them after discovering that the SGRP design errors were so significant that there was no other feasible course of action.

Therefore, the SGRP and the related High Pressure Turbine project (which was never put into service) should be treated in the same manner as an abandoned plant that was never put into service. Commission policy in this regard is that: "Generally, utility shareholders must bear the full costs of abandoned projects." [24]

It is unfortunate that the Commission has previously determined that if an asset is put into service and the utility decides to pull the plug for any reason after only a small fraction of the intended life of the investment, that the utility can assume that it will be able to recover its entire investment plus a return on equity. This is perverse public policy.

The useful life of the San Onofre Replacement Steam Generators was supposed to be 40 years. They lasted for an average of about 18 months, thus providing about 3.75% of their

[24] *Re Pacific Power and Light Company*, (1984), 15 CPUC 2d, 118, 119 (D.85-05-097)

intended life. At present, the SCE and SDG&E are trying to be compensated for every aspect of the SGRP despite the project being an utter failure. Since we have not yet undertaken the reasonableness review of the SGRP scheduled in Phase 3 of this Investigation and the U.S. Nuclear Regulatory Commission has not published the results of its investigation into SCE's re-design of the Steam Generators, we don't yet know if SCE knew the faulty nature of the replacement steam generators and made a calculated decision to install them anyway, run them for as long as they could, and if/when they failed, argue that they should not only get all the investment returned to them and their shareholders from the ratepayer, but all the other costs associated with rushing these defective RSGs into service. Even if SCE did not know of the failed design of the RSGs, they acted imprudently in their effort to "supercharge" the design so they would produce more steam and thus the HPT project would be viable. Therefore, the HPT project investment in Construction Work In Project (CWIP) should not be recovered from rate base.

At Page 9, SCE argues that an unspecified portion of CWIP investment is in projects "necessary to support current operations or … necessary to support the transition to decommissioning in the future. These projects need to be subjected to third-party scrutiny for reasonableness as a going-forward ratepayer obligation; SCE has purported that it will be requesting access to the San Onofre Decommissioning Trust Fund, at the time it so does, it needs to specify what it requires said funds for, including these CWIP investments.

At Pages 11-12, SCE raises the question of how the salvage of unused materials, supplies, and nuclear fuel will be recorded and tracked. It expects its M&S inventory to be amortized along with the "used and useful rate base", offset by any proceeds from salvage. This inventory needs to be categorized as to abandoned (SGRP and HPT) vs. continuing operations, and treated accordingly as to cost recovery. Proceeds from the salvage of M&S inventory for abandoned plant should credit to shareholders; proceeds from the salvage of M&S inventory for continuing operations should credit to ratepayers.
SCE refers to "future obligations to purchase nuclear fuel" which it expects to be recovered in rates, unless these pending orders can be cancelled – however, if there are cancellation charges, these should be recovered in rates as well. Contrary to its witnesses' emphatic, repeated testimony in Phase 1, who insisted that nuclear fuel procured for San Onofre could NOT be resold (Palmisano and Perez) in defense of SCE's imprudent move of fuel back into Unit 2, SCE now says it intends to try to resell its entire nuclear fuel inventory. SCE's decision to move fuel back into Unit 2 while investigation of the RSGs was underway has been

questioned by several Parties in this Investigation, and SCE insisted that there would be no savings gained by not doing so, since it would be unable to re-sell it anyway.

Clearly, it WAS an imprudent decision as to making the nuclear fuel loaded into Unit 2 no longer re-sellable, as well as creating even more nuclear waste, which must go into onsite storage which is already over significantly over designed capacity. [25]

In light of this further example of SCE's imprudent and unreasonable decision-making and mismanagement of this nuclear power plant, the unused nuclear fuel on-site or pending delivery under contract should be considered a direct consequence of the abandoned SGRP, and NOT recovered in rates nor a return on investment provided. Any proceeds from the salvage of nuclear fuel can therefore be credited to shareholders.

SCE knew that the plant could not reasonably return to service as soon as the root-cause analysis showed that the RSGs were severely misdesigned – May 7, 2012. [26] The delay until June 1, 2013, is unbelievable. P.U. Code Section 455.5 required SCE to formally notify the Commission when the plant is not in use for nine continuous months. Any amortization should start no later than that date: November 1, 2012.

Accelerated amortization is one incentive for utilities to make bad decisions, and then get their return faster. Since this shutdown was due to design errors and other mistakes inside SCE and in its supervision of its suppliers, ratepayers should not be asked to subsidize these errors. The SGRP and HPT projects and all costs related to determining the reason for failure should be booked as losses to shareholders.

However, since shareholders do not hold stock in this specific asset, they will likely see no loss, but reduced profits, and this is as it should be to discourage SCE and SDG&E management from making similar bad decisions in the future.

[25] June 19, 2013, California Energy Commission IEPR Workshop, 2011 IEPR Reporting: "SCE reported inventory of the spent fuel pools to be almost 2x the original design capacity."

[26] Exhibit SCE-10, Timeline.

# APPENDIX A:
# QUALIFICATIONS AND PREPARED TESTIMONY

## QUALIFICATIONS AND PREPARED TESTIMONY OF RAYMOND LUTZ

Q1. Please state your name and business address.

A1. My name is Raymond Lutz. My business address is 771 Jamacha Rd #148, El Cajon, CA 92019

Q2. By whom are you employed and in what capacity?

A2. I am the principal of Cognisys, Inc, an engineering firm, and the National Coordinator of Citizens Oversight, Inc., a 501(c)3 nonprofit organization DBA Coalition to Decommission San Onofre.

Q3. Please describe your educational background and professional experience.

A3. I received a Master's Degree in Electrical Engineering from San Diego State University (1984) and have held numerous professional positions for the past 33 years. Recently, I have participated as an intervenor in the NRC License Amendment Request by Southern California Edison for San Onofre Nuclear Generating Station, published in the Federal Register on August 16, 2012.

Q4. What is the purpose of your testimony?

A4. I am co-sponsoring CDSO's reply testimony in Phase 2 of the Commission's Investigation into the San Onofre Outage.

Q5. Does this complete your testimony?

A5. Yes, it does.

## QUALIFICATIONS AND PREPARED TESTIMONY OF MARTHA SULLIVAN

Q1. Please state your name and business address.

A1. My name is Martha Sullivan. My business address is 2354 Carmel Valley Road, Del Mar CA, 92014.

Q2. By whom are you employed and in what capacity?

A2. I am the owner of Apply Liberally Enterprises, LLC and Organizer for Citizens Oversight, Inc., a 501(c)3 nonprofit organization DBA Coalition to Decommission San Onofre.

Q3. Please describe your educational background and professional experience.

A3. I received a Bachelor's Degree in Urban Studies from San Francisco State University (1981) and worked for the California Public Utilities Commission until 1998, attaining the level of Project and Program Supervisor. At the CPUC, I worked on human resources, budgeting, facilities management, information technology management, telecommunications and energy utility regulation, and environmental impact assessment and mitigation monitoring. In 1998, I joined an environmental consulting firm as a principal, growing its utility infrastructure practice substantially. Since 2003, I have been a community organizer in San Diego County, and in 2007, formed my company, Applly Liberally Enterprises LLC, a small business based in San Diego offering fine art and collectibles for sale and event planning and production services.

Q4. What is the purpose of your testimony?

A4. I am co-sponsoring CDSO's reply testimony in Phase 2 of the Commission's Investigation into the San Onofre Outage.

Q5. Does this complete your testimony?

A5. Yes, it does.