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 andSan Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.	Investigation 12-10-013 (Filed Oct. 25, 2012)
And Related Matters.	Application 13-01-016 Application 13-03-005 Application 13-03-013 Application 13-03-014

THE COALITION TO DECOMMISSION SAN ONOFRE'S OPPOSITION TO JOINT MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E), THE UTILITY REFORM NETWORK, THE OFFICE OF RATEPAYER ADVOCATES, FRIENDS OF THE EARTH, AND THE COALITION OF CALIFORNIA UTILITY EMPLOYEES FOR ADOPTION OF SETTLEMENT AGREEMENT

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I. INTRODUCTION

This investigation is to determine who should pay for the costs related to the failed and abandoned San Onofre Nuclear Generating Station (SONGS) as well as the reasonableness of the actions of Southern California Edison (SCE) as they executed the steam generator replacement project at SONGS and then responded to the outage caused by the emergency shutdown of January 31, 2012, as a result of steam generator design errors. SCE said that "At SONGS, the major premise of the steam generator replacement project was that it would be implemented under the 10CFR50.59 rule, that is, without prior approval by the US Nuclear Regulatory Commission (USNRC)[1]". In December, 2013, the NRC issued a notice of violation to SCE[2] regarding the actions related to the steam generator project.

Although the investigation has been split into a number of phases, the last phases have not been completed even to the extent that an adequate record has been generated, most particularly the review of the actual steam generator replacement project itself. Now, a settlement proposal is being pushed forward by the utility, negotiated with only two parties in the proceeding, the Office of Ratepayer Advocacy (ORA), and one outside party (The Utility Reform Network "TURN") in secret meetings and with no other parties informed about these settlement negotiations. Parties located in the service area of the plant were excluded. The settlement proposal was completed and announced to all other parties at a settlement conference on March 27, 2014, with no opportunity for other parties to participate in the settlement process. The settlement is not based on the whole record, because the record was not completed, with Phase 3 and Phase 4 as originally defined for the investigation never even started. The settlement itself is unsatisfactory in many ways and does not include all the issues, as it completely ignores community engagement issues which were part of the Phase 1 proceedings. However, this objection is regarding the process of allowing a settlement proposal at this stage in the investigation and the method by which this particular settlement was negotiated.

The Coalition to Decommission San Onofre (CDSO) hereby objects to this motion to adopt the settlement agreement according to these reasons and others to be explained more fully in the sections that follow.

CDSO is a project of Citizens Oversight, Inc. a 501c3 nonprofit organization with offices in the

1 http://www.copswiki.org/Common/M1252 - "Improving Like-for-like RSGs" -- *Nuclear Engineering International (2012-01) Boguslaw Olech, SCE*

2 http://www.copswiki.org/Common/M1406

San Diego County area, and that represents a number of residents and organizations in the vicinity of the San Onofre Nuclear Generating Station (SONGS). Included in this group is Residents Organized for a Safe Environment (ROSE), San Clemente Green, San Onofre Safety, and members, ratepaying residents in both the SCE and SDG&E areas of service, and many residents who live in the nuclear danger zone of the plant.

II. BACKGROUND

Key milestones in this case are as follows:

1. On 15 December 2005, the PUC issued Decision 05-12-040 granting SCE a rate increase for the Steam Generator Replacement Project (SGRP) at San Onofre as requested in A04-02-026. In Decision 0512040 the PUC:

   1.1. Determined the SGRP was cost-effective and allowed as "reasonable" estimate of total SGRP costs of $680,000,000 ($569,000,000 for replacement steam generator installation and $111,000,000 for removal and disposal of the original steam generators).

   1.2. 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.

2. SCE was required to file an Application with the Commission to establish the reasonableness of the SGRP construction costs, six months after San Onofre returned to commercial operations. (D. 05-12-040 Pages 48-49)

3. A number of Advice Letters were filed with the PUC in subsequent years describing revenue requirements related to the steam generator replacement project, summarized below, along with key milestone dates in the project and proceeding. Many of these Advice Letters refer to the Original Steam Generators (OSGs) which had to be removed and disposed as they are radioactive.

Date (AL)	Amount $M Nominal USD	Description
2005-12-28 (AL 1951-E)	3.03 (4.04 at 100%)	2006 Revenue Requirement, SCE share (75.05%) , OSG removal and disposal costs.

2006-11-30 (AL 2067-E)	3.32 (4.24 at 100%)	2007 Revenue Requirement, SCE share (78.21%) OSG Removal and disposl costs.
2007-11-30 (AL 2187-E)	3.60 (4.60 at 100%)	2008 Revenue Requirement, SCE share (78.21%) OSG Removal and disposal costs.
2008-11-24 (AL 2292-E)	3.78 (4.83 at 100%)	2009 Revenue Requirement, SCE share (78.21%) OSG Removal and disposal costs.
2009-06-30 (AL 2355-E)		Establishes two balancing accounts for SGRP
2009-11-16 (AL 2402-E)	3.84 (4.91 at 100%)	2010 Revenue Requirement, SCE share (78.21%) OSG Removal and disposal costs.
2011-02-28		2010 SEC 10K reported SG were replaced in 2010-04 (Unit 2) and 2011-02 (Unit 3)
2011-08		Six months after replacement and application for reasonableness review of construction costs. No application was filed.
2011-12-27 (AL 2468E)	115.239	2012 revenue requirement for replacement steam generators.
2012-01-10		Unit 2 entered planned refueling outage, to include inspection of steam generator tube wear.
2012-01-31		Emergency shutdown of Unit 3 after radiation leak to the environment. Subsequent inspections identified cause as tube-to-tube wear due to inadequate computer modeling.
2012-10-25		CPUC issued Order of Investigation (OII) I.12-10-013, including provision for accounts to retroactively account for expenditures in rates for SGRP and SONGS.
2012-12-31 (AL 2834-E)	A. 130.766 B. 17.924 (22.92 at 100%)	A. Modified revenue requirement for 2012 for Replacement Steam Generators. B. 2013 OSG removal and disposal costs.
2013-01-08		I.12-10-013 Prehearing conference, setting out the plan for four distinct phases.
2013-01-28		I.12-10-013 Scoping ruling establishing a number of phases, with Phase 3 to include causes of the steam generator failure and allocation of responsibility, and to determine if claimed SGRP costs are reasonable.
2013-05-13		I.12-10-013.P1 Evidentiary Hearing, Phase 1, confined to events of 2012 during the outage.
2013-06-07		SCE announced permanent shutdown of SONGS.
2013-07-12		I.12-10-013.P2 Pre-hearing Conference, Phase 2
2013-08-06		I.12-10-013.P1A Evidentiary Hearing, Phase 1A on

		replacement power calculations.
2013-10-07		I.12-10.013.P2 Evidentiary Hearing
2013-11-19		I.12-10-013.P1/1A Proposed Decision
2013-12-23		NRC Issues "FINAL SIGNIFICANCE DETERMINATION OF WHITE FINDING AND NOTICE OF VIOLATION, NRC INSPECTION REPORT 05000361/2012009 AND 05000362/2012009" stating that SCE had violated NRC regulations in the steam generator project.
2014-01-15		I.12-10-013.P1/1A PD All Party Meeting
???		I.12-10-013 Secret settlement negotiations held without informing all parties for their participation.
2014-03-27		I.12-10-013 Settlement conference held. Secretly negotiated settlement revealed to the other parties with no opportunity to participate in the negotiations.
2014-03-29		I.12-10-013.P1/1A Revised Proposed Decision released
TBA		I.12-10.013.P2 Proposed Decision (not done)
TBA		I.12-10.013.P3 Pre-hearing Conference (not done)
TBA		I.12-10.013.P3 Evidentiary Hearings (not done)
TBA		I.12-10.013.P3 Proposed Decision (not done)
TBA		I.12-10.013.P4 Pre-hearing Conference (not done)
TBA		I.12-10.013.P4 Evidentiary Hearings (not done)
TBA		I.12-10.013.P4 Proposed Decision (not done)
	45.39	TOTAL OSG work (100%), 6.7% of $671M

III. RATIONALE FOR OUR OBJECTION

Nuclear energy is extremely dangerous and requires compliance with safety regulations of the Nuclear Regulatory commission (NRC). SCE, in their application to replace the steam generators, asserts that they could complete the project safely and economically, and that the new steam generators would probably last another 40 years. Instead, the steam generators were only operational for an extremely minor fraction of the estimated operational lifetime. Unit 2 was only operational for about 18 months, or 3.75% of the projected operational lifetime. Unit 3 was only operational for 11 months, or 2.3% of the projected operational lifetime. (Unit 2 was undergoing routine fuel rod replacement in January 2012, so was not generating electricity when vibration caused Unit 3 shutdown, but the routine

maintenance being undertaken at the time was a planned outage, and therefore is counted toward the operational lifetime for that Unit.) These design failure was one of the most serious engineering and management blunders ever facing Southern California. Fortunately, no one died and the region did not need to be evacuated on a permanent basis. Now, the settlement proposes that ratepayers pick up the tab for about $3.3 billion while SCE management is rewarded with millions in profits from stock liquidations, and investors largely emerge unscathed. The settlement process is imprudent, unreasonable, andunfair to ratepayers.

A. WHOLE RECORD NOT ESTABLISHED, SHORTCUTTING THE PROCESS IS IMPRUDENT

The Commission is responsible for prudent processing of this devastating disaster. We don't want such mistakes to be made ever again. If the Commission shortcuts the proceeding and does not fully complete the investigation, then it will be impossible to learn from this failure and avoid similar losses and dangerous failures in the future. This is just not another rate-setting action where the result is either obscene profits as requested by the utilities or a negotiated settlement which results in absurd profits. This is about safety and how the utility conducts business to preserve the investment by the ratepayer in assets such as this huge plant.

CPUC "RULES OF PRACTICE AND PROCEDURE" Section 12.1(d) describes a set of circumstances which are required for settlements to gain approval:

> (d) The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. [3]

This can be pulled apart into a number of requirements, since they are connected by the article "and." Another way to say it would be in the positive sense, that settlements will be approved only if all of the following provisions are true:

1. The settlement is reasonable in light of the whole record.
2. The settlement is consistent with the law.
3. The settlement is in the public interest.

Requirement #1 implies that the "whole record" has been determined prior to the start of the

3 http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M089/K380/89380172.PDF

settlement. It seems reasonable that in many typical rate-setting cases, there may not be a lot of investigation to do to determine the rates, as long as a significant number of parties agree. This is not the case in this investigation, however, as just the opposite is the case.

The investigation was to "consider the causes of the outages, the utilities' responses, the future of the SONGS units, and the resulting effects on the provision of safe and reliable electric service at just and reasonable rates.[4]" Phase 3 of the investigation included investigation into "causes of the SG damage and allocation of responsibility, whether claimed SGRP expenses are reasonable."

Most of the "meat" of the investigation was moved to Phase 3, and much of what is to be decided in the other cases depends on the outcome of that phase. For example, the Phase 1 Proposed Decision could not determine much of what should be done prior to completing Phase 3:

> This decision provides interim rate relief to ratepayers, but $122.6 million in other O&M costs related to the steam generators are still subject to final review in Phase 3.[5]

And:

> We also order the continued tracking of incremental costs incurred due to the steam generator outages for further review in Phase 3 when the Commission examines the Steam Generator replacement project as a whole.[6]

And this passage:

> The Phase 1A portion of today's decision adopts a method for calculating the cost of replacement power in 2012, and orders the utilities to serve exhibits detailing their calculations according to the adopted method. Recovery of the calculated replacement power costs will be decided in Phase 3 of this proceeding.[7]

Here is another:

> Therefore, in this phase, we confine our review to knowledge gained by SCE in 2012 which informed, or should have informed, SCE's decisions in how to respond to the SG problems. In Phase 3, we will examine the SGRP as a whole and, if it is established that SCE had pre-existing knowledge about risks at the SGs, then it is possible that some or all SGIR-related expenses in 2012 may be found unreasonable.[8]

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4 Decription of I.12-10-013.
5 I.12-10-013.P1 Proposed Decision Page 4
6 I.12-10-013.P1 Proposed Decision Page 5
7 *Ibid.*
8 *Ibid* Page 33

And yet another:

> Beginning in the second half of March, all SGIR expenses, including Base-SGIR, are not yet eligible for rate recovery and shall be segregated for further review in Phase 3, subject to refund, where issues of outage-related fault or imprudence by SCE will be raised.

Why are these parts of the Phase 1 Proposed Decision deferred until after Phase 3? It's because the record has not yet be developed regarding the prudence and reasonableness of the entire SGRP. Indeed, throughout Phase 1 and Phase 2, SCE would object whenever the notion of reasonableness and prudency were broached, as these were to be discussed only in Phase 3. The Administrative Law Judges (ALJs) in the case would allow only the events of 2012 to be considered in Phase 1, even though attempts to restart Unit 2 continued until the plant was official shut down. The reasonableness of these actions were apparently to be considered in Phase 4.

Since Phase 3 and Phase 4 will never be processed in the proceeding if the Settlement is approved, a large and important part of the record is missing, and thus, it is impossible to state that the settlement is "reasonable in light of the whole record." Since this was a devastating failure on the part of SCE in their execution of the SGRP, it is imprudent for the Commission to shortcut the investigation and avoid reviewing the reasonableness of the SGRP itself.

In fact, in the original OII document, the following passage exists:

> Design flaws identified by NRC may have contributed to the accelerated wear and tear of the steam generators. If so, there may be questions about the degree to which the manufacturer may be responsible for expenses related to the shutdown. There may or may not be other sources of funds for some or all of the resulting costs (e.g., warranties, insurance, federal assistance). There are issues about how much cost, if any, should be paid by ratepayers and company owners. Therefore, it is in the public interest to undertake an investigation into the facts and circumstances of the SONGS outages for the purpose of exercising our statutory authority over rate recovery of associated utility costs, and to ensure safe and reliable service at just and reasonable rates.

But since many of the "facts and circumstances of the SONGS outages" have not be determined, the required authority of the CPUC is not properly exercised.

Also in that document:

> There is also the potential for review of some or all of the $671 million authorized

> for the steam generator replacement program (SGRP).[9] In particular, we authorized up to $671 million with the intention not to conduct an after-the-fact reasonableness review if the costs did not exceed $671 million. However, we also ordered:
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> > If the SGRP cost exceeds [$671 million], or the Commission later finds that it has reason to believe the costs may be unreasonable regardless of the amount, the entire SRGP cost may be subject to reasonableness review." (D.05-12-040, Ordering Paragraph 5.)

Thus the intention of possibly reviewing the entire SGRP is avoided by this settlement. Certainly, that may be the easiest for the utility, but it does not complete the oversight intended in the initial approval of the project.

Therefore, the motion to adopt the settlement agreement should be denied until Phase 3 is completed, and it can be determined if the entire SGRP should be reviewed.

B. SETTLEMENT NEGOTIATIONS CONDUCTED IN SECRET WITH FEW PARTIES INVOLVED.

There are multiple parties to the proceeding for a reason. Not all the issues are important to all parties to the same degree. TURN, the primary outsider party in the negotiations, is not located in Southern California and is not subject to the rates negotiated, for example. We also note that entire topics were not included at all in the settlement, even though a significant amount of time in the evidentiary hearings dealt with these issues.

At the request of Joint Parties and others, the Commission included in Phase 1, a review of SCE's 2012 actions and expenditures for community outreach and emergency preparedness related to the SONGS outages. The Phase 1 Proposed Decision included a section on this topic (67-70). There was no mention of this topic in the Proposed Settlement.

In this case, the attorney for TURN (Matthew Freedman) essentially became the sole negotiator for all the other parties. According to the American Bar Association guidelines for settlements:

> A lawyer who represents two or more clients shall not counsel the clients about the possibility of settlement or negotiate a settlement on their behalf if the representation of one client may be materially limited by the lawyer's responsibilities to another client, unless the lawyer reasonably believes the lawyer will be able to provide competent and diligent representation to each affected client, the representation is not prohibited by law and does not involve assertion of

9 The original authorization of $680 million (D.05-12-040) was reduced to $671 million (D.11-05-035.)

> a claim by one client against another, and each client gives informed consent in writing.[10]

To be fair to the other parties in the proceeding, the settlement negotiations should have been open to all parties and if any party wanted to allow TURN to represent them, then that should have been done in writing. The other parties were not informed of the negotiations and TURN did not get any informed consent for representation by TURN.

The Administrative Conference of the United States[11] has developed a set of "best practices for model public agencies. Recommendation 88-5 "Agency Use of Settlement Judges" Adopted on June 10, 1988, suggests that it is good practice to attempt to settle disputes without proceeding to litigation when possible, and they suggest the use of a settlement judge who is not one of the ALJs in the proceeding.

> The settlement judge can command a degree of deference similar to that of the presiding judge without the need to observe all of the commands that establish and maintain impartiality. A separate settlement judge, once appointed, can engage in ex parte and off-the-record conversations, frank assessments of the merits, and other techniques to aid settlement that the presiding judge is less free to use.

Unfortunately, the settlement procedures in this case are hardly within range of general practice since not all the parties were even informed of the negotiations, and were not able to participate in any meaningful way. This abrogated the rights of the other parties to participate and did not respect their rights to represent their constituents.

Therefore, we object to the motion to approve the settlement which was processed in this manner.

C. THE SETTLEMENT IS UNFAIR TO RATEPAYERS

The CDSO plans to provide comment on the actual content of the settlement within the 45-day period specified by the Rules Of Practice And Procedure, however, we must assert that the proposed settlement is so far away from fair to the ratepayer, that the motion to approve the settlement should be denied.

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10 http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/settlementnegotiations.authcheckdam.pdf -- Ethical Guidelines for Settlement Negotiations -- American Bar Association (2002) Page 25.

11 http://www.acus.gov

Representations in the Settlement Conference and in the media by TURN representative Matt Freedman were that the ratepayer was getting a $1.4 billion "rebate". However such is far from the truth.

Ratepayers are shouldering about $3.3 billion while investors are largely made whole. Instead, CDSO believes that ratepayers should be made whole and investors should shoulder about $2.8 billion.

The main points of the settlement are as follows:

1. One positive note: The steam generator replacement project (SGRP) will be removed from rates as of Feb 2, 2012. However, the settlement allows the utilities to keep the return on the steam generators before that date, which is about 20% of the value. Ratepayers must also pay for portions of the SGRP which were not included in the official SGRP account, such as removal of the old steam generators, and ancillary project that would not have been attempted has the SGRP never been started, such as replacing the High-Pressure Turbines (HPT) so as to take advantage of the "uprated" steam generators that produce higher steam pressure.

2. They define the "base plant" as really everything except for the SGRP, and the net investment value is fully returned to investors. Similarly, Operations and Maintenance (O&M) and Construction Work in Progress (CWIP) that were not canceled are effectively added to the base plant or covered by the Provisionally Authorized Revenue Requirement (PARR -- i.e. ratebase).

3. Under this settlement, the net asset value of the base plant is returned to investors with a lower (but guaranteed) rate of return.

4. At the same time, they want full compensation for replacement power which was purchased when the plant was out of service but not considered permanently shut down. It is unfair that they should be compensated for power purchased when ratepayers are also paying investors for the plant (which is no longer operating).

5. Finally, they are seeking insurance payments and damages from Mitsubishi Heavy Industries (MHI) in arbitration which may drag on for years. They suggest that any judgments paid from this process would be shared by ratepayers and the utilities, but ratepayers and the CPUC has no control over this process.

6. Thus investors recover their investment, and earn a guaranteed return on the backs of

ratepayers, while also sharing in insurance coverage, litigation proceeds, and being compensated for replacement power.

D. TOWARD FAIRNESS TO RATEPAYERS

CDSO suggests that a far simpler approach would make the ratepayer whole and limit the exposure to the ratepayer for the mistakes made by the utility in their SGRP and then abandoning the plant, as follows:

1. The entire plant would be taken out of ratebase as of Feb 1, 2012. This is similar to what is said in the settlement, but the settlement goes on to leave the investment value in rates, amortized over ten years. Any rates collected and paid to the utility would be refunded. This includes not only the SGRP, but the rest of the plant as well. It is important that we respect this important precedent. Plants earn revenue from the ratebase from the moment they start to operate and they should cease to earn that revenue the minute they are shut down.

2. Ratepayers would not be asked to compensate investors for their net investment in the plant nor to provide return on investment through amortization. The plant is considered "abandoned" with the special circumstance that the abandonment was due not to outside decisions, regulatory mandates, or natural causes, but because of utility imprudence, mistakes and errors. This includes a total of about $2.78 billion. Please note that the net investment of the "original plant" was fully returned with ROI to investors as of 2001. Current investment value in the plant include additions that were made mostly in anticipation of many years of service after the successful completion of the SGRP. It is good policy to make sure that investors are not fully compensated for failed projects or there is no incentive to avoid risky projects and poor management decisions.

3. Because ratepayers are no longer paying anything for the base plant, all "replacement power" would be paid at market rates, about $517 million. This has already been paid by ratepayers so it is simply not refunded. (Despite the fact that the plant was offline during 2012, rates were not higher as a result. Testimony by energy traders was that nothing happened to energy prices during the shutdown that they could tell.)

4. The utilities would pursue their insurance carrier NEIL[12] and MHI to cover the $2.78 billion

12 https://www.nmlneil.com/ -- Nuclear Electric Insurance Limited

deficit. These actions are strictly between SCE, SDG&E and their subcontractor MHI, and therefore, ratepayer need not get in the middle of this action or take any risks of its completion. Apparently, SCE has filed for some $4 billion in compensation from MHI for the steam generator failure. (Subject to confirmation by SCE, MHI is automatically liable for $380 million under their contract and the NEIL insurance carrier provides $328 million.)

5. Some portion of the plant will be used in the Nuclear Waste Operation (NWO) both in the spent fuel pools and their cooling infrastructure, as well as dry cask storage, the Independent Spent Fuel Storage Facility (ISFSI). This portion of the plant is valued by our analysis at about $342 million (undepreciated) with current net asset value of about $152 million. We propose that this portion of the plant be essentially "sold" by the investors to the decommissioning project, which draws its money from decommissioning trust funds, which currently have $3.9 billion in fund assets. The decommissioning project will seek damages from the Dept of Energy (DOE) for appropriate costs based on the breach of contract by the DOE to accept spent fuel inventories as of 1999. CDSO suggests a reasonable price be negotiated for this operation, which can help to mitigate overall losses by investors.

6. In terms of remaining plant assets, such as nuclear fuel and any salvageable portions of the plant, SCE should be allowed to fully benefit from sales of salvaged assets, which can also mitigate a significant portion of investor losses. The 95% ratepayer / 5% SCE split does not provide sufficient incentive for SCE to effectively salvage the remaining value of the plant.

7. Assuming transfering ownership of the NWO from the operating plant to the decommissioning project for $300, $380 million (minimum) from MHI, $328 million from the NEIL insurance, and perhaps $300 million for salvaged assets, probably the net asset value not returned to investors is reduced to about $1.5 billion. This loss can be quickly made up by reducing the salaries of top management at SCE and cutting bonuses to help them learn the lessons from the failure at San Onofre.

The difference in the current settlement and what CDSO considers fair for ratepayers differs from the current settlement by about $1.5 billion, and more importantly, is a cleaner and simpler arrangement that does not need to be monitored over a ten year amortization period, and does not get the ratepayer involved in a lengthy dispute between the utilities and MHI, and puts salvaging in the hands of SCE.

IV. CONCLUSION

The CPUC, as a regulatory body with authority to provide oversight of public utilities such as SCE and SDG&E, should deny the request for this secretly negotiated, lop-sided settlement, which is not based on the "whole record" and is not in the best interests of the public. Instead, the Commission should allow the envisioned process to complete, including the generation of a full record and completion of the evidentiary hearing for phase 3.

Any future settlement conference should invite all parties for participation to ensure that all voices are heard, and the missing elements of the settlement included, including nonmontetary actions required to be performed by the utilities.