

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

In Attendance: COMMISSIONER MICHEL PETER FLORIO
COMMISSIONER CATHERINE J.K. SANDOVAL
COMMISSIONER CARLA J. PETERMAN
COMMISSIONER MICHAEL PICKER

ADMINISTRATIVE LAW JUDGES DUDNEY and
DARLING, co-presiding

) ORAL ARGUMENT
)
Order Instituting Investigation on)
the Commission's Own Motion into the) Investigation
Rates, Operations, Practices,) 12-10-013
Services and Facilities of Southern)
California Edison Company and San) Application
Diego Gas and Electric Company) 13-03-005
Associated with the San Onofre)
Nuclear Generating Station Units 2) Application
and 3.) 13-03-013
)
) Application
And Related Matters.) 13-03-014
)
) Application
) 13-01-016
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)

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SAN FRANCISCO, CALIFORNIA
OCTOBER 31, 2014 - 11:09 A.M.

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ADMINISTRATIVE LAW JUDGES DUDNEY and
DARLING:

Today's date is October 31st. This is the time and place set for argument on the Proposed Decision in SONGS OII. That is the Investigation 12-10-013 and the other four consolidated proceedings.

I want to make a couple comments about safety today. As you know number, it's our number one priority. And in an emergency, I want to just point out the exits. There's two up here at the front, two at the back. In the event that we do need to evacuate the building, head out to the courtyard, down the front steps, continue west on McCallister Street. That's that way.

And turn north onto Franklin, west onto Turk. Follow the crowd. And you'll wind up at Jefferson Park. We normally have a closer rendezvous spot. But there's so much construction, and you probably don't want to head towards the Giants parade today.

So with that, I would like make some introductions of who's on the dais. To my right is Administrative Law Judge Kevin

1 Dudney, who has been my colleague all the way
2 through this many proceedings and many hours
3 of hearing and reading evidence.

4 The commissioners to my immediate
5 left is Commissioner Peterman, then followed
6 by Commissioner Florio, who is the assigned
7 commissioner for this proceeding, and
8 Commissioner Picker on the far left.

9 No insinuations, Commissioner.

10 COMMISSIONER PICKER: None taken.

11 ALJ DARLING: So the structure today is
12 going to be pretty simple. If you've been
13 participating in the consideration of the
14 settlement, you were considered participating
15 party. And you have 10 minutes. It's
16 sign-ups are taken in the order in which they
17 are made. We have a list here that we're
18 going to be following.

19 If you have not yet signed up and
20 you are a party, either participating -- or
21 you were party to the proceeding but didn't
22 get involved here, you may have much shorter
23 period of time to speak after all the
24 parties.

25 So with that said, we will begin
26 with Jean Merrigan from Women's Energy
27 Matters. Thank you.

28 And, Ms. Merrigan, you'll have 10

1 minutes, and there's a timekeeper right here.

2 MS. MERRIGAN: Okay.

3 ALJ DARLING: Thank you.

4 ARGUMENT OF MS. MERRIGAN

5 MS. MERRIGAN: Thank you. And good
6 morning. My name is Jean Merrigan. I'm here
7 representing Women's Energy Matters. And
8 Women's Energy Matters has been an active
9 participant since the very beginning of this
10 proceeding.

11 We filed comments on Wednesday. And
12 I hope that the commissioners who are here
13 and all the other commissioners and staff
14 will take the time to read them. I spent the
15 last 24 hours -- not all of it, but some of
16 it -- reading through all the comments that
17 were filed. And I think that the comments of
18 all the opposing parties taken together give
19 a really good view of what's been going here
20 the past two years of this investigation.

21 You'll read a lot about the
22 incomplete record, the fact that there was
23 not -- we were not allowed to develop a
24 record on the reasonableness of the Steam
25 Generator Replacement Project. We were not
26 allowed to develop a record on the
27 reasonableness of the utilities replacement
28 power choices.

1 But I want to use my short time here
2 today to talk about an issue that was fully
3 developed on the record. And that's the
4 issue of community outreach and emergency
5 preparedness.

6 I'll read you the January 28th
7 scoping ruling back in 2013, set out that
8 issue. It was included in the January 28
9 scoping ruling. There would be a review of
10 the reasonableness and effectiveness of SCE's
11 actions and expenditures for community
12 outreach and emergency preparedness related
13 to the SONGS outages. And please take note
14 that this proceeding addressed 2012 and 2013
15 costs. So we were looking into the
16 reasonableness of the community outreach and
17 emergency preparedness during that time
18 period.

19 A very full and complete record was
20 developed on this issue. But, unfortunately,
21 it wasn't included in the settlement
22 agreement. And I believe the Proposed
23 Decision gives it very short shrift.

24 The Proposed Decision would kick the
25 issue over to the 2015 GRC where it says it
26 may consider the issue, but not that it will
27 consider the issue.

28 And it describes the issue in very

1 vague terms. Somehow it becomes not about
2 2012/2013 anymore; it's about the future
3 community outreach and emergency
4 preparedness.

5 But, as I said, WEM, CDSO, and the
6 Joint Parties developed a complete record on
7 2012 and 2013 outreach activities. WEM's
8 work on this issue is on the record. It
9 includes a content analysis of Edison's
10 outreach materials. And that includes
11 content analysis of Edison's flagship
12 community outreach asset, which is
13 songscommunity.com.

14 The record includes Mr. Russell
15 Worden of Edison's acknowledgment in Phase 1
16 evidentiary hearings that the website is paid
17 for with ratepayer funds.

18 Our content analysis revealed that
19 throughout 2012 and 2013, songscommunity.com
20 prepared the front of its opening page as
21 continuing to be safe, clean, reliable, and
22 affordable.

23 The word "safe," are content
24 analysis showed, appears seven times on that
25 opening page. The word "reliable" or
26 "reliability" four times.

27 And if you run your mouse over the
28 top of the page where it says "safe, clean,

1 and affordable," the word "safe, clean,
2 affordable, and reliable" will pop up again.

3 So at ratepayer expense, the message
4 went out throughout 2012 and 2013, a time
5 when the plant had been shut down due to a
6 radiation leak, that the plant remained --
7 was safe at a time when there -- well, there
8 was only one month's of electricity
9 production that the plant remained
10 reliable -- a time when if this PD is
11 approved, ratepayers will pay billions for
12 that lack of production of electricity -- the
13 rate -- the service was not affordable -- and
14 also a time when the plant essentially
15 transitioned into being a nuclear waste dump
16 on this California coast. So it's definitely
17 not clean.

18 This 2012/2013 misuse of ratepayer
19 funds is illegal under Section 451. And
20 Section 455 authorized return of these
21 misspent funds.

22 As I said, the Proposed Decision
23 claims to resolve the issue by sending it to
24 the 2015 GRC where it may be considered. It
25 also now characterizes the issue in a way
26 that can be attributed as what Edison will do
27 in future years.

28 We looked at 2012/2013 activities.

1 We found blatant and illegal misuse of
2 ratepayer funds. Together with CDSO and
3 Joint Parties, we developed a complete record
4 on this issue. There was actually a
5 reasonable review of 2012/2013 community
6 outreach activities.

7 And we requested in our comments
8 that this issue be resolved by refund of the
9 misspent funds and a commitment by the CPUC
10 that it will develop policies and programs to
11 provide oversight of utility misuse of
12 ratepayer funds for corporate PR.

13 Our discussion today of this
14 Proposed Decision doesn't take place in a
15 vacuum. All of the commissioners heard
16 Commissioner Ferron's farewell remarks. I'm
17 pretty sure that all of us -- not most of
18 us -- in this room have read the emails
19 between President Peevey and Commissioner
20 Florio in another proceeding with PG&E
21 executives.

22 The past two years of this
23 proceeding are textbook example of how
24 procedural evasiveness at the CPUC serves the
25 utilities' interests.

26 WEM requests that any final decision
27 in this proceeding, whether through
28 settlement or otherwise, will not use

1 procedural evasiveness to ignore the fully
2 developed record in the proceeding on
3 2012/2013 community outreach activities.

4 You have the legal authority. Make
5 Edison take responsibility for its illegal
6 use of ratepayer funds in 2012 and 2013. And
7 we ask you to exercise it. Thank you.

8 ALJ DARLING: Thank you. Thank you,
9 Ms. Merrigan.

10 Before we go forward, I'd like to
11 acknowledge Commissioner Sandoval has joined
12 us. Thank you, Commissioner. And President
13 Michael Peevey is on the phone listening.
14 He's at a remote location, not in the city
15 today.

16 All right. So before I go ahead,
17 are there any questions with Ms. Merrigan's
18 testimony? Or would you like to save them
19 till the end? Any comments?

20 (No response.)

21 ALJ DARLING: Okay. Let's proceed.
22 Thank you.

23 Mr. Gnaizda. Followed by
24 Mr. Geesman.

25 ARGUMENT OF MR. GNAIZDA

26 MR. GNAIZDA: Good morning, your
27 Honors, and good morning, Commissioner
28 Florio, Commissioner Peterman, Commissioner

1 Picker, and Commissioner Sandoval.

2 I'm here on behalf of four minority
3 groups: the Los Angeles Latino Chamber of
4 Commerce, the Black Ecumenical Center, and
5 the National Asian American Coalition, and
6 Chinese American Institute for Empowerment.

7 But we are representing here far
8 more than those groups. Forty thousand
9 Latino evangelical churches are interested in
10 the Commission's proceedings, and 5,000
11 African Methodist Episcopal churches are
12 concerned.

13 Firstly, before I get to our
14 position and comments we filed, our groups
15 support safe nuclear, at least until solar
16 energy and wind power can play a very
17 dominant and relatively inexpensive role in
18 this state. And that means this Commission
19 must act carefully in not giving out a
20 message that will be seen as hostile to
21 nuclear energy.

22 We would invite of course, if this
23 Commission would like, to have a poll done of
24 the groups that did not appear in this
25 proceeding. Disproportionally those that did
26 not participate were our 60 percent of our
27 population and the more than 60 percent in
28 the Edison and San Diego territory who are

1 minorities. We think it will show
2 overwhelming majority support for this
3 Commission not sending a hostile message on
4 nuclear energy.

5 Our comments support the Proposed
6 Decision. We do so because we know there are
7 no perfect solutions. We also do so because
8 we think this Commission has had a long
9 policy that we have supported almost always,
10 which is to favor good settlements rather
11 than a perfect solution that will not occur.

12 And in this case, adding to the
13 support for our support for this Proposed
14 Decision is the fact that two groups that we
15 believe are highly credible and have always
16 put the interests of consumers ahead of any
17 ideological principles, TURN and ORA, have
18 helped devise this settlement. That is very
19 meaningful. This is not a fly-by-night
20 group.

21 One thing missing from this
22 settlement, however -- actually two -- and
23 it's nothing we can do about in this
24 settlement. And we don't want to delay this
25 settlement -- and that is there is inadequate
26 public safety measures being provided --
27 actually, none from the point of view of
28 educating the consumer.

1 And there is no specific, as the PD
2 acknowledges, relating to outreach to our
3 most vulnerable communities about energy
4 efficiency and alternatives. It is our hope
5 that this can be corrected in a subsequent
6 proceeding.

7 It cannot of course be corrected
8 fully in the Edison GRC. Perhaps it can in
9 part be corrected in the Sempra GRC, which
10 there will be hearings on hopefully in 2015.

11 One last comment -- please don't
12 reverse the PD because it will be seen across
13 the nation as a hostile message relating to
14 safe nuclear energy. And there is a future
15 for safe nuclear energy. We think that
16 future will require of course legislation in
17 California.

18 But small ultra safe nuclear plants
19 away from faults and away from large
20 population centers may be the answer to what
21 will in our opinion be a growing energy
22 problem for the next 20 years. Thank you
23 very much.

24 ALJ DARLING: Thank you very much,
25 Mr. Gnaizda.

26 Mr. Geesman, followed by
27 Mr. Weissmann. My mistake. Followed by
28 Mr. Freeman.

1 ARGUMENT OF MR. GEESMAN

2 MR. GEESMAN: Good morning. I'm John
3 Geesman on behalf of the Alliance for Nuclear
4 Responsibility. I want to thank you for the
5 opportunity to address you today.

6 We have filed comment on the
7 Proposed Decision going into some detail as
8 to our belief as to why you cannot legally
9 approve the settlement as presented in the
10 Proposed Decision. Today I don't want to
11 reiterate those points but, rather, to
12 address why you should not approve the
13 proposed settlement.

14 Before I do that, I would call your
15 attention though to the Proposed Decision
16 Conclusion of Law No. 20 in Ordering
17 Paragraph No. 8, which address keeping the
18 investigation and consolidated proceedings
19 open. And I'm quoting from Conclusion of
20 Law 20: "So the Commission may undertake
21 consideration of Rule 1.1 violations which
22 appear to have occurred during the course of
23 these proceedings."

24 No party is identified. No instance
25 is identified. This is vague, menacing,
26 ambiguous language with the sole purpose of
27 attempting to intimidate participation or
28 comment in this process. It's inappropriate

1 for public institution which is attempting to
2 encourage participation of the public in its
3 process. And I would encourage each of you
4 to disavow this type of threat in whatever
5 final decision you adopt.

6 I'm also not going to dwell on the
7 findings of UC Energy Institute workpaper
8 No. 248 about the consequences that have been
9 suffered by California ratepayers from the
10 premature shutdown of the plant. The
11 workpaper is cited in the Proposed Decision.

12 Interestingly, the impact on rates
13 is not cited. The UC Energy Institute paper
14 calculated that in 2012, about \$369 million
15 of rate increases in California were caused
16 by the shutdown of San Onofre, about
17 a 15-percent increase in the cost of
18 electricity which the Energy Institute
19 determined was shielded by an offsetting
20 decline in the price of natural gas.

21 Now, maybe that gives enough cover
22 to just ignore that impact. But according to
23 UC, over 10 years, the present value of that
24 amount is \$3.4 billion. And I raise that to
25 emphasize the magnitude of consequence
26 stemming from the commercial destruction of
27 Southern California's largest electric
28 generating asset.

1 The PD does mention the institute's
2 work on CO2 emissions associated with the
3 premature shutdown of the plant. And
4 according to the institute, the social cost
5 of that carbon, using the White House price
6 for carbon, is about \$331 million in the
7 first year. That's the equivalent of over
8 two million cars on the road.

9 Now, the PD addresses that providing
10 for a \$5 million a year research program at
11 UC. And I'll leave it to your own discretion
12 to determine whether that's an appropriately
13 proportionate response. But I will observe
14 that it is unlikely that the State of
15 California will be asked to preach any more
16 sermons to the United Nations about
17 California's global leadership in climate
18 protection when you issue indulgence to
19 California's most heavily regulated companies
20 at a ratio of \$1 for every \$66 of damage
21 caused.

22 The three points I do want to
23 emphasize are policy related. I've made
24 parallel legal arguments in the Alliance's
25 comments on the PD. But they are in
26 declining order of financial consequence.]

27 Inappropriate operation and
28 maintenance expenses for a plant that stopped

1 operating February 1st, 2012. According to
2 the settlement agreement, \$785 million would
3 be approved for operation and maintenance
4 expenditures on this plant in 2012 and 2013.

5 Now in fairness, the amount of O&M
6 for January of 2012 before the plant closed
7 should be recovered in rates. That's not an
8 amount that's been identified, but
9 the average of \$785 million spread over
10 24 months is about 33 million.

11 So \$752 million of O&M on a plant
12 that is not producing a single kilowatt-hour
13 of electricity, that's the equivalent of
14 posthumous dental work or surgery. And if
15 a doctor attempted to recover those costs
16 from Medicare, it'd be put in prison.

17 I should emphasize that the
18 Alliance For Nuclear Responsibility does not
19 oppose any bona fide decommissioning expense.
20 So any of that \$785 million, or if you will,
21 \$752 million that would qualify under
22 the strict test of whether this was
23 a decommissioning expenditure or not ought to
24 be recovered.

25 But that's not what the settlement
26 agreement does. It says, Here's your 785;
27 try and get as much of it from
28 the decommissioning trust as you can. But

1 whether you're successful or not at the
2 effort, you're going to get your money.

3 Second point that I would raise has
4 to do with construction work in progress for
5 a plant that has not operated since
6 February 1st, 2012. How can you have an
7 acceptable construction work in progress
8 project that wasn't on line and in service by
9 February 1st, 2012?

10 Our comments on the settlement
11 agreement itself last spring pointed out that
12 that number had accumulated to \$584 million,
13 a 60 percent increase for Southern California
14 Edison since the plant shut down;
15 a 31 percent increase for San Diego Gas &
16 Electric since the plant shut down. But
17 the numbers climb now to \$615 million. It
18 just keeps growing and the plant has not
19 generated electricity since February 1st --
20 actually, since January 31st of 2012.

21 The third area -- and I think
22 frankly it is the most egregious -- has to do
23 the provisions of the Proposed Decision for
24 recovery of replacement power.

25 The settlement agreement completely ignores
26 any offset for foregone sales revenues in
27 calculating replacement power costs.

28 Now the order which started this

1 entire process, the OII which you adopted
2 a couple of years ago, mentioned the need to
3 capture that offset four separate times,
4 twice in the ordering paragraphs. Yet
5 the settlement agreement makes very clear,
6 no, we're not going to make any offset.

7 How much of a difference does that
8 make? Well, that's now in excess of
9 \$451 million. Who is going to place any
10 credibility to any of your pronouncements in
11 the future if you look the other way at
12 a theft of \$451 million in the calculation of
13 replacement power costs?

14 I should say that when there was an
15 evidentiary record developed on this
16 question -- Phase 1A, several days of
17 hearings, briefing, comments on the Proposed
18 Decision for Phase 1A -- the Phase 1A PD said
19 that the Edison position that these foregone
20 sales revenues should be ignored has no
21 merit. So if you're going to base your
22 review of the settlement on the record at
23 all, you really need to exclude this
24 \$451 million of foregone sales revenues.

25 I thank you for your attention.

26 ALJ DARLING: Thank you, Mr. Geesman.

27 Mr. Freeman.

28 //

1 ARGUMENT OF MR. FREEMAN

2 MR. FREEMAN: May it please
3 the Commission, I am S. David Freeman, the
4 senior advisor to the Friends of the Earth,
5 and I appear before you on behalf of
6 the Friends of the Earth.

7 FOE supports this settlement. We
8 do so as the party whose efforts played a key
9 role in uncovering the facts in providing
10 the expert analysis that persuaded this
11 Commission to initiate in OII. Some of
12 the members of this Commission who were
13 present at the time will recall that FOE
14 urged you to initiate this proceeding.

15 We patiently understood why you
16 needed to wait until nine months after
17 the plant was closed down before you
18 initiated the proceeding, so that you could
19 include the ratemaking issues that we are
20 discussing. But for the knowledge and
21 initiative of this Commission in framing this
22 investigation to include actual action on
23 rates, we would be waiting until the years
24 that this proceeding would have to go on and
25 then yet another proceeding to even get to
26 the issue of rates. And I just think that
27 the newcomers in this proceeding should
28 recognize the Commission's consumer-oriented

1 approach to this whole matter.

2 It was a series of reports
3 initiated by the FOE's technical expert,
4 Arnie Gundersen who informed all the parties
5 of the reasons why the steam generators
6 failed. It was the incisive analysis by
7 FOE's other technical expert John Large that
8 documented how the Edison Company
9 short-circuited the approval process at the
10 NRC. His testimony was effectively confirmed
11 very recently by the NRC Inspector General
12 himself. It was a timely and insightful
13 financial analysis provided by FOE's economic
14 expert, Steve Moss, which revealed the true
15 cost of continued operation of a single unit
16 at San Onofre as was proposed by the Edison
17 Company.

18 And it was FOE's exercise of its
19 discovery rights in this OII along with
20 related actions that FOE took which played
21 a crucial role in the Edison Company's
22 decision to close the plant.

23 We recite all this history to
24 document the fact that if any party in this
25 proceeding had the knowledge and
26 the incentive to fight this thing to the
27 finish, it was the Friends of the Earth. And
28 for that reason, we, not too modestly but

1 respectfully, suggest that the Commission
2 give weight to the FOE's considered judgment
3 to support this settlement. It did not come
4 easy.

5 We are actively supporting this
6 settlement because it is our considered
7 judgement that it reflects the most likely
8 outcome of this proceeding after additional
9 years of litigation. And during that period,
10 Edison's ratepayers, which we are all very,
11 very much concerned about, would continue to
12 pay rates that are higher than the rates that
13 are being provided by this settlement.

14 Now, overlooked in the entire
15 debate over this settlement is the principle
16 benefit -- and I say that advisedly --
17 the principle benefit for Edison's customers
18 that was achieved in this proceeding by
19 the combined efforts of this Commission,
20 Friends of the Earth and its grassroots
21 supporters in Southern California; namely,
22 the decision of the Edison Company to close
23 the San Onofre plant permanently.

24 The plant closure, coupled
25 the proposed settlement, removes an
26 uneconomic plant which, if it continued to
27 operate, would trigger massive rate increases
28 to satisfy environmental and safety concerns

1 such as the need for cooling towers and
2 upgrades to remedy earthquake concerns.

3 And I think this last point is very
4 important: The plant closure relieves
5 consumers from paying for decades, decades
6 and decades of additional irradiated nuclear
7 waste where we have no idea where to take it.
8 It's a cost that has no end to it. And
9 the birth control implemented by the decision
10 for closure is a major saving to consumers.

11 It's also highly relevant to
12 remember that the pendency of this OII itself
13 played an important role in Edison's decision
14 to close the plant which benefits consumers.
15 It's also highly relevant to recognize this
16 settlement was negotiated on behalf of all
17 consumers by TURN, the progressive consumer
18 watchdog which has the longest and most
19 successful track record of any consumer
20 entity that routinely, day in and day out,
21 appears before this Commission, as well as by
22 the Commission's own Office of Ratepayer
23 Advocates.

24 The settling parties, including
25 FOE, reviewed and approved the details of
26 this settlement which are reflected in
27 the Proposed Decision before you.

28 I think it's really important to

1 recognize the unique nature of this
2 proceeding. This OII and its settlement is
3 a noteworthy example of this Commission
4 taking the initiative to advance the public
5 interest. The settlement should be approved
6 and the Commission's initiative in launching
7 this settlement should be applauded.

8 Thank you.

9 COMMISSIONER PETERMAN: Thank you.

10 ALJ DARLING: Thank you, Mr. Freeman.

11 Mr. Weissmann.

12 Mr. Weissmann, I'll ask you to hold
13 on.

14 All right. We have an update on
15 the webcast. The technician is here. It
16 will probably take about five minutes to go
17 live.

18 Mr. Weissmann, do you have any
19 objection to going ahead?

20 MR. WEISSMANN: Not at all.

21 ALJ DARLING: Thank you. Please
22 proceed.

23 ARGUMENT OF MR. WEISSMANN

24 MR. WEISSMANN: Good morning. My name
25 is Henry Weissmann. I represent Southern
26 California Edison. We support the Proposed
27 Decision and urge the Commission to vote on
28 it on November 20th.

1 Let me start by providing a broad
2 overview of the five major elements of
3 the settlement.

4 First of all, it provides for no
5 rate recovery for the Steam Generator
6 Replacement Project starting February 1,
7 2012, which is the day after the outages
8 began. This is about \$600 million being
9 written off from rate recovery for Southern
10 California Edison.

11 Second of all, the remaining SONGS
12 investments would be recovered over,
13 generally, a ten-year period at a greatly
14 reduced rate of return that covers only
15 the cost of debt and 50 percent of the cost
16 of preferred, so no return on equity. For
17 Edison currently, that rate of return is
18 about 2.62 percent.

19 Third, the settlement disallows
20 recovery of the incremental O&M costs
21 incurred to inspect the replacement steam
22 generators following the outage which, for
23 Edison, is about a hundred million dollars of
24 costs incurred in 2012. So those 2012 costs
25 would be disallowed, remaining O&M is
26 permitted to be recovered up to authorized,
27 those rate level that is were preliminarily
28 authorized in our prior GRC.

1 And I might say, the extent to
2 which Edison's O&M costs as actually recorded
3 were reasonable, including the incremental
4 inspection and repair cost, was a very hotly
5 contested issue in this proceeding,
6 the settlement permits partial recovery of
7 those costs.

8 Fourth, ratepayers pay for
9 the market purchases of replacement power
10 that they use. There is no offset for
11 forgone sales because that would amount to
12 a disallowance based on the loss of SONGS.
13 And in the overall package of this
14 settlement, the disallowance is imposed in
15 a different way, as I've already described,
16 through the disallowance of the replacement
17 steam generator costs, and the reduced return
18 and extended amortization for the remaining
19 SONGS investments.

20 Fifth, the settlement contains
21 provisions for sharing between ratepayers and
22 shareholders of any recoveries that we're
23 able to obtain from the insurance company and
24 also from Mitsubishi which is the designer
25 and manufacturer of the replacement steam
26 generators that failed.

27 We believe the settlement is
28 reasonable and should be approved. Edison,

1 had the case gone forward, would have
2 presented substantial evidence demonstrating
3 that it acted prudently in all respects and,
4 hence, Phase 3, had it been litigated, would
5 have been heavily contested. Edison decided
6 that rather than engage in protracted
7 litigation of this kind, it would be better
8 to settle and to be able to focus on other
9 issues, including replacing SONGS output.

10 The SONGS settlement is not an
11 admission of imprudence. We believe
12 the evidence would have shown that Edison
13 acted prudently. It's a settlement, however,
14 that allows us to put the issues behind us.

15 As you will hear, the settlement is
16 supported by a broad-base coalition of
17 consumer, environmental, and labor groups.
18 And we'll let them explain why they concluded
19 from their perspective that the settlement is
20 in the interests of consumers and ratepayers.

21 Overall, we believe it is
22 a reasonable compromise that is well within
23 the range of reasonable litigation outcomes
24 of this proceeding. Indeed, the claim of our
25 opponents that even more costs should have
26 been disallowed than are under the settlement
27 is based on an extreme and unprecedented
28 outcome. That is the view that even if

1 Edison were found to have been imprudent,
2 which we don't believe would be the case,
3 that all -- that the costs in addition to the
4 steam generator costs would have been
5 allowed -- disallowed. That certainly cannot
6 be deemed to be an assured outcome of this
7 proceeding.

8 Let me talk for a moment about
9 the settlement process that led us here
10 today.

11 Settlement discussions began in
12 July of 2013. They lasted many months. They
13 were very hotly hard fought. The settlement
14 was signed eight months later at the end of
15 March of this year.

16 The six settling parties filed
17 a motion for settlement approval in early
18 April, almost seven months ago. Actually,
19 more than seven months ago.

20 The process for the consideration
21 of the settlement has been extensive. On
22 April 24, the ALJs issued a ruling requiring
23 the settling parties to provide testimony,
24 answering a series of questions. There was
25 an evidentiary hearings on the settlement on
26 May 14. There was a community meeting on
27 the settlement.

28 Parties filed comments. Parties

1 filed reply comments.

2 On September 5th, the assigned
3 commissioner, Commissioner Florio and
4 the ALJs issued a ruling requesting
5 modifications to the settlement which
6 the settling parties accepted. Opponents
7 were given the opportunity to file comments
8 on that as well.

9 There was a Proposed Decision that
10 was issued on October 9th. It is very
11 thorough. It carefully analyzes each of the
12 arguments made by the opponents of
13 the settlement and concludes that the
14 settlement is in the public interest, that it
15 meets the criteria for approval, that it is
16 reasonable, and that it is lawful.

17 We urge the Commission to adopt
18 the Proposed Decision on November the 20th.
19 Prompt approval of the settlement will enable
20 the utilities to provide the benefits of
21 the settlement to consumers quickly,
22 including by reducing the amount of SONGS
23 costs being collected in rates starting on
24 January 1st, 2015.

25 Prompt approval of the settlement
26 also allows Edison and San Diego to focus on
27 the important efforts to obtain recoveries
28 from Mitsubishi and from NEIL, our insurance

1 company, as well as decommissioning and
2 meeting resource adequacy and reliability
3 goals.

4 I'd be happy to answer any
5 questions you may have. Thank you.

6 ALJ DARLING: Thank you.

7 The other Mr. Freedman, Matt
8 Freedman.

9 Before you start, let me just make
10 note: The webcast is up and running, and we
11 welcome members of the public who have joined
12 us, and apologize for the delay in getting
13 the webcast up but it should be fine.

14 And here we go. Mr. Freedman.

15 ARGUMENT OF MR. FREEDMAN

16 MR. FREEDMAN: Thank you, your Honor.
17 Thank you, ALJs Dudney, Darling;
18 Commissioners Peterman, Florio, Sandoval and
19 Picker. I'm Matt Freedman, representing
20 The Utility Reform Network.]

21 TURN actively opposed the 2004
22 application of Southern California Edison
23 seeking Commission approval to replace the
24 failing steam generators at San Onofre. In
25 that case, we argued that the project was
26 unlikely to be cost-effective, and pointed
27 out that even slightly adverse events would
28 saddle ratepayers with significant

1 unaccounted costs. We urged the Commission
2 to consider what would happen if SONGS were
3 to go out of service for a year due to
4 unforeseen problems at the plant.

5 The Commission rejected our
6 arguments, concluded that a one-year outage
7 was unlikely, and approved Edison's
8 application despite the fact that the
9 cost-effectiveness modeling scenario showed
10 that that investment didn't make sense. Had
11 the Commission accepted TURN's recommendation
12 and decided differently in that case, we
13 wouldn't find ourselves in this situation
14 today.

15 In the current investigation TURN
16 actively litigated the major issues presented
17 in Phases 1 and 2. We strongly opposed the
18 rate proposals made by Southern California
19 Edison and San Diego Gas & Electric and
20 offered aggressive alternatives based on our
21 understanding of the applicable law and the
22 best outcomes achieved in prior cases.

23 Had this case been resolved through
24 litigation without a settlement, we recognize
25 there were significant uncertainties as to
26 how the contested issues would be resolved.
27 Edison and SDG&E put many problematic
28 proposals on the table. These proposals were

1 given substantial amounts of hearing time and
2 consideration by the Commission. The
3 adoption of any one of these problematic
4 proposals would have set terrible precedence
5 if adopted by this Commission.

6 Despite these risks, TURN was not
7 committed to settling the case. We only
8 settled because the terms were favorable
9 compared to what we expected to achieve
10 through litigation. These favorable terms
11 were achieved through prolonged and very
12 contentious negotiations between TURN, ORA,
13 Edison, and San Diego Gas & Electric.

14 And TURN ultimately decided to
15 settle, because it was not clear to us what
16 incremental ratepayer benefits could be
17 achieved by rejecting the favorable terms
18 achieved through negotiation and instead
19 rolling the dice with litigation.

20 We had initially hoped the
21 Commission would remove the base plan from
22 rates in November of 2012 pending the
23 resolution of this investigation. The
24 Commission did not take this action at the
25 outset of the investigation, and it became
26 clear to us that there would be no meaningful
27 rate relief for an extended period of time.
28 Given this reality, our position to settle on

1 favorable terms was intended to expedite the
2 return of overcollections, avoid extended
3 litigation delays, and bring down rates for
4 customers as soon as possible.

5 In terms of the numbers, the
6 settlement leans heavily towards the
7 positions put forth by ORA and TURN. On a
8 present value basis, the settlement doesn't
9 split the difference with the utilities. It
10 moves 70 percent away from the utility
11 proposals toward the TURN and ORA positions.

12 The settlement treats past
13 investments on base plant as retired and
14 removed from rate base on February 1, 2012,
15 only one day after SONGS Unit 3 was shut down
16 due to a steam generator tube leak. For
17 these costs, the settlement authorizes no
18 return on equity, 50 percent of return on
19 preferred stock, and full return on debt over
20 a 10-year amortization period. This compares
21 to TURN's position of treating the plant as
22 retired in November of 2012 and providing a
23 zero percent return over 10 years.

24 In past situations where plants have
25 been prematurely retired, regardless of the
26 reason for retirement, the Commission has
27 typically provided for recovery of prudently
28 incurred investments at a low or zero rate of

1 return for periods of four to six years. But
2 the combination of low returns and a 10-year
3 amortization in the settlement provides a
4 much better outcome and lower cost to
5 consumers on a present value basis than if
6 the plant were amortized over a shorter
7 period and at a zero percent return. That is
8 because of the time value of money.
9 Moreover, the longer amortization period
10 means larger refunds and earlier rate
11 reduction that can be provided to customers
12 in 2015.

13 With respect to the replacement
14 steam generators, the settlement disallows
15 any collection of these costs from customers
16 after January 31, 2012. This is a great
17 result for customers and the exact remedy
18 that TURN sought through litigation. This
19 extremely large disallowance is justified,
20 because the steam generators were defective.
21 The costs have never found it to be
22 reasonable, and the replacement steam
23 generator investment had not been permanently
24 placed into rate base.

25 For TURN's perspective, the issue of
26 whether Edison or Mitsubishi was at fault is
27 not relevant to the determination of which
28 costs can and should be recovered in rates.

1 Edison and San Diego Gas & Electric should be
2 held similarly responsible for mistakes made
3 either by its own staff or for mistakes made
4 by contractors and vendors. In both
5 situations, the utilities should be
6 responsible.

7 The allocation of liability between
8 Edison and Mitsubishi shouldn't be determined
9 here at the Commission. Mitsubishi isn't
10 even a party to this investigation and had no
11 opportunity to present its evidence to the
12 Commission. Instead, liability and fault
13 will be determined in an ongoing arbitration
14 between these two companies. And under the
15 revised settlement, ratepayers are entitled
16 to half of any net proceeds that are obtained
17 from Mitsubishi in the arbitration process.

18 Some parties argue that the
19 settlement is unfair because in Phase 3 the
20 Commission would completely disallow all
21 previously incurred costs including base
22 plant, nuclear fuel, and operation and
23 maintenance costs. This sounds great. The
24 problem is there is no Commission precedent
25 that supports this outcome; and had there
26 been such a precedent and a reasonable chance
27 of success on the merits, TURN would not have
28 settled.

1 The settlement also identifies four
2 categories of refunds that will be coming to
3 customers that aren't included in the numbers
4 that have been provided to the Commission in
5 terms of the present value calculations.
6 Ninety-five percent of the net proceeds of
7 nuclear fuel cells could be a couple of
8 hundred millions dollars right there, 95
9 percent of the net proceeds of materials and
10 supplies, 95 percent of the net recoveries
11 for nuclear insurance for outage-related
12 costs, and 50 percent of net recoveries from
13 Mitsubishi. Fundings from any of these
14 sources would reduce the obligations of
15 ratepayers and would mitigate and could
16 effectively zero out the cost of fees
17 collected from customers under the settlement
18 between 2015 and 2022.

19 Some parties argue the settlement is
20 not valid because the process did not comply
21 with Commission rules. This argument lacks
22 merit. Rule 12.1(b) only requires that a
23 settlement conference be noticed and convened
24 prior to the signings of the final settlement
25 document, and this requirement was satisfied.

26 Rule 12.1 specifically states the
27 settlements need not be joined by all
28 parties. And this settlement was not signed

1 by all active parties, although it was signed
2 by several parties that didn't participate in
3 the negotiations but did attend the
4 settlement conference.

5 The Commission's long-standing
6 policy is that contested settlements that are
7 opposed by some active parties should be
8 subject to more scrutiny than an all-party
9 settlement. This is appropriate, and it is
10 what happened in this case.

11 The non-settling parties had a full
12 opportunity to critique the settlement and
13 suggest alternative outcomes. The fact that
14 the assigned commissioners, the commissioner
15 and ALJs, requested revisions to the
16 settlement after reviewing comments from the
17 non-settling parties demonstrates that
18 greater scrutiny was, in fact, applied to the
19 settlement. And the Proposed Decision
20 devotes 60 pages to a discussion of the
21 substantive provisions in the settlement, and
22 finds that each one is reasonable in light of
23 the record, the law, and the public interest.
24 This type of heightened scrutiny in a
25 Proposed Decision is not consistent with the
26 type of deference that usually is afforded to
27 an all-party settlement.

28 TURN did its best to represent the

1 interest of customers who have been saddled
2 with excessive costs resulting from the
3 project. Based on our professional
4 experience that includes decades of practice
5 in front of this Commission, we believe that
6 the settlement represents a reasonable
7 outcome of the contested positions.

8 That said, we also understand that
9 the disastrous failure of the Steam Generator
10 Replacement Project represents a bad outcome
11 for everyone. It is an outcome that would
12 have been avoided had the Commission listened
13 more carefully to TURN's concerns about this
14 project a decade ago. Thank you.

15 ALJ DUDNEY: Thank you. Any questions?

16 Commissioner Florio.

17 COMMISSIONER FLORIO: Yes. Thank you,
18 Mr. Freedman.

19 There is a table at the top of page
20 32 of the Proposed Decision that I believe is
21 taken directly from the settlement that shows
22 the litigation positions of TURN, DRA, and
23 the utilities, and then the settlement.
24 There is a line present value of revenue
25 requirements at 10 percent. Is that the best
26 place for us to look for how this compared to
27 the litigation positions of the various
28 parties?

1 MR. FREEDMAN: I don't have the table
2 in front of me, but I believe you are
3 correct. The present value calculations were
4 done to show the Commission how the costs
5 were split relative to the positions taken by
6 the utilities, and TURN, and ORA. I think it
7 became clear, to me at least as we were
8 talking in the settlement process, that there
9 is a lot of moving parts here. And one thing
10 that is very important is to understand how
11 they all fit together into numbers that would
12 allow for an apples-to-apples comparison
13 between positions.

14 I would say that this split of
15 positions here was one thing that we looked
16 at, but not the only thing we looked at, in
17 determining whether the settlement was
18 acceptable, from our perspective.

19 COMMISSIONER FLORIO: And the numbers
20 in that table do not reflect those four
21 additional categories that you just
22 mentioned, the 95 percent of nuclear fuel, 95
23 percent of materials and supplies, et cetera?

24 MR. FREEDMAN: That is correct. It
25 seemed unreasonable, to me at least, to try
26 to estimate numbers. Because these are
27 refunds that either will or won't be provided
28 based on the money that comes in. Some have

1 a higher probability than others.

2 But specifically with respect to
3 insurance claims and arbitration awards, it
4 is very challenging for me on behalf of TURN,
5 and anyone that we could have as an expert
6 take a look at this, to try to define an
7 accurate number. There is no accurate number
8 from a forecast basis. There is only the
9 number that actually shows up. Our goal was
10 to make sure that whatever money comes in
11 through those insurance and arbitration
12 processes, that ratepayers get their fair
13 share.

14 COMMISSIONER FLORIO: Would it be fair
15 to say that as these outstanding issues are
16 resolved, the deal only gets better for
17 ratepayers?

18 MR. FREEDMAN: That is for sure.

19 COMMISSIONER FLORIO: Thank you.

20 ALJ DUDNEY: All right. Thank you,
21 Mr. Freedman.

22 MR. FREEDMAN: Thank you.

23 Jamie Mauldin.

24 ARGUMENT OF MS. MAULDIN

25 MS. MAULDIN: Good morning ALJs Dudley
26 and Darling, commissioners. My name is Jamie
27 Mauldin. I represent the Coalition of
28 California Utility Employees, or CCUE.

1 CCUE is a coalition of unions whose
2 35,000 members work in nearly all the
3 electric utilities in California, including
4 approximately 700 employees at the SONGS
5 units at the time the steam generator leak
6 occurred. Currently, Utility Workers Union
7 of America, a member of CCUE, represents 138
8 employees still at SONGS units. All the rest
9 have lost their jobs.

10 CCUE has been an active party in
11 this proceeding and since the OII issued, and
12 decided to join the settlement agreement for
13 several reasons. First, the settlement
14 allows Edison to recover the costs of paying
15 employees before they were laid off when
16 there was still a chance that the plant would
17 be restarted, because any possibility that
18 the plant may have been restarted required
19 Edison to keep its trained staff to operate
20 the equipment.

21 In contrast to the settlement
22 agreement, the Commission issued a Phase 1
23 Proposed Decision that would have authorized
24 a mass layoff of the trained work force as
25 soon as the units were offline, regardless of
26 the possibility of a restart. The Phase 1 PD
27 would have created terrible policy and
28 precedent encouraging the utilities to fire

1 their employees at the first hint of
2 operational trouble.

3 It is important to remember that the
4 SONGS workers are a unique asset, one which
5 has been trained to keep the public safe from
6 potential disaster. SCE and SDG&E ratepayers
7 have invested in these people, and they would
8 have been impossible to replace or reassemble
9 if the plant had been restarted.

10 Unfortunately, the Phase 1 PD and other
11 parties arguing against keeping trained staff
12 failed to consider the value of these
13 workers. Additionally, for 2013 the
14 settlement agreement authorizes severance
15 expenses for those approximately 560
16 employees who have now lost their jobs.

17 Lastly, and very importantly, CCUE
18 believes the settlement agreement strikes a
19 fair balance so that ratepayers pay for
20 portions of SONGS that reliably served
21 customers at greatly reduced rate, the
22 replacement power that customers consumed,
23 but not the steam generators after they
24 failed.

25 There is a lot of blame to go around
26 here. Everybody is worse off, and there are
27 no winners in this situation. California
28 ratepayers lost a cost-effective electrical

1 resource. California lost 2200 megawatts of
2 carbon-free generation located in an
3 electrically critical place, and more than
4 500 people lost high-quality middle-class
5 jobs. There is no happy outcome here.

6 However, the Commission has two
7 choices. One, adopt the PD which gives money
8 back to ratepayers right away; or, two,
9 continue litigation that, due to the amount
10 of money and complexity of contested issues,
11 would last at least one or two more years
12 delay in getting money back to ratepayers.

13 The Proposed Decision correctly
14 finds that the settlement agreement reflects
15 a reasonable compromise between the diverse
16 settling parties' positions and will avoid
17 the time, expense, and uncertainty of further
18 litigation.

19 We urge the Commission to adopt the
20 PD because the settlement is reasonable,
21 balanced and has the support of the leading
22 ratepayer advocacy groups and international
23 environmental group, and labor, along with
24 the utilities. Moreover, it provides a
25 reasonable, efficient, and timely resolution
26 of this investigation. Thank you.

27 ALJ DUDNEY: Thank you.

28 Mr. Lutz followed by Mr. Pocta.

1 ARGUMENT OF MR. LUTZ

2 MR. LUTZ: Hello. Thank you very much.
3 My name is Ray Lutz. I am with the citizens'
4 oversight projects, and we are in this
5 investigation as the Coalition to
6 Decommission San Onofre. Thank you very much
7 for letting me speak before the Commission
8 today.

9 ALJ DUDNEY: Mr. Lutz, could you raise
10 your microphone a little bit, please?

11 MR. LUTZ: I'll move it more here.
12 Thank you.

13 ALJ DARLING: Thank you.

14 MR. LUTZ: The mission of Citizen's
15 Oversight is civic engagement. We prefer
16 open and public processes rather than private
17 and secret processes. We believe that this
18 is good public policy, and is likely endorsed
19 by virtually everyone that you ask. Do they
20 want it secret or open? I bet you you would
21 all raise your hand "open." I would hope at
22 least in a public forum you would say that.

23 Transparency encourages fair and
24 just decision making and discourages waste,
25 fraud, and abuse. My background is not as an
26 attorney but as an engineer with an advanced
27 degree. After careful consideration of
28 nuclear energy, we have concluded that

1 safety, waste, and cost make nuclear energy a
2 bad public policy to continue.

3 This is our first attempt to provide
4 Citizen's Oversight in the processes of the
5 CPUC, but we do it with the experience
6 providing oversight to many other
7 governmental groups.

8 Some may say that any settlement is
9 worth agreeing to as long as the nuclear
10 plant is shut down. This proceeding had
11 nothing do with the decision to shut down the
12 plant. We believe this is an abandonment of
13 the duties of the groups representing
14 ratepayers to give in very easily to the
15 utilities without pushing for the position of
16 the ratepayers.

17 No matter how you look at it, there
18 were significant investments in this plant
19 based on the plan to extend its life by
20 another 40 years, which were lost. The
21 original equity though in the plant was
22 recovered by investors in 2001. So those
23 investors that originally invested in this
24 plant made their money back a long time ago.
25 All the recent investment was speculation on
26 this plant will continue for a long time at
27 the rate of about \$115 million a year. A lot
28 of that would have been saved had this plant

1 never been approved and gone forward.

2 Now, what we noticed in our review
3 of this first consideration of your processes
4 is that there is two process here, a public
5 process that we are involved in right now and
6 all the other courtroom and formal procedures
7 and rules, which are apparently very
8 respectable. However, there is also an
9 actual process, that is the one that is
10 really used. The actual process uses ex
11 parte meetings, significant number of them;
12 maybe improper communications between the
13 utilities and the Commission, maybe a great
14 number of those; private and secret
15 settlement meetings where not everybody is
16 involved.

17 It is not a public process that you
18 are sponsoring here. In fact, you say that
19 it is your policy that you like that process
20 better. You like the secret process better.
21 Shame on you. Shame on you. You should not
22 like the secret process better. Public
23 process is better. It is open. It is
24 transparent.

25 You also say that it is better
26 because it is cheaper. I beg to differ.
27 Even a 1 percent improvement in the ratepayer
28 position is \$33 million. That probably will

1 pay for a lot of proceedings. Certainly it
2 would pay for some for me. I made zero on
3 this. And I don't really expect to make a
4 lot, but a lot less than 33 million, because
5 I hope that I can improve the position of the
6 ratepayer by at least 1 percent.

7 And, unfortunately, the other
8 ratepayer advocates have said we don't want
9 to try to improve the ratepayer position by
10 at least 1 percent, so we will give in.

11 So the Commission should not
12 automatically say it is better to go for the
13 settlement. It is certainly not going to be
14 better for ratepayers, because you can get at
15 least 1 percent, I bet, without going through
16 with the proceedings.]

17 They're not open. They're secret.
18 They're bad policy.

19 It's a tradition of turning over
20 your decision-making to other groups. You
21 say well, we're not going to make any
22 decisions. We'll let TURN and the utilities
23 figure it out. That takes us off the hook.
24 Then we can just say oh, we like the
25 settlement because it's the best we can do
26 because we depend on these guys. Hell, we've
27 been paying them for 40 years. They're on
28 basically our payroll. TURN has been doing

1 this for a long time. They like to be in the
2 process. It's part of their business. They
3 don't certainly want to ruin their insider
4 position here.

5 It's time for the Commission to
6 start to change your ways. The secret
7 evidence which surfaced in the extensive
8 communications in the San Bruno case has
9 tarnished your reputation, allowing the
10 secret negotiated settlements to be the
11 primary way that you decide things. That's
12 not a good way to do it.

13 It's now been revealed that the
14 Commission has a habit of improper dealing.
15 The San Bruno case has thousands of documents
16 that I've been looking through.

17 ALJ DARLING: Mr. Lutz, the purpose of
18 the oral argument is to keep your comments
19 directed to the public Proposed Decision.
20 Okay. Ask your cooperation in that regard.
21 Thank you.

22 MR. LUTZ: This is with regard to this
23 case, and I will continue to make my comments
24 with regard to this case. And this case has
25 to do with the communications which may have
26 preceded in this case and with the
27 Commission. So I object to your interruption
28 of my statement, and I ask for additional

1 time.

2 Were there additional significant
3 irregularities in this case like there were
4 in the San Bruno case? I don't know yet.
5 But it certainly could have. And it stands
6 to reason that you should investigate that
7 before you go forward with any kind of
8 settlement.

9 I think the Commission should come
10 clean here. Immediately submit any late ex
11 parte information. And also with the
12 utilities, they should submit late ex parte
13 admissions like they're doing now in the
14 San Bruno case where they had to submit
15 over 900 pages of late filed ex parte
16 communications.

17 Now, a review of reasonableness
18 of -- okay, there was an application that was
19 supposed to be put forward within a few
20 months after the steam generators were put
21 into place. That was targeted for June of
22 2012.

23 And I think by your own rules it was
24 supposed to be put in in six months. They
25 didn't do it. You didn't really ask for them
26 to do it until one of the parties in this
27 proceeding asked for you to roll that into --
28 and you did -- rolled it into Phase 3. But

1 it's never even been brought up.

2 In fact, had that application been
3 brought forward, this plant would not be in
4 rates at all because it wasn't running at
5 that time. You have left it in rates the
6 whole time through your inaction, through
7 your not allowing that application to be put
8 in and forcing them to put it in the way it
9 was supposed to. You allowed it to be in
10 rates the whole time.

11 And it's still in rates. We're
12 still paying for a plant that is not working.
13 That is embarrassing, embarrassing for me
14 because I'm a citizen and you're working for
15 me. You're working for me. And the fact
16 that you're not paying attention to that is
17 an embarrassment to me because I'm part of
18 that, I'm a citizen.

19 The Commission should -- well, the
20 settlement is unfair to the ratepayers. It
21 cannot be fairly evaluated without more
22 evidence because you didn't go into any of
23 the possible improvements. In fact, that was
24 explicitly taken out of the proceedings by
25 ALJ Dudley's ruling. None of it would be
26 left in.

27 It was explicitly excluded. Any
28 attempt by the parties such as us to get

1 anything in was objected to by the utilities.
2 And they took it out. And we never got to
3 that point. And, specifically, they came up
4 with this settlement in a backroom deal which
5 now you say is good because you like backroom
6 deals for some reason instead of having it
7 out in the public.

8 Some of the parties here say oh, we
9 couldn't do any better in the transparent
10 process. There's no guarantee of that. But
11 just the fact that you have a transparent
12 process is better. Is better why? Because
13 it gives you guys the confidence and the
14 public has confidence in you by having a
15 transparent process versus a secret process.

16 Except for the replacement power,
17 which is something around \$500 million, the
18 residual value of the nuclear waste operation
19 which we have to continue that, the
20 ratepayers should not be on the hook for any
21 part of this plan.

22 It was taken down by decisions of
23 this utility. That's about \$2.7 billion.
24 Now, are they going to have to -- or what's
25 going to happen is it going to go belly up?
26 No, because they actually can do pretty.
27 They've got lawsuits with Mitsubishi, their
28 own insurance. They can salvage the plant.

1 They actually get back up to pretty
2 much where they were. The difference is
3 you're not in the middle of their court cases
4 over there. And you're putting it in their
5 hands, which is where it should be, because
6 they're a company. They're a big boy. They
7 can handle this.

8 The Commission should immediately
9 halt the collection of rates for this plan
10 immediately. Don't even wait another day.
11 There's no reason rates should be collected
12 for this plant.

13 You should deny the settlement. Set
14 up a criteria and process for open settlement
15 process. And at least complete your internal
16 investigation which you stopped. Dr. Budnitz
17 was stopped from doing his investigation.
18 You should at least complete that.

19 Thank you very much for allowing me
20 to speak today.

21 COMMISSIONER PETERMAN: Mr. Lutz, I
22 have a question. Thank you for your
23 presentation.

24 MR. LUTZ: Thank you. I like
25 questions.

26 COMMISSIONER PETERMAN: So were you
27 notified of the settlement meetings and
28 invited to attend?

1 MR. LUTZ: There was one meeting that
2 everyone was invited to that I heard of which
3 was on March 27th. And that was the
4 settlement was already completed at that
5 point, fait accompli. There was no
6 discussion allowed by anybody, any one of the
7 parties, regarding the settlement at that
8 meeting. So, no, there was no open -- there
9 was no opportunity that I knew of and anyone
10 else knew of that we heard except for TURN to
11 participate in any settlement negotiations.

12 Now, we provided in our comment to
13 the settlement a set of criteria that we
14 think that the Commission should adopt where
15 you more clearly specify the process that's
16 used for settlements including not getting
17 involved in narrow litigation far in the
18 future. This is a bad decision to go way in
19 the future and say oh, how many years is it
20 going to take to decide who is at fault
21 between MHI and SCE? Hard to say.

22 I know that in the Novell-Microsoft
23 case, which has been going on for
24 like 25 years. And it's finally settled. So
25 it could be going on for decades before they
26 decide that. Cost -- pretty much no limit
27 because the attorneys like to spend a lot of
28 money. And we have no way to control that.

1 So our view is that you should be out of that
2 litigation between their subcontractors.

3 Now, in our --

4 COMMISSIONER PETERMAN: I'm going to
5 stop there. I was just mostly interested in
6 your general question about the secrecy sense
7 of settlement agreement. So perhaps we have
8 two parties coming up as well. ORA and I
9 believe SDG&E still remain. So maybe they
10 can speak to the noticing of the settlement
11 meetings.

12 But Mr. Freedman of TURN noted that
13 the settlement meetings followed the guidance
14 that the Commission provides. So I wanted to
15 just clarify that issue with you in terms of
16 whether it was your choice not to participate
17 versus whether you were somehow not informed
18 of the process.

19 MR. LUTZ: We participated in
20 everything that we possibly could. And there
21 was no participation available to us at that
22 meeting. At that meeting, the settlement was
23 already done.

24 COMMISSIONER PETERMAN: Thank you.

25 MR. LUTZ: Any more questions? Give me
26 a chance to talk some more.

27 ALJ DARLING: That's it, Mr. Lutz.
28 Thank you.

1 Mr. Pocta.

2 ARGUMENT OF MR. POCTA

3 MR. POCTA: Thank you. Good afternoon,
4 commissioners, ALJs, advisors, and other
5 participants. I am Mark Pocta. I'm a
6 program manager with the Office of Ratepayer
7 Advocates. And I'd like to thank everyone
8 for taking the time to attend this oral
9 argument and listen to our perspective.

10 As one of the settling parties, ORA
11 supports the Proposed Decision of ALJs
12 Darling and Dudney which adopts settlement
13 agreement. The Proposed Decision considers
14 the settlement as a whole and finds that it
15 reasonably allocates the various cost
16 categories between shareholders and
17 ratepayers and is in the public interest. It
18 finds that if the Commission held hearings on
19 Phase 3 issues, there is a wide range of
20 outcomes and that the provisions of the
21 amended settlement agreement are within the
22 range of possible outcomes.

23 The Proposed Decision identifies the
24 settlement agreement's primary result of
25 ratepayer refunds and credits of
26 approximately \$1.3 billion. Throughout this
27 process, ORA's focused on the three primary
28 aspects of the settlement agreement that

1 contribute to this benefit.

2 First, SCE is permitted to retain
3 its authorized operational and maintenance
4 costs for 2012 but does not obtain recovery
5 of approximately 100 million in incremental
6 inspection and repair cost incurred in 2012.
7 The Proposed Decision finds that the
8 settlement provisions related to O&M and
9 other non-O&M operating expenses are
10 reasonable.

11 The second issue is the ratemaking
12 treatment pertaining to the remaining
13 investment in the SONGS facility referred to
14 as "base plant" and the reduction in rate of
15 return on base plant.

16 The Proposed Decision finds that the
17 proposed recovery of base plant over a 10-
18 year period at a reduced rate to be
19 reasonable. SCE and San Diego cease earning
20 a full return on its investment in SONGS base
21 plant effective February 1st, 2012, when the
22 facilities stopped operating. And the
23 underappreciated value of the base plant will
24 be amortized in rates over 10-year time frame
25 at an extremely low rate as described in the
26 settlement.

27 The Proposed Decision states this
28 compromise is clearly demonstrated in the

1 present value revenue requirement which shows
2 that the settlement agreement is 360 million
3 less than SCE's litigation position.

4 The Proposed Decision further states
5 that instead of the usual authorized rate of
6 return, the settlement agreement reduces
7 shareholder return on all SONGS investment to
8 less than three percent, which has the effect
9 of saving ratepayers approximately 420
10 million over the 10-year amortization period.

11 The third issue is the ratemaking
12 treatment for basement steam generators. The
13 settlement this allows any rate recovery
14 associated with the replacement steam
15 generators effective February 1st, 2012.
16 This ratemaking adjustment is also spent
17 substantial and unprecedented.

18 The utilities will recover none of
19 the underappreciated book value in the
20 replacement steam generator investment
21 effective when the SONGS facility stopped
22 operating. The ratepayers do not pay for the
23 replacement steam generators when they are no
24 longer operational. This is the most optimal
25 result from ORA's perspective that it could
26 achieve, equivalent to achieving 100 percent
27 of its litigation position on this issue for
28 ratepayers.

1 As identified in settlement
2 agreement, ratepayers are not responsible for
3 any costs after February 1st, 2012,
4 associated with SCE's net book value of 597
5 million in the replacement steam generators.
6 And San Diego's share amounting to
7 \$160 million. These figures are identified
8 on page 99 of the Proposed Decision.

9 The Proposed Decision finds the
10 approach to replacement steam generator
11 recovery to be fair and conforms the cost of
12 service ratemaking principles. The utilities
13 will only recover costs for the time period
14 that the steam generators were actually used
15 to produce power. And ratepayers will not
16 pay for nonoperating generation source when
17 they are paying for purchased power.

18 The Proposed Decision further states
19 that no finding on prudence or imprudence has
20 been made or needs to be made to reach this
21 conclusion and finds that the provisions
22 related to the replacement steam generators
23 are reasonable and within the range of
24 possible outcomes.

25 The Proposed Decision also provides
26 a detailed and thorough discussion describing
27 the reasons that the settlement is not
28 inconsistent with any prior Commission

1 decisions. Finally, the Proposed Decision
2 finds that all issues in the proceeding are
3 encompassed by and resolved in the Amended
4 Settlement Agreement and Proposed Decision.

5 And ORA asks and requests for each
6 commissioner's affirmative vote for the
7 Proposed Decision of Administrative Law
8 Judges Darling and Dudney in the
9 investigation.

10 On behalf of ORA, I want to thank
11 you once again for your time and
12 consideration of our comments in the case.
13 Thank you very much.

14 ALJ DARLING: Thank you, Mr. Pocta.

15 Questions?

16 (No response.)

17 ALJ DARLING: All right. Thank you.

18 MR. POCTA: Thank you.

19 ALJ DARLING: And, Mr. Schavrien.

20 MR. SCHAVRIEN: Good job. Thank you.]

21 ARGUMENT OF MR. SCHAVRIEN

22 MR. SCHAVRIEN: ALJs Darling and
23 Dudney, Commissioners, my name is Lee
24 Schavrien. I'm senior vice president of
25 finance, regulatory and legislative affairs
26 for San Diego Gas & Electric.

27 SDG&E, a non-operator of SONGS,
28 owns a 20-percent share of the facility and

1 we have been very active in both the OII
2 proceeding and the settlement negotiations.
3 As SDG&E's representative here today, I urge
4 this Commission to approve the settlement as
5 outlined in the Proposed Decision.

6 All settlements involve
7 give-and-take by all of the negotiating
8 parties, and this one is no exception. No
9 settlement is perfect. That is, no settling
10 party will ever walk away completely
11 satisfied with the terms of the settlement.

12 The settlement before you is
13 the result of significant give-and-take, made
14 by parties representing a broad range of
15 stakeholders. The settlement came together
16 only after many months of negotiation --
17 intense negotiations amongst the parties.
18 All parties made significant concessions
19 along the way. Each of the settling parties
20 weighed the potential risk of continued
21 litigation against the 'settlements terms.
22 Even this Commission weighed in, strongly
23 recommending that certain terms be amended or
24 added to make the settlement more favorable
25 to ratepayers. All of the Commission's
26 recommendations were accepted by the settling
27 parties. In the end, SDG&E is confident that
28 the resulting settlement is fair and

1 reasonable -- is a fair and reasonable
2 agreement that deserves this Commission's
3 approval.

4 As the very thorough and thoughtful
5 Proposed Decision explains, this Commission
6 has a long, established standard for
7 reviewing and approving settlement
8 agreements. First, the settlement must
9 result in just and reasonable rates. Second,
10 the settlement must be consistent with the
11 law. Third, the settlement must be
12 reasonable in light of the whole record. And
13 last and certainly not least, the settlement
14 must be in the public interest.
15 The settlement now before this Commission
16 strongly achieves all four of these
17 requirements.

18 In the settling parties' comments
19 to the Proposed Decision filed on Wednesday
20 of this week, the settling parties have
21 requested a few changes in the ordering
22 paragraphs. If adopted, these changes would
23 ensure that the benefits of the settlement
24 agreement would flow promptly to ratepayers
25 starting January 1, '15. And SDG&E urges
26 this Commission to adopt those recommended
27 changes in the final decision.

28 I suspect that most of us in this

1 room are ready to move on. I know I am.
2 I've been involved with settlements for over
3 35 years at this Commission. We at SDG&E are
4 eager to resolve all of our issues applicable
5 to the Commission's investigation into the
6 early closure of SONGS through the settlement
7 as soon as possible so that we may provide
8 those benefits to our customers starting
9 January 1, and so that we may focus our
10 attention on the safe and efficient
11 decommissioning of SONGS. Thus, on behalf of
12 SDG&E, I urge the Commission to approve
13 the settlement at its November 20th
14 Commission meeting.

15 Thank you.

16 ALJ DARLING: Thank you.

17 Commissioners, any questions?

18 (No response.)

19 ALJ DARLING: Thank you very much. All
20 right, thank you.

21 Are there any other parties in
22 the room that did not have an opportunity to
23 sign up?

24 (No response.)

25 ALJ DARLING: Seeing none, no further
26 questions.

27 Commissioner Florio, did you wish
28 to make a comment before we close?

1 COMMISSIONER FLORIO: Well, yes. This
2 is perhaps the only opportunity we'll have
3 before the 20th for the commissioners as
4 a group to discuss this, so I would also
5 invite any questions that my colleagues have
6 for me or for the ALJs regarding this.

7 I just want to emphasize I have,
8 just to be doubly sure, gone back through all
9 of my e-mails and confirmed that there were
10 no ex parte contacts with my office. Both
11 President Peevey and I publicly and on
12 the record urged the parties to reach
13 a settlement, but the settlement that's
14 presented is totally their work product and
15 neither of us had any role in crafting the
16 settlement as some have alleged.

17 So I want to thank those parties
18 that did make the tough decision to come to
19 a settlement here. I know all sides that
20 participated gave up things that they didn't
21 want to, that they thought they might win in
22 litigation. But I think considering all
23 the other important work that this Commission
24 has in front of it, that resolving this in
25 a fair and expeditious manner is a good idea.
26 But certainly invite any questions from my
27 colleagues.

28 COMMISSIONER PETERMAN: Commissioner

1 Florio or Judge Darling, if you want to
2 comment on the question asked earlier
3 about the protocol being followed for
4 settlement and inviting all the parties.

5 ALJ DARLING: Sure. Under the rules
6 what -- parties are -- they notice -- when
7 parties have negotiations, which are
8 voluntary and do not need to involve all
9 parties, particularly in these multiple party
10 settlements, they will very often engage in
11 preliminary negotiations and try to reach
12 some level of understanding. The rules
13 require that at that point or some other
14 point prior to signing an agreement, they
15 must put out a notice for an opportunity for
16 other parties to come and discuss
17 the settlement.

18 From reading the comments submitted
19 by parties, the concern by a few parties was
20 that they felt that they should have been
21 included in the beginning, and that as
22 a matter of fairness and due process, we
23 should have ordered that negotiations,
24 settlement negotiations include all
25 the parties.

26 Our rules and our decisions in
27 the past have very clearly understood that
28 when you have multiple parties, settlement

1 negotiations can be a lot more difficult on
2 complex proceedings. So we have previously
3 approved subsets of parties working to reach
4 negotiated settlement. It also -- we
5 specifically have a provision that says it
6 does not need to be an all-party settlement.
7 So the concern was access to the negotiation.

8 Now, two things that were in
9 the decision that might be instructive is one
10 that -- one of the parties that did
11 eventually offer support for this agreement,
12 World Business Academy, had voluntarily gone
13 and approached the utility with their
14 testimony -- and that's described in here --
15 they did not join the settlement. Two other
16 organizations that were not involved in
17 the settlement negotiations joined
18 the settlement agreement.

19 So I think that the fundamental
20 concern is they weren't invited, but they do
21 have the opportunity to come into
22 the settlement agreement. They have an
23 opportunity to say We like that. You can
24 change this and we would come on board. Or,
25 We don't like it.

26 COMMISSIONER PETERMAN: And could any
27 party have initiated settlement discussions.

28 ALJ DARLING: Certainly at any time.

1 COMMISSIONER PETERMAN: Thank you.

2 COMMISSIONER FLORIO: I would just
3 note, I was party before this Commission for
4 30-plus years before I was appointed and we
5 had hundred -- I participated in hundreds of
6 proceedings, many of which were resolved by
7 the traditional litigation route and a number
8 of which were resolved by settlement. And in
9 these big cases, inevitably a settlement
10 starts with two people having a conversation,
11 and then three and then four and then five.

12 The rules that have been in place
13 for about 25 years now say that you have to
14 have at least one publicly noticed meeting
15 where all parties attend before
16 the settlement is signed.

17 Now, sometimes the parties come in
18 and say -- the parties that have been talking
19 come in and say Here's the deal; take it or
20 leave it. Sometimes they hear arguments from
21 parties and say Oh, you know, that's
22 something we didn't think about. Or, you
23 know, We really want to get you on board so
24 we'll make some changes.

25 And what happens in that settlement
26 agreement is confidential, so people can't
27 really reveal who said what and what -- you
28 know, what, if any, changes were made in

1 the document when.

2 But as far as I'm aware, the rules
3 were followed in this case. And we could
4 certainly go back and take a look at whether
5 we want to make any changes to those for
6 the future. But the record indicates that
7 that process was followed here.

8 ALJ DARLING: That's correct.

9 COMMISSIONER SANDOVAL: So I guess that
10 was my main question as well, is
11 the settlement process here is established.
12 It does allow that. It does allow
13 discussions that initially don't include all
14 parties, but at the same time any party may
15 initiate settlement talks. So I just wanted
16 to confirm your understanding as well that
17 what happened here was consistent with
18 the rules in terms of the notice.

19 ALJ DARLING: Yes. There was a notice
20 that was served on the service list
21 the week -- several days before of
22 the settlement conference. Testimony -- or
23 argument was presented by other -- another
24 party saying, Yes, we initiated our
25 settlement discussions way back in February;
26 they didn't go anywhere. Other parties
27 didn't get involved and didn't make any
28 attempt to reach settlement. And that's what

1 our rules provide. And those that do can
2 come forward and make their argument that
3 this meets the standard of review under
4 Rule 12.1.

5 COMMISSIONER FLORIO: And typically, as
6 in this case, the Commission makes a judgment
7 whether the parties agreeing to
8 the settlement fairly represent the range of
9 parties in the proceeding. Sometimes
10 I've seen instances where -- say there are
11 four interest groups in a proceeding and
12 three of them get together and have
13 a settlement, and the fourth one kind of "if
14 you're not at the table, you're on the menu"
15 kind of thing. And the Commission sometimes
16 rejects settlements like that where
17 the interests of the parties that aren't
18 signing are not fairly represented. But in
19 this case, the ALJs and I agree that the key
20 interests were represented and that
21 the outcome is reasonable.

22 ALJ DARLING: I would direct the
23 commissioners' future attention to pages 61
24 through 65 -- -6, which do address
25 the settlement conference, the conduct,
26 the basis for allowing approving settlements
27 that are not all party, that that can be
28 a very useful mechanism when there's many

1 parties, many issues. It talks about the
2 timing of the agreement. It talks about the
3 conduct at settlement conference and bringing
4 the joint motion forward.

5 So those issues have been
6 addressed. If you have further questions,
7 we'd be happy to talk to you about that.

8 COMMISSIONER SANDOVAL: I'll review
9 that and let you know.

10 I have to say, the standard for
11 reviewing a settlement that the Commission
12 reviews and determines whether or not
13 the settlement is in the public interest,
14 there is -- correct?

15 ALJ DARLING: That's one of three.

16 COMMISSIONER SANDOVAL: And public
17 interest and other --

18 ALJ DARLING: Reasonable in light of
19 the whole record and consistent with the law.

20 COMMISSIONER SANDOVAL: So, reasonable
21 in light of the whole record and consistent
22 with the law.

23 So there already has been some
24 feedback about the settlement based upon
25 the previous iteration and so now we come to
26 this new iteration.

27 So part of the judgment in
28 the settlement is in light of those factors,

1 should the settlement be approved or should
2 we continue with more process and full blown
3 litigation that would go -- continue on.

4 So you know, I think it's important
5 as we talk about a process that is
6 transparent, that settlement, while it is
7 also a process in which we do not
8 participate, it is transparent in the sense
9 that the process is set out, and we need to
10 make sure that the process is followed. And
11 then our job is to consider the factors and
12 go through this part of the process to
13 determine whether or not the settlement is
14 appropriate in light of those factors or
15 whether we should reject the settlement and
16 continue on with the process.

17 So that's basically our --

18 ALJ DARLING: That's an accurate
19 framing of the position, yes. Your role
20 here.

21 COMMISSIONER SANDOVAL: Thank you.

22 ALJ DARLING: Commissioner Picker?

23 (No response.)

24 ALJ DARLING: All right. I want to
25 thank all the parties very much for coming
26 and helping the commissioners and us
27 understand your views, and we are adjourned.

28 Thank you. Drive carefully.

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(Whereupon, at the hour of
12:40 p.m., this Oral Argument was
concluded.)

* * * * *

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

)	
Order Instituting Investigation on)	
the Commission's Own Motion into the)	
Rates, Operations, Practices,	)	Investigation
Services and Facilities of Southern	)	12-10-013
California Edison Company and San)	
Diego Gas and Electric Company	)	Application
Associated with the San Onofre	)	13-03-005
Nuclear Generating Station Units 2)	
and 3.	)	Application
	)	13-03-013
)	
And Related Matters.	)	Application
	)	13-03-014
)	
	)	Application
	)	13-01-016
)	

CERTIFICATION OF TRANSCRIPT OF PROCEEDING

I, Alejandrina E. Shori, Certified Shorthand Reporter No. 8856, in and for the State of California do hereby certify that the pages of this transcript prepared by me comprise a full, true and correct transcript of the testimony and proceedings held in the above-captioned matter on October 31, 2014.

I further certify that I have no interest in the events of the matter or the outcome of the proceeding.

EXECUTED this 31st day of October, 2014.

Alejandrina E. Shori
CSR No. 8856

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

)	
Order Instituting Investigation on)	
the Commission's Own Motion into the)	
Rates, Operations, Practices,	)	Investigation
Services and Facilities of Southern	)	12-10-013
California Edison Company and San)	
Diego Gas and Electric Company	)	Application
Associated with the San Onofre	)	13-03-005
Nuclear Generating Station Units 2)	
and 3.	)	Application
	)	13-03-013
)	
And Related Matters.	)	Application
	)	13-03-014
)	
	)	Application
	)	13-01-016
)	

CERTIFICATION OF TRANSCRIPT OF PROCEEDING

I, Ana M. Gonzalez, Certified Shorthand Reporter No. 11320, in and for the State of California do hereby certify that the pages of this transcript prepared by me comprise a full, true and correct transcript of the testimony and proceedings held in the above-captioned matter on October 11, 2014.

I further certify that I have no interest in the events of the matter or the outcome of the proceeding.

EXECUTED this 11th day of October, 2014.

Ana M. Gonzalez
CSR No. 11320

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

)	
Order Instituting Investigation on)	
the Commission's Own Motion into the)	
Rates, Operations, Practices,	)	Investigation
Services and Facilities of Southern	)	12-10-013
California Edison Company and San)	
Diego Gas and Electric Company	)	Application
Associated with the San Onofre	)	13-03-005
Nuclear Generating Station Units 2)	
and 3.	)	Application
	)	13-03-013
)	
And Related Matters.	)	Application
	)	13-03-014
)	
	)	Application
	)	13-01-016
)	

CERTIFICATION OF TRANSCRIPT OF PROCEEDING

I, Michael J. Shintaku, Certified Shorthand Reporter No. 8251, in and for the State of California do hereby certify that the pages of this transcript prepared by me comprise a full, true and correct transcript of the testimony and proceedings held in the above-captioned matter on October 31, 2014.

I further certify that I have no interest in the events of the matter or the outcome of the proceeding.

EXECUTED this 31st day of May, 2014.

Michael J. Shintaku
CSR No. 8251