

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

In Attendance: COMMISSIONER MICHAEL R. PEEVEY
COMMISSIONER MICHEL PETER FLORIO

ADMINISTRATIVE LAW JUDGES MELANIE M. DARLING and
KEVIN DUDNEY, co-presiding

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

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SAN FRANCISCO, CALIFORNIA

14 MAY, 2014 - 1:30 P.M.

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ADMINISTRATIVE LAW JUDGE DARLING: Good afternoon. My name is Melanie Darling and I am the administrative law judge that will be presiding today. To my right on the dais is Commission President Michael Peevey, the assigned commissioner Mike Florio, and the co-assigned administrative law judge Kevin Dudney.

Before we begin, a couple of safety points. Restrooms are outside in the lobby to the left. And in the event of an emergency, if we need to evacuate the building, please proceed calmly towards the closest exits. There are four exits in this room; two on the back and one on either side of the stage. The courtyards outside is where you would exit the building. And these courtyards are the designated emergency destination where you would wait further instructions.

Proceeding, today's date is May 14, 2014, and this is the scheduled time and place for the hearing on the proposed settlement of the Commission's investigation into the rates, operations, practices,

1 services and facilities of Southern
2 California Edison Company and San Diego Gas &
3 Electric Company associated with
4 the San Onofre Nuclear Generation Station
5 Units 2 and 3, which we will refer to as
6 SONGS.

7 The proceeding I.12-10-013 was
8 opened pursuant to Public Utilities Code
9 Section 455.5 after an extended outage at
10 SONGS commencing January 31, 2012 following
11 discovery of a leak in one of the new steam
12 generators in Unit 3.

13 The Commission has added in other
14 SONGS-related proceedings, including review
15 of recorded SONGS expenditures for 2012 and
16 2013, calculation of the replacement power
17 costs, and review of the original costs of
18 the replacement steam generators.

19 Edison is the operator of SONGS but
20 as co-owners, both Edison and SDG&E have
21 recorded and reported their expenses
22 associated with the operations at SONGS after
23 the January 31, 2012 shutdown.

24 During the course of this
25 proceeding, thousands of pages of testimony
26 and other evidence have been reviewed. We
27 conducted more than three weeks of
28 evidentiary hearings and examined dozens of

1 witnesses.

2 Phase 3, which was to examine
3 the replacement steam generator expenses and
4 associated issues, has not yet been set for
5 hearing.

6 On April 3, 2014, six parties --
7 Edison, SDG&E, the Office of Ratepayer
8 Advocates, The Utility Reform Network,
9 Friends of the Earth, and the California
10 Coalition of Utility Employees -- submitted
11 a motion asking the Commission to adopt
12 a settlement of all issues in this
13 proceeding.

14 Prior to filing the motion the
15 Settling Parties convened a settlement
16 conference with notice to all parties as
17 required by our Rules of Practice and
18 Procedure.

19 Based on the opening comments,
20 other parties have since expressed general
21 support for the settlement agreement.
22 California Large Energy Consumers
23 Association, the Alliance for Retail Energy
24 Markets filed jointly with the Direct Access
25 Coalition, Joint Minority parties and World
26 Business Academy.

27 MR. AGUIRRE: Excuse me. I have to
28 object. Your recitation that there was

1 compliance with Rule 12, I take exception to
2 that. Factually, that is incorrect.
3 The parties were not invited to participate.

4 ALJ DARLING: Mr. Aguirre --

5 MR. AGUIRRE: I just want to put my
6 objection -- if you're going to make
7 a record, I want to object when you do so.
8 Thank you.

9 ALJ DARLING: I will give you -- you
10 may have your comments when it's your turn to
11 speak, Mr. Aguirre.

12 MR. AGUIRRE: I'm objecting to your
13 statement on the record at the appropriate
14 time.

15 When you make an objectionable
16 statement, I have a right to object.

17 And I interpose the objection. You
18 incorrectly stated that there was --
19 the settlement was in compliance with
20 Rule 12.

21 ALJ DARLING: All right, moving on. It
22 is not an all-party settlement. Parties
23 opposing the settlement are the Alliance for
24 Nuclear Responsibility, Women's Energy
25 Matters, the Coalition to Decommission
26 San Onofre, and Ruth Henricks. Therefore,
27 pursuant to the Commission's Rule 12.3
28 the purpose of this hearing is to examine

1 the material issues of fact related to the
2 settlement agreement and the motion.

3 For those of you watching our web
4 cast from the affected communities in
5 Southern California, there will be
6 a community information meeting about
7 the settlement proposal scheduled on June 16
8 from 4 to 7 p.m. at the Costa Mesa Community
9 Center. You cordially invited to attend and
10 to hear presentations about the proposal and
11 to have an opportunity to comment or ask
12 a question. Please contact the Public
13 Advisor's Office for any additional
14 information. It is also listed, the details,
15 in the Commission's calendar.

16 I'll take this opportunity to
17 remind the parties of their obligation to
18 exhibit professional and courteous conduct
19 during the course of this hearing as set
20 forth in Rule 1.1 which reads as follows:
21 Any person who signs a pleading or brief,
22 enters an appearance, offers testimony at
23 a hearing or transacts business with the
24 Commission by such act represents that he or
25 she is authorized to do so, and agrees to
26 comply with the laws of this state to
27 maintain the respect due to the Commission,
28 members of the Commission, and its

1 administrative law judges, and never to
2 mislead the Commission or its staff by an
3 artifice or false statement of fact or law.

4 Because the hearing is web cast and
5 there are multiple witnesses from the
6 Settling Parties, please remember to speak
7 loudly and clearly into the microphones. And
8 only one person may speak at time. Do not
9 speak over the witness, judges, or the
10 Commissioners.

11 We will begin with the Settling
12 Parties making a presentation of
13 the settlement agreement.

14 Are there any questions about the
15 order?

16 MR. AGUIRRE: Yes, I have -- I wanted
17 to put on the record specifically --

18 ALJ DARLING: Do you have any
19 questions?

20 MR. AGUIRRE: You said I would have an
21 opportunity to make a record about what you
22 said.

23 ALJ DARLING: Yes. When I call on you
24 later. Right now, do you have any questions
25 about the order?

26 MR. AGUIRRE: Normally what we do in a
27 proceeding is when there's an objection to
28 something that's said, you do it then to

1 preserve your rights. You don't wait until
2 way -- hours and hours later. So this --

3 ALJ DARLING: This will not be hours
4 and hours later, Mr. Aguirre. You may have
5 your turn when I call on you.

6 Unless you have a question, anyone
7 has a question about the agenda order, we
8 will proceed to the Settling Parties.

9 MR. AGUIRRE: I have a question.
10 What was the basis of your statement that
11 this was in -- this settlement was in
12 compliance with Rule 12.1.b? What was the
13 basis of that?

14 ALJ DARLING: What I said was that
15 a notice was served on the parties and that
16 is in the docket. The notice is there.
17 The certificate of service is there. End of
18 story. We're moving on.

19 MR. AGUIRRE: Okay.

20 ALJ DARLING: All right.

21 MR. AGUIRRE: I want the objection to
22 be noted that you are not allowing me to make
23 an objection in a timely fashion.

24 ALJ DARLING: You may make whatever
25 note you'd like. And now it's time for
26 someone else's statement, Mr. Aguirre; okay?
27 You'll have your turn.

28 So, I think what we first need to

1 do is to swear the witnesses on the panel in.

2 Would you all please rise and raise
3 your right hand.

4 CYNTHIA FANG, called as a witness by
5 San Diego Gas & Electric Company,
6 having been sworn, testified as
7 follows:

8 ROBERT M. SCHLAX, called as a
9 witness by San Diego Gas & Electric
10 Company, having been sworn, testified
11 as follows:

12 RON LITZINGER, called as a witness
13 by Southern California Edison Company,
14 having been sworn, testified as
15 follows:

16 ROBERT M. POCTA, called as a witness
17 by Office of Ratepayer Advocates,
18 having been sworn, testified as
19 follows:

20 WILLIAM MARCUS, called as a witness
21 by The Utility Reform Network, having
22 been sworn, testified as follows:

23 (Witnesses answered in the
24 affirmative)

25 ALJ DARLING: All right. Please be
26 seated.

27 And Mr. Mr. Weissmann, is there
28 a preexisting process that you devised here?

MR. WEISSMANN: Good afternoon, your
Honor.

Good afternoon, your Honor and
Commissioners. Henry Weissmann for Southern

1 California Edison.

2 The way we proposed to proceed is
3 for Mr. Litzinger, the president of Southern
4 California Edison, to make some remarks
5 presenting the settlement agreement. He
6 will then be followed by Mr. Pocta for ORA,
7 and subsequently Mr. Marcus for TURN.

8 ALJ DARLING: All right, thank you.

9 Mr. Litzinger.

10 STATEMENT OF MR. LITZINGER

11 MR. LITZINGER: Good afternoon. I'm
12 Ron Litzinger, president of Southern
13 California Edison. On behalf of the Settling
14 Parties, I'm here to present the proposed
15 settlement agreement. The Settling Parties
16 are Edison, the Office of Ratepayer
17 Advocates, The Utility Reform Network, and
18 San Diego Gas & Electric. Also joining in
19 the settlement are Friends of the Earth and
20 the Coalition of Utility Employees.

21 I would like to spend a few minutes
22 summarizing the major terms of
23 the settlement. Then I will turn it over
24 to the witness for other Settling Parties who
25 can add their perspectives on the settlement.
26 At that point, we would all be pleased to
27 answer any questions.

28 Let me begin by addressing

1 the disallowances and other rate related
2 provisions of the settlement.

3 First, the settlement would
4 disallow any rate recovery for
5 the replacement steam generators starting on
6 February 1st, 2012, the day after the outages
7 began. All amounts the utilities have
8 collected since that date for the replacement
9 steam generators would be refunded and
10 the balance would not be recoverable in
11 rates.

12 Second, the remaining investment in
13 SONGS would be removed from rate base on
14 the same day, February 1st, 2012, and would
15 be amortized over ten years at a reduced rate
16 of return. In 2014, the rate of return would
17 be 2.62 percent for Edison compared to our
18 authorized return of 7.9 percent.

19 In the case of nuclear fuel, we
20 would recover an even lower rate of return
21 equal to the commercial paper rate. To the
22 extent we are able to sell nuclear fuel and
23 other materials and supplies at SONGS, that
24 will reduce the amount recovered in rates.
25 The settlement gives the utilities an
26 incentive to make such sales and we are going
27 to pursue them.

28 With regard to operations and

1 maintenance costs incurred in 2012 and 2013,
2 the settlement would limit rate recovery to
3 the amount provisionally authorized in our
4 last general rate case. In 2012, Edison
5 recorded base O&M was approximately equal to
6 the amount provisionally authorized in
7 the GRC. This means that under
8 the settlement, Edison would be prevented
9 from recovering approximately \$100 million in
10 incremental costs it incurred to inspect and
11 repair the replacement steam generators in
12 response to the outages.

13 In 2013, as the outages continued
14 and we then announced in June the decision to
15 permanently shut down the plant, SCE was able
16 to reduce its O&M costs so that our recorded
17 O&M costs were below the amount provisionally
18 authorized in the general rate case. Under
19 the settlement, SCE would refund that
20 difference to ratepayers.

21 In addition, we have pending before
22 the Commission an advice letter requesting
23 authority to obtain funds from the Nuclear
24 Decommissioning Trust to pay for the O&M
25 costs after June 7 of 2013. The settlement
26 does not affect or prejudge the Commission's
27 consideration of that advice letter but it
28 does provide that if the Commission permits

1 us to obtain funds from the trust, we will
2 refund the corresponding amounts previously
3 collected in rates.

4 In exchange for writing off
5 the investment in the steam generators from
6 the start of the outage and for removing the
7 remaining investments from rate base on that
8 date, the settlement would permit utilities
9 to recover the amounts they have spent to
10 purchase power for our customers in
11 the market to replace the lost output at
12 SONGS.

13 I've said a few times that the
14 amounts would be refunded to ratepayers. The
15 settlement agreement includes detailed
16 provisions on how ratepayers would receive
17 the benefits of the settlement. For amounts
18 we have already collected in rates and that
19 we would be required to refund under
20 the settlement, the refund will be made
21 through a reduction in the amount we would
22 otherwise need to charge our customers for
23 the purchased power costs which are tracked
24 in our ERRRA account.

25 Finally, the settlement includes
26 important provisions that address how
27 litigation recoveries would be shared. We
28 are pursuing two sets of claims. First, we

1 have filed claims with our insurer, Nuclear
2 Electric Insurance Limited or NEIL. Second,
3 we have initiated an arbitration against
4 Mitsubishi, the designer and manufacturer of
5 the steam generators that failed. The
6 settlement provides that we can't -- cannot
7 recover the legal fees and other costs of
8 the litigation in rates. Instead, we would
9 net out those costs from any recoveries we
10 obtain from NEIL or Mitsubishi. The net
11 proceeds would then be shared between
12 utilities and their customers. In the case
13 of NEIL, ratepayers would receive 82.5
14 percent of all net recoveries. In the case
15 of Mitsubishi, the sharing depends on
16 the amount recovered. For the first hundred
17 million in net recoveries for Edison --
18 the corresponding figure for San Diego is
19 25 million -- ratepayers would receive
20 15 percent. For the next 800 million in net
21 recoveries for Edison, 200 million; in
22 the case of San Diego Gas & Electric,
23 ratepayers would receive one-third. And for
24 any net recoveries above the amounts -- above
25 those amounts, ratepayers would receive
26 75 percent.]

27 As with any settlement, no party
28 got everything it wanted in this deal. As

1 some of the other panelists will address, the
2 settlement is actually much closer to the
3 positions TURN and ORA took in this
4 proceeding than to the positions that the
5 utilities took.

6 In any case, we believe the
7 settlement is a fair and reasonable
8 compromise and is in the public interest. It
9 would avoid protracted proceeding to review
10 the prudence of our conduct in connection
11 with the steam generator replacement project
12 and the response to the outages, a proceeding
13 that would involve an enormous commitment of
14 resources that instead should be focused on
15 obtaining recoveries from NEIL and
16 Mitsubishi. We therefore ask for your
17 support of the settlement.

18 ALJ DARLING: Okay. Next speaker.

19 STATEMENT OF MR. POCTA

20 MR. POCTA: Good afternoon,
21 commissioners, advisors, ALJs, and other
22 participants. I'm Mark Pocta, Program
23 Manager with the Office of Ratepayer
24 Advocates. On behalf of the Settling Parties
25 I'm going to provide ORA's perspective of the
26 settlement agreement.

27 I'll focus on three primary aspects
28 the settlement agreement: the incremental

1 inspection repair cost, the ratemaking
2 treatment of the utilities' investment in the
3 replacement steam generators, and the
4 ratemaking treatment of the remaining
5 investment in the SONGS facility.

6 The first issue pertains to the
7 incremental inspection repair cost. SCE is
8 permitted to retain its authorized operation
9 and maintenance costs for 2012 and through
10 this will not obtain recovery of
11 approximately 100 million in incremental
12 inspection repair cost incurred by them in
13 2012.

14 The second issue is the ratemaking
15 treatment for the replacement steam
16 generators. As described by Mr. Litzinger,
17 the settlement will disallow any rate
18 recovery associated with the replacement
19 steam generators effective February 1st,
20 2012. This ratemaking adjustment is both
21 substantial and unprecedented. The
22 undepreciated investment associated with the
23 utilities' investment in replacement steam
24 generators is disallowed effective the date
25 when the plant went out of service.

26 There are no qualifications or other
27 aspects pertaining to this matter. There are
28 no issues regarding the timing of the matter

1 as to when the investment was removed from
2 rates. It is not the date that the utilities
3 decided to permanently cease operation of the
4 SONGS plant. It is not nine months after the
5 date the facilities stopped operating or any
6 potential spectrum of dates in between. It's
7 effective the date the outage began and the
8 plant ceased generating electricity for
9 customers.

10 This means that, one, the utilities
11 will recover none of its undepreciated book
12 value in the replacement steam generator
13 investment, and two, it's effective when
14 SONGS facility stopped operating. Ratepayers
15 don't pay for replacement steam generators
16 when they weren't operating.

17 As identified in the settlement
18 agreement, ratepayers are not responsible for
19 any cost after February 1st, 2012, associated
20 with SCE's share of the net book value of 597
21 million in the replacement steam generators.
22 And SDG&E's share amounted to 160 million.
23 This is the most optimal result from ORA's
24 perspective that it could achieve in
25 litigation and equivalent to achieving a
26 hundred percent of its litigation position on
27 this issue for ratepayers.

28 The third issue is the ratemaking

1 treatment pertaining to the remaining
2 investment in the SONGS facility or what is
3 referred to in the settlement as base plant.
4 This remaining investment in base plant is
5 removed the date after the outage began,
6 again, February 1st, 2012. The undepreciated
7 amount of base plant will be amortized in
8 rates over a ten-year time period at an
9 extremely low rate. The settlement details
10 involving base plant are associated with the
11 timing when it's removed from plant, the time
12 period of amortization, and the return or
13 carrying cost of the regulatory asset being
14 amortized.

15 Once again, the settlement utilizes
16 a method and rate of amortization which is
17 exceptionally beneficial to ratepayers. This
18 is important in terms of evaluating the
19 settlement agreement. First, the
20 amortization of base plant commences again
21 February 1st, 2012. Therefore, the utilities
22 stop earning a full return of its investment
23 in SONGS base plant on that date, the date
24 the facility stopped operating. Again, not
25 nine months later. It's not the date the
26 facility was deemed officially nonoperational
27 by SCE nor any time in between. It's the
28 date that the outage began.

1 To reiterate, the date the utilities
2 stopped getting electricity from the SONGS
3 facility is the date that SCE and San Diego
4 Gas and Electric stopped earning a full
5 return on SONGS base plant.

6 A review of many past cases reveals
7 there's typically a lag between the time in
8 which a generating facility ceases commercial
9 operation when the utilities continue to earn
10 full return on investment and the date when
11 the facility is removed from ratebase by the
12 Commission and the utilities no longer earn a
13 full return.

14 For example, a recent case involved
15 Mohave Generating Facility. That facility
16 ceased commercial operation in 2005 and
17 continued to earn a return for another six
18 years. Going back many years to a case which
19 many parties have cited, the Humboldt Nuclear
20 Power Plant was not removed from ratebase
21 according to that decision until 1979, three
22 years after the plant stopped operating.

23 Therefore, the timing of when the
24 amortization period commences is a very
25 important factor on the impact on ratepayers.
26 The settlement terms on this issue are the
27 most optimal for ratepayers that could be
28 achieved through litigation.

1 The next deal -- detail pertains to
2 the SONGS base plant and the return on it.
3 Utilities earn a return or carrying cost that
4 is well below its authorized rate of return.
5 For the period starting in 2013 the return on
6 base plant is equal to 2.62 percent for SCE
7 and 2.35 percent for SDG&E, which is well
8 below the authorized returns of 7.9 percent
9 for SCE and 7.79 percent for San Diego Gas
10 and Electric.

11 What makes this aspect of the
12 settlement beneficial to ratepayers is
13 essentially the utilities are earning no
14 return on the capital investment associated
15 with shareholder equity. This comprises
16 about 50 percent of the total investment.
17 Thus, the utilities are essentially only
18 earning a debt return associated with the
19 portion of the investment that is associated
20 with debt and 50 percent of the adopted
21 preferred stock return associated with that
22 small portion of preferred stock investment,
23 and once again, essentially zero return, and
24 that's how you get a very low rate of return
25 on the regulatory aspect. Asset. Excuse me.

26 The final aspect of base plant issue
27 is the amortization period. The amortization
28 period is ten years, 2012 through 2022. And

1 at first glance one may question the wisdom
2 of ratepayers paying costs associated with
3 SONGS for such a lengthy timeframe. The
4 Commission has used various amortization
5 periods in the past. For example, the
6 amortization period for electromechanical
7 meters replaced by smart meters adopted by
8 the Commission was six years for both PG&E
9 and SCE.

10 Given the cost of base plant, which
11 is fairly substantial, the ten-year period
12 used for the SONGS base plant given the
13 impact on ratepayers is very reasonable. The
14 idea is to mitigate or cushion the impact on
15 customers. In fact, the ten-year
16 amortization at the low return is comparable
17 to a shorter amortization with no return
18 depending on how one would value ratepayers'
19 time value of money. Your value of the time
20 value of money at 2.5 percent or more to
21 ratepayers, essentially, by amortizing it
22 over a longer period of time, they're getting
23 value for that longer amortization period.

24 Therefore, to fully appreciate the
25 full value of the ten-year amortization
26 period one must combine it with the very low
27 return utilities would earn on the SONGS base
28 plant in contrast to that shorter

1 amortization period. And I've already stated
2 what that amor -- rates are. And we feel the
3 low rates combined with the ten-year
4 amortization timeframe is an optimal
5 resolution of the issue for ratepayers.

6 The full ratepayer impact of the
7 settlement can be evaluated by comparing the
8 settlement provisions to the litigation
9 positions of SCE and SDG&E, which is
10 illustrated in the settlement agreement, and
11 that benefit is significant. The settlement
12 agreement is approximately \$1.1 billion less
13 than the SCE litigation position and \$300
14 million below the SDG&E litigation position.

15 So final item I'd like to touch on
16 is Section 6.1 of the settlement agreement.
17 There are very complex accounting and
18 ratemaking aspects and implementation issues
19 that are associated with the settlement
20 agreement. ORA takes its responsibility
21 under Section 6.1 very seriously and intends
22 to review, validate, and verify the figures
23 and amounts used by SCE and SDG&E to
24 implement the revenue requirement accounting
25 procedures and charges authorized in the
26 settlement agreement.

27 And thank you very much for your
28 patience in considering ORA's comments on the

1 settlement agreement. Thank you.

2 ALJ DARLING: All right. Thank you,
3 Mr. Pocta.

4 There's about six minutes left.

5 STATEMENT OF MR. MARCUS

6 MR. MARCUS: Okay. I'm going to be --
7 this is Bill Marcus, the consultant for JBS
8 Energy, Incorporated, and I'm working for
9 TURN. I'm going to be brief, particularly,
10 other folks have said a lot of what I was
11 going to say.

12 The settlement is quite close to our
13 original litigation position and that of ORA.
14 We and ORA had a present value of revenue
15 requirements in the vicinity of \$2 billion
16 rounded to the nearest hundred million.
17 Edison was at 3.7. The settlement for Edison
18 is at 2.5. San Diego is similar. They came
19 in at \$1 billion. The DRA and ORA and TURN
20 positions were around 600 million. The
21 settlement is at 700 million.

22 So I think there has been a fairly
23 large amount of progress here. In terms of
24 our positions, there were some small changes
25 to the date of recovery of the plant that
26 were favorable to us. The February 1st date
27 is favorable. The recovery of materials and
28 supplies, CWIP, and nuclear fuel over ten

1 years is actually more favorable than our
2 litigation position. On the other hand,
3 because of the February 1st settlement date
4 we agreed that replacement power would not be
5 deducted because we were trying to be
6 consistent between the treatment of plant and
7 the treatment of replacement power.

8 The use of this ten-year
9 amortization period with a low rate of return
10 actually results in a lower present value of
11 cost to ratepayers by significant amounts of
12 money and greater near-term rate refunds than
13 if we had given them no rate of return and an
14 amortization period of five or six years. I
15 ran some numbers to that effect, and the
16 Settling Parties also took a look at those
17 issues. So that is a key benefit.

18 Another key benefit is to reduce the
19 rate burden as quickly as possible through
20 refunds to ERRR which will keep the ERRR
21 rates down and lower rates in 2015 and
22 beyond. That's important to us because
23 otherwise if we were in a protracted period
24 of litigation, these refunds might not show
25 up and rates might be going up for reasons
26 unrelated to SONGS without the benefit of the
27 refunds, and the rates for SONGS might even
28 be higher. So, okay.

1 The settlement is thus in a range of
2 expected outcomes given the litigation risk.
3 It moved towards our position. It provides
4 for certainty regarding the disposition of
5 recoveries from insurance and from
6 Mitsubishi, assures that ratepayers receive
7 some money from any recovery and that we
8 receive large amounts of money if Mitsubishi
9 in litigation results in a significant
10 recovery above the cost of the disallowed
11 steam generator. And it places the interests
12 of both shareholders and ratepayers in
13 alignment by sharing it in favor -- so
14 they're aligned in favor of maximizing
15 recovery.

16 So we support the settlement and
17 urge the Commission to approve it.

18 ALJ DARLING: Thank you, Mr. Marcus.

19 And the final witness, Mr. Schlax.
20 Two minutes.

21 MR. SCHLAX: I have no comments to add.
22 Everything has been well covered.

23 ALJ DARLING: Okay.

24 I believe that we have some
25 exhibits, Judge Dudney.

26 ALJ DUDNEY: Good afternoon everyone.
27 Mr. Weissmann, would you like to introduce
28 the Edison and joint Settling Parties'

1 exhibits.

2 MR. AGUIRRE: Excuse me. Have those
3 exhibits already been provided to the
4 commissioners and to the ALJ?

5 ALJ DARLING: Yes.

6 MR. AGUIRRE: So they were provided to
7 you, but they weren't provided to the other
8 parties?

9 MR. WEISSMANN: They have previously
10 been served.

11 MR. AGUIRRE: No. I'm not asking about
12 whether they've been previously served. I'm
13 just asking, were exhibits provided to the
14 commissioners and to the ALJ without them
15 being previously -- or without them being
16 contemporaneously provided to the opposing
17 parties? Simple question.

18 MR. WEISSMANN: They're certainly
19 available here, Counsel, if you'd like a
20 copy. We have served them well in advance of
21 today's hearing.

22 MR. AGUIRRE: Excuse me. If these are
23 marked as exhibits, that is -- the way I was
24 trained as a trial attorney is no one gives
25 the decisionmakers exhibits without providing
26 them contemporaneously actually before to the
27 opposing parties.

28 MR. WEISSMANN: They were provided

1 before.

2 ALJ DARLING: They were provided
3 before. Your objection is overruled.
4 Proceed, Mr. --

5 MR. AGUIRRE: May I see what's been
6 provided to the Commission to see if they
7 were provided to me?

8 ALJ DARLING: Mr. Weissmann --

9 MR. WEISSMANN: Certainly. They're
10 available to you.

11 MR. AGUIRRE: May I see what you've
12 been provided? That's what I'm asking.

13 ALJ DARLING: Mr. Aguirre, you need to
14 remember that one person speaks at a time.
15 You have raised an objection. I will give
16 you two minutes off record to see what has
17 been distributed. All right.

18 Starting now we're off the record.

19 (Off the record)]

20 ALJ DARLING: Back on the record.

21 And I will say one thing which is
22 that this is the testimony which was
23 previously provided to the service list which
24 includes the administrative law judges, you
25 Mr. Aguirre, and all the other parties of the
26 responses to the testimony requests set out
27 in the settlement ruling which went out in
28 April. This testimony was filed and served

1 on May 1st. It is consistent with the
2 testimony which was served according to my
3 review.

4 Now, Mr. Weissmann, I'm going to
5 turn this back to Judge Dudney to proceed
6 with marking these exhibits.

7 ALJ DUDNEY: Mr. Weissmann, go ahead.

8 MR. WEISSMANN: Thank you. First in
9 order, we would like to mark for
10 identification the testimony of the joint
11 Settling Parties as noted as Joint Settling
12 Parties 01. This is the joint testimony
13 provided in response to the questions posed
14 by the ALJ's ruling of April 24th,
15 Questions 5, 8 through 11, 13, and 15
16 through 18. The witnesses are identified on
17 the face page of the exhibit. Ron Litzinger
18 for Edison, Robert Schlax and Cynthia Fang
19 for SDG&E, Robert Pocta for ORA, and William
20 Marcus for TURN.

21 ALJ DUDNEY: Very good. Exhibit Joint
22 Settling Parties 01 is marked for
23 identification.

24 (Exhibit No. Joint Settling
25 Parties 01 was marked for
identification.)

26 MR. WEISSMANN: Next in order is what's
27 been identified as SCE-54. This is Edison's
28 testimony in response to certain other

1 questions in the April 24th ruling, namely,
2 Questions 1 through 4, 6 through 7, 12, 14,
3 and 19 through 20. The witnesses are
4 identified on the face page and also in the
5 table of contents as Richard Fisher and Doug
6 Snow. I might indicate Mssrs. Fisher and
7 Snow are present today and available to
8 answer questions about that testimony.

9 Next in order is SCE-55. These are
10 errata to Edison's testimony on certain of
11 what's been marked as SCE-54. And the
12 witness sponsoring SCE-55 is Doug Snow.

13 Next in order is SCE-56. This is an
14 exhibit sponsored by Mr. Snow. This contains
15 a one-page table that sets forth the
16 estimated present value revenue requirements
17 associated with the parties' litigation
18 positions as well as the settlement.

19 And, finally, SCE-57 is further
20 errata to SCE-54 Question No. 7 sponsored by
21 Mr. Snow.

22 ALJ DUDNEY: Thank you, Mr. Weissmann.

23 Exhibit SCE-54, Exhibit SCE-55,
24 Exhibit SCE-56, and Exhibit SCE-57 are marked
25 for identification.

26 (Exhibits Nos. SCE-54, SCE-55,
27 SCE-56, and SCE-57 were marked for
identification.)

28 MR. AGUIRRE: May I make inquiry if

1 these witnesses are here today to provide
2 testimony for cross-examination?

3 MR. WEISSMANN: They are available,
4 yes.

5 MR. AGUIRRE: They are available.

6 ALJ DUDNEY: Mr. Weissmann, does that
7 conclude Edison's exhibits?

8 MR. WEISSMANN: It does, your Honor.

9 ALJ DUDNEY: Thank you.

10 Mr. Walsh, please introduce the
11 San Diego exhibits.

12 MR. WALSH: What has been marked as
13 SDGE Exhibit 22 is the testimony of
14 Mr. Robert Schlax. Mr. Schlax is available
15 today for cross-examination. This addresses
16 certain questions that had been asked by the
17 administrative law judge pertaining to SDG&E.

18 In addition, there is an exhibit
19 that I have marked SDGE-23. This is a
20 one-page document that updates the SDG&E net
21 present value revenue requirements
22 calculation showing the litigation positions
23 of the parties and the settlement net present
24 value as applicable to SDG&E.

25 ALJ DUDNEY: Thank you, Mr. Walsh.

26 Exhibits SDGE-22 and SDGE-23 are
27 marked for identification.

28 (Exhibits Nos. SDGE-22 and SDGE-23
were marked for identification.)

1

2 ALJ DUDNEY: Thank you.

3 ALJ DARLING: All right. At this time,
4 before we proceed to the cross-examination, I
5 would like to ask President Peevey do you
6 have any questions for the panel at this
7 time?

8 COMMISSIONER PEEVEY: Not at this
9 moment.

10 ALJ DARLING: Commissioner Florio?

11 COMMISSIONER FLORIO: Not at this time.

12 ALJ DARLING: Judge Dudney?

13 ALJ DUDNEY: Yes, I do have a few
14 questions.

15 Mr. Weissmann, I'll note that I will
16 go ahead and address some of my questions to
17 Mr. Litzinger, but some of them come from
18 testimonies sponsored by Mr. Fisher and
19 Mr. Snow. To the extent that Mr. Litzinger
20 wishes to defer to those witnesses, that's
21 fine. We will swear them in at that time.

22 MR. WEISSMANN: Very good.

23 EXAMINATION

24 BY ALJ DUDNEY:

25 Q Mr. Litzinger, I would like you to
26 turn to Exhibit SCE-54. And let's look at I
27 believe it's Question 4.

28 ALJ DARLING: Are you there,

1 Mr. Litzinger?

2 WITNESS LITZINGER: Yes.

3 ALJ DUDNEY: Q Mr. Litzinger, in
4 Question 4, the table, wanted to ask what
5 costs were included in rates before the
6 replacement steam generators came online?

7 WITNESS LITZINGER: A I'm going to
8 defer that to the witnesses that prepared
9 this exhibit.

10 ALJ DUDNEY: Sure.

11 ALJ DARLING: Let's go off the record
12 and bring up which witness. Would that be
13 Mr. Snow?

14 Off the record.

15 (Off the record)

16 ALJ DUDNEY: All right. Mr. Snow,
17 please stand and raise your right hand.

18 DOUGLAS SNOW, called as a witness by
19 Southern California Edison, having been
20 sworn, testified as follows:

21 ALJ DUDNEY: Thank you, Mr. Snow.

22 EXAMINATION

23 BY ALJ DUDNEY:

24 Q Again, on Exhibit SCE-54, the
25 response to Question 4, there's a table. In
26 that table, could you describe to me what
27 types of costs were included in rates before
28 the replacement steam generators came online?

A So it's the amounts that are shown

1 on line two for 2006 through 2009. The steam
2 generators came online in 2010.

3 Q And --

4 A So this was 20 percent of the
5 removal of the generators that was adopted in
6 the '05 decision that had us before with
7 putting in the new generators.

8 Q Very good. Footnote 2 on this
9 table mentions that these costs were offset
10 by reductions to rate base.

11 Is that offset included in the
12 figures further down in the table? Or is
13 this shown elsewhere in the testimony?

14 A That would be included.

15 Q Okay. So these figures are net of
16 that deduction?

17 A Right, because we had recovered
18 that from customers before.

19 Q Thank you. All right. Now, in
20 this same exhibit I would like you to turn to
21 Question 6. I'm also going to ask you to
22 compare the response for Question 6 to the
23 response to Question 7. And I believe the
24 most up-to-date copy of the response to
25 Question 7 is in SCE-55.

26 A Correct.

27 Q Generally, what I'm interested in
28 with this comparison is that the revenue

1 requirement and net book value as shown in
2 the response to Question 7 are higher than
3 the counterpart numbers in the response to
4 Question 6. My question is could you explain
5 those differences? Would you like a moment
6 off the record?

7 MR. AGUIRRE: Could I ask the ALJ to
8 say that one more time so I could follow you
9 quicker?

10 ALJ DUDNEY: Sure. My question is
11 comparing the Edison responses to ALJ
12 Question 6 and Question 7, generally, the net
13 book value and revenue requirement shown in
14 the response to Question 7 are higher than
15 the corresponding numbers in Question 6.

16 MR. AGUIRRE: Thank you very much.

17 THE WITNESS: I think primarily the
18 main difference is that the numbers that are
19 shown in Question No. 6 were authorized.
20 Those were estimated in the 2012 GRC. The
21 amounts that are shown in Question 7 are
22 actual numbers.

23 ALJ DARLING: That actual number is
24 based on the terms of the proposed settlement
25 agreement?

26 THE WITNESS: That's correct. At the
27 end of each of those years.

28 ALJ DUDNEY: Q Okay. Mr. Snow --

1 A And once before, they're averages
2 also. On the response to Question 6, those
3 are average balances.

4 Q Averaged over the calendar year?

5 A That's correct.

6 Q Quickly on the point about those
7 being average versus end-of-year figures,
8 could you qualitatively describe what impact
9 that would have?

10 ALJ DARLING: For example, depreciation
11 totals in the response to Question 6 about
12 140 million. Under the proposed --
13 description in the impact of the settlement
14 agreement, depreciation total 189. There are
15 other dissimilarities that he is addressing.

16 THE WITNESS: I think the depreciation
17 is because it is going to be amortized over
18 ten years.

19 ALJ DUDNEY: Q Following up on that
20 point, in the response to Question 6, do I
21 correctly understand that some SONGS assets
22 as it was understood at the time of the 2012
23 rate case would have been depreciated over a
24 longer period?

25 A That's correct.

26 Q And so that's responsible for the
27 bulk of the increase in revenue?

28 A I would say that's true.

1 Q Thank you. And then do I correctly
2 understand another difference between these
3 two tables is the treatment of construction
4 work in progress or CWIP? To expand on that,
5 as I read the footnote for Question 7, I
6 understand that CWIP is included in that
7 response.

8 A You're correct.

9 Q Is that correct? And can you tell
10 me how large of a change that is in the net
11 book value?

12 A I can't. Maybe Mr. Fisher can, but
13 we can certainly get that for you.

14 Q All right. Thank you, Mr. Snow.

15 I have one last question. I
16 believe this is also in your testimony, yes.
17 Exhibit SCE-56, the updated present value
18 revenue requirement.

19 A Okay.

20 Q Looking at the nuclear fuel line, I
21 notice that for all three of the parties'
22 litigation positions, the nuclear fuel
23 component was higher than it is under the
24 settlement.

25 Can you explain the difference
26 there?

27 A Can I have a minute?

28 ALJ DUDNEY: Yes. Off the record.

1 (Off the record)]

2 ALJ DUDNEY: On the record.

3 While we were off the record,
4 Mr. Marcus indicated that he would be able to
5 answer my question.

6 Q Go ahead, Mr. Marcus.

7 WITNESS MARCUS: A Yes. I think
8 the settlement agreement had a ten-year
9 amortization of nuclear fuel costs. And
10 I know that my testimony had a five-year
11 amortization on it. So that may be -- that
12 is likely to be the difference here.

13 ALJ DUDNEY: All right. Thank you,
14 Mr. Marcus.

15 Q Mr. Snow, does that sound correct
16 to you?

17 WITNESS SNOW: A It does.

18 Now there could be that our
19 number's only from February forward.

20 I don't know if your number
21 included all of 24 or not.

22 WITNESS MARCUS: A That's possible.

23 ALJ DUDNEY: Thank you both.

24 Mr. Snow, that concludes my
25 questions for you.

26 Q Mr. Schlax, if I could, I would
27 essentially ask the same questions to you
28 that I did to Mr. Snow.

1 Am I correct in understanding that
2 Mr. Snow's response to my questions about
3 the difference between question 6 and
4 question 7 would also apply to
5 the corresponding differences in the San
6 Diego testimony?

7 WITNESS SCHLAX: A Yes, that is
8 correct, that in question 7 our numbers again
9 do include the CWIP in our gross investment
10 in plant whereas in response to -- table in
11 question 6 does not.

12 And then as far as the revenue
13 requirement, it would be table 7 represents
14 the shorter amortization period.

15 ALJ DUDNEY: Thank you, Mr. Schlax.
16 That is all the questions I have at this
17 time.

18 ALJ DARLING: Okay. Mr. Weissmann, do
19 you want to move your exhibits into
20 the record?

21 MR. WEISSMANN: Thank you, your Honor.
22 At this time, we would move the admission of
23 the exhibits previously marked.

24 ALJ DARLING: Any objections?

25 (No response)

26 ALJ DARLING: Hearing none, these
27 exhibits are moved into the record.

28 (Exhibit Nos. SCE-54 through SCE-57
 were received into evidence.)

1

2 ALJ DARLING: All right, Mr. Schlax.
3 Or Mr. Walsh.

4 MR. WALSH: Your Honor, at this time
5 I move that the SDG&E Exhibits 22 and 23 be
6 moved into the record.

7 ALJ DARLING: Any objections?

8 (No response)

9 ALJ DARLING: Hearing none, these
10 exhibits are moved into the record.

11 (Exhibit Nos. SDG&E-22 and SDG&E-23
12 were received into evidence.)

13 ALJ DARLING: All right. At this time
14 we will begin -- settling parties will have
15 an opportunity to cross-examine the witnesses
16 on the settling panel. We will take
17 the non-settling parts in the order which
18 they requested time.

19 MR. AGUIRRE: Excuse me, your Honor.
20 You allowed the other side to decide how they
21 wanted to present their case. Now you're
22 making a different rule. You're not treating
23 the parties similarly. You are now dictating
24 who's going to go and under what
25 circumstances? Could I ask you to not do
26 that, please.

27 And I would like to renew my
28 objection which you said you would allow me

1 to do. You said it wouldn't be long time.
2 Would this be an appropriate time for me to
3 renew my objection?

4 ALJ DARLING: I think you put your
5 objection on the record.

6 MR. AGUIRRE: No.

7 ALJ DARLING: Do you have new
8 information --

9 MR. AGUIRRE: Yes.

10 ALJ DARLING: -- or law to back your
11 motion?

12 MR. AGUIRRE: Yes, I do.

13 Your Honor, I am going to be moving
14 to disqualify you under Rule 9.4 for bias and
15 prejudice because you have now stated --
16 inaccurately stated for the record, and you
17 stated false and untrue that there was
18 compliance with Rule 12(b) because 12(b)
19 requires that prior to signing any
20 settlement, the settling parties shall
21 convene at least one conference with notice
22 and opportunity to participate provided to
23 all parties for the purpose of discussing
24 settlements in the proceeding.

25 No such conference is before your
26 Honor. There is nothing in the record that
27 justified you making the statement that you
28 did.

1 In addition, both Mr. Florio and
2 Mr. Peevey issued press releases on March
3 the 27th in which they indicated that, quote,
4 the parties had reached an agreement. That
5 was false and untrue and misleading and was
6 coordinated with the media blitzkrieg to tell
7 the public that this settlement had been --
8 now, here's my question.

9 ALJ DARLING: All right.

10 MR. AGUIRRE: No. I need to finish.

11 ALJ DARLING: No. You don't need to
12 finish.

13 MR. AGUIRRE: Do we need to have you --
14 do you want to consider whether you should
15 suspend the hearing and allow for this motion
16 for your disqualification to be determined
17 and thereby avoid having to come back should
18 the motion be granted or do you want to go
19 ahead, having heard on the record the motion
20 that -- I'm not bringing the motion now, but
21 I'm informing you that I will be bringing the
22 motion based on bias and prejudice because
23 you prejudged the Rule 12 issue in this case
24 which is one of the bases for our opposing
25 because it was -- the settlement process did
26 not comply with Rule 12.

27 ALJ DARLING: All right, Mr. Aguirre.
28 Now it's my turn.

1 First of all, you misstate my
2 remarks. I know what I said because I read
3 it. And what I said was that prior to filing
4 the motion, the settling parties convened
5 a settlement conference with notice to all
6 parties.

7 MR. AGUIRRE: No. Not true.

8 ALJ DARLING: Period.

9 MR. AGUIRRE: That's not true.

10 ALJ DARLING: Excuse me.

11 MR. AGUIRRE: That's not true.

12 ALJ DARLING: Mr. Aguirre, you need
13 to --

14 MR. AGUIRRE: What's in the record to
15 justify --

16 ALJ DARLING: Mr. Aguirre, could you
17 not speak over the judge? Period. Period.

18 MR. AGUIRRE: Okay. What's in
19 the record that justifies you saying that?

20 ALJ DARLING: No. Mr. Aguirre, I need
21 to you stop.

22 MR. AGUIRRE: Okay.

23 ALJ DARLING: If you are not able to
24 stop, we'll have to adjourn the hearing. Or
25 take a break because you read to conform with
26 Rule 1.1. You have, one, misstated what
27 I staid. Two, you're free to argue whatever
28 you'd like in your comments. Three, you're

1 free to file whatever motions you are -- but
2 that are out of scope of this hearing. If
3 you wish to make some arguments about
4 the state of mind of the judges or
5 the president of the Commission or
6 Commissioner Florio, this is not the forum
7 for that.

8 MR. AGUIRRE: What --

9 ALJ DARLING: So your objection --

10 MR. AGUIRRE: I'm asking for
11 clarification.

12 ALJ DARLING: No.

13 MR. AGUIRRE: What is the record that
14 justified you saying that there was
15 a conference?

16 That's all I'm asking. You made
17 a factual assertion.

18 ALJ DARLING: Yes, I did.

19 MR. AGUIRRE: What is in the record
20 that justifies you saying that?

21 ALJ DARLING: I've answered the
22 question once. I'll answer it one more time
23 then we're moving on.

24 MR. AGUIRRE: Okay. What is it that's
25 in record?

26 ALJ DARLING: There was a notice that
27 was filed and it's on the docket card in this
28 proceeding that shows certificate of service

1 to the service list. All right. Period.

2 MR. AGUIRRE: That's -- from there
3 you --

4 ALJ DARLING: Period.

5 MR. AGUIRRE: -- concluded that that
6 was a conference?

7 ALJ DARLING: I con- -- what I said was
8 that they served notice on all parties.

9 MR. AGUIRRE: No. You said there was
10 a conference.

11 ALJ DARLING: No.

12 MR. AGUIRRE: You just said it twice.

13 ALJ DARLING: I'm not going to get into
14 an argument with you, Mr. Aguirre, about
15 this.

16 You noted your objection on the
17 record. You're free to argue what you want.
18 If you have other concerns about the state of
19 mind about the judges or the commissioners,
20 this is not the forum for that.

21 MR. AGUIRRE: Go ahead. If you want to
22 proceed on this record, go ahead. But you
23 prejudged it and you are acting in the face
24 of bias.

25 ALJ DARLING: Mr. Aguirre, when I tell
26 you that you are done, you're done. So now,
27 Ms. Merriman [sic].

28 MS. MERRIGAN: It's Merrigan, actually.

1 ALJ DARLING: Merrigan.

2 MS. MERRIGAN: Jean Merrigan with
3 Women's Energy Matters. So I have a few
4 questions for the panel and then Dorah Shuey
5 with Women's Energy Matters has a few more
6 questions.

7 ALJ DARLING: All right. And you've
8 asked for 20 minutes.

9 MS. MERRIGAN: Yes.

10 ALJ DARLING: You may proceed.

11 CROSS-EXAMINATION

12 BY MS. MERRIGAN:

13 Q So I'll start with you,
14 Mr. Litzinger.

15 I'd like to ask -- get clear about
16 some of the provisions about litigation costs
17 in the agreement. So looking at section
18 4.11, I just have a series of questions here.

19 I want to -- who's paying --
20 I want -- who's paying for the costs as they
21 accrue?

22 WITNESS LITZINGER: A The utilities
23 will be paying the litigation costs as they
24 accrue and they will be netted out against
25 any settlement. If there is no settlement,
26 utilities would be responsible for those
27 costs.

28 Q Okay. So there is no ratepayer

1 involvement in paying the litigation costs
2 except that it will be deducted from
3 the recovery?

4 A That is correct. Other than
5 the netting, there would be no
6 responsibility.

7 Q Okay. And could you look at 4.11,
8 paragraph 4.11(e)?

9 And if you want to read it --
10 I don't know if we should read it into the
11 record or people have it as a reference.

12 ALJ DARLING: This is the section from
13 the settlement agreement?

14 MS. MERRIGAN: Yes. It's:

15 In consideration of the Utilities
16 retaining SONGS Litigation
17 Recoveries to the extent of
18 the SONGS Litigation Costs,
19 the Utilities shall remove all
20 SONGS Litigation Costs booked in
21 the memorandum accounts described
22 in Section 4.11(a) of this
23 Agreement from the recorded costs
24 used to develop future general
25 rate case forecasts.

26 And then it says:

27 Nothing in this Agreement shall
28 preclude the Settling Parties from

1 making any arguments in either
2 Utility's general rate cases
3 regarding costs used to develop
4 general rate case forecasts.

5 So what does that paragraph mean?

6 WITNESS LITZINGER: A Primarily means
7 that we will not be able to put those
8 litigation costs into our rate case for
9 recovery, consistent with what we said
10 before.

11 Q Okay. I just want to be real clear
12 about it. But I guess I'm not -- I know --
13 I'm not -- the part about not precluding
14 the Settling Parties, is that any of
15 the Settling Parties?

16 Or, do you have something to say,
17 Mr. Marcus?

18 WITNESS MARCUS: A I might be able to
19 help you here.

20 Q Sure.

21 A I think that sentence was put in
22 because we did not want -- we wanted these
23 costs to be left out for ratemaking purposes
24 in general rate cases. But we also did not
25 want to limit parties' ability to make any
26 other arguments about litigation costs
27 unrelated to this when we came to a general
28 rate case. So it's more of a -- it's more of

1 a protection of everybody's rights about what
2 goes into a future general rate case.

3 Q So it's real clear that ratepayers
4 will not be paying any of the rate of
5 the litigation costs; is that right?

6 A That certainly was our intent not.

7 Q And you all agree with that?

8 (No audible response).

9 And then I just want to clarify all
10 this.

11 The definition of the SONGS
12 litigation costs, all litigation costs
13 recorded since January 31 including but not
14 limited to fees paid to outside attorneys and
15 experts associated with pursuing and
16 preparing to pursue SONGS litigation
17 recoveries, what is an example of an expert?

18 WITNESS LITZINGER: A An expert, when
19 we proceed in a litigation with someone like
20 a Mitsubishi Heavy Industries where we're
21 going to be talking about very complicated
22 technical design issues, there is no doubt
23 that MHI will come forward with their
24 external independent experts and we would
25 want to counter with our own.

26 Q I just wanted to make sure. Could
27 that include -- that there's no way to sneak
28 in like the inspection and repair costs that

1 were done in 2012 as far as somehow that
2 would go into the litigation costs because
3 that was necessary for the experts?

4 A No. Those costs have been
5 excluded. They've already been invoiced and
6 paid. This would be new experts coming into
7 the litigation at that time based on those
8 invoices.

9 Q Okay, thanks.

10 And what's the current total cost
11 of SONGS litigation costs, the current
12 amount?

13 A I'm unaware of the amount. We'd
14 have to get back to you on that.

15 Q Does anybody here have it?

16 I think -- is it around 32 million
17 or -- Mr. Weissmann?

18 WITNESS LITZINGER: I would have to
19 respond later.

20 MR. WEISSMANN: There was a data
21 request on this that WEM propounded and to
22 which we responded. These amounts are
23 recorded in our monthly SONGSOMA report.

24 MS. MERRIGAN: Q Currently at about 32
25 million; is that right?

26 MR. WEISSMANN: I don't have the number
27 but it's in the SONGSOMA report, so whatever
28 that adds up to.

1 MS. MERRIGAN: Q And with the NEIL
2 claim, in pursuing the NEIL claim the
3 utilities maintain the plant was shut down
4 due to an accident as defined by the NEIL
5 policy?

6 WITNESS LITZINGER: A That is the
7 basis of our claim, yes.

8 Q Okay. And are there negligence
9 provisions in the policy?

10 A There are numerous exclusions.
11 I do not believe simple negligence is one of
12 them.

13 Q I wanted to ask some question of
14 TURN and ORA.

15 In the general recitals,
16 the procedural history of this proceeding.

17 ALJ DARLING: Are you referring to the
18 motion?

19 MS. MERRIGAN: No.

20 ALJ DARLING: Or the settlement
21 agreement?

22 MS. MERRIGAN: -- itself. There's
23 general recitals.

24 Q And if you'd look at general
25 paragraph 3.12 -- if I can find it -- it
26 basically states that -- what this proceeding
27 was set out to do; is that correct?

28 WITNESS POCTA: A Yes, I think that's

1 correct.

2 Q And it was to look into the causes
3 of the outages, the utilities' responses, and
4 the resulting effects on the provision of
5 safe and reliable service.

6 And then 3.15, 3.15(d) or actually
7 (c). 3.15(c). What's that one about?

8 A States:

9 In Phase 3, the Commission will
10 examine "causes of the [steam
11 generator] damage and allocation
12 of responsibility, whether claimed
13 SGRP expenses are reasonable,
14 including review of
15 utility-proposed repair and/or
16 replacement cost proposals using
17 cost-effectiveness analysis and
18 other factors."

19 ALJ DARLING: Mr. Pocta, could I ask
20 you to speak up more directly into the
21 microphone, because it is being web cast.

22 WITNESS POCTA: Sure.

23 ALJ DARLING: Thank you.

24 MS. MERRIGAN: Q Okay. So there
25 was -- the proceeding set out to, this
26 proceeding opened with the promise that there
27 would be an investigation into the causes and
28 responsibility of the SONGS outages; is that

1 correct?

2 WITNESS MARCUS: A I wouldn't call it
3 a promise. I would call it a procedural
4 schedule that had that phase in it.

5 Q Okay. Well, that's something.

6 Well, okay. Now the agreement, is
7 it a correct reading of the proposed
8 agreement that every time ratepayers were
9 entitled to a reasonableness review of the
10 SGRP, the utilities have conceded money in
11 exchange for ending the reasonableness
12 review?

13 ALJ DARLING: Is that a question?

14 MS. MERRIGAN: Yeah. Yeah.

15 Q Is that -- I mean, that's --
16 I spent a lot of time with this agreement and
17 like that began to dawn on me: Oh, that's
18 why they can get rid of Phase 3 because they
19 dispensed --

20 I'm sorry.

21 ALJ DARLING: Ms. Merrigan, you need to
22 confine yourself to a question.

23 MS. MERRIGAN: Okay.

24 ALJ DARLING: This not the opportunity
25 to make your agreement.

26 MS. MERRIGAN: Okay.

27 ALJ DARLING: Can you reframe your
28 inquiry?

1 MS. MERRIGAN: Is it a correct reading
2 of the proposed agreement that every time
3 ratepayers were entitled to a reasonableness
4 review of the SGRP, the utilities have
5 conceded money in exchange for ending
6 the reasonableness review?

7 WITNESS MARCUS: A I would not put it
8 that way.

9 I believe that the agreement
10 essentially adopted our litigation position
11 that there would be no costs for the steam
12 generator after February 1, 2012, which
13 essentially is a proxy for a finding of some
14 type of imprudence. Whether the problem is
15 caused by Mitsubishi or caused by Edison,
16 frankly ratepayers don't care. Ratepayers --

17 Q Okay.

18 A -- have basically gotten that money
19 out.

20 MR. AGUIRRE: I'm going to object and
21 move to strike as no foundation for him
22 testifying to what ratepayers have done or
23 not done. That's a third party for whom he
24 has no personal knowledge.

25 ALJ DARLING: Reply comment?

26 Mr. Marcus?

27 WITNESS MARCUS: I believe that
28 the organizations representing -- I will

1 change my comment to say the organizations
2 representing ratepayers among the settling
3 parties got that \$597 million removed as part
4 of the settlement which would have been
5 likely to occur had there been a finding of
6 imprudence.

7 ALJ DARLING: Objection overruled.

8 MR. AGUIRRE: Well, he changed his
9 answer.

10 ALJ DARLING: Yes, based on the changed
11 answer.

12 MR. AGUIRRE: That's not -- you don't
13 object -- you don't overrule the objection.
14 Factually he changed his answer. Now
15 the objection has been dealt with. Come on.

16 ALJ DARLING: Let's move on.

17 MS. MERRIGAN: Q So you're one of
18 the coauthors of the response to question 17
19 as well from ORA?

20 It's -- I guess what I'm getting at
21 is response to Question 17 states that
22 there's aligned interest between ratepayer
23 and shareholder interests now, and I think
24 were you just stating that.

25 But in that -- isn't what happened
26 is that ratepayers -- by the terms of this
27 agreement, it hasn't happened yet because
28 this hasn't been approved yet. But by

1 the terms of the agreement, ratepayers give
2 up their right to an investigation of what
3 happened with the steam generator replacement
4 project and they are asked to align
5 themselves with the utilities in their
6 prosecution of the arbitration against
7 Mitsubishi so they give up -- is that what's
8 happened by the agreement?

9 WITNESS MARCUS: A Question 17
10 specifically speaks to litigation costs. And
11 what -- and it was written narrowly with
12 respect to litigation costs.

13 Q Okay. But they are on board with
14 the Mitsubishi and with the litigation; is
15 that right?

16 A What do you mean "on board"?

17 Q You guys think it's in their
18 interest to -- in ratepayers' interest to be
19 aligned with the utility there?

20 A I think what we are saying here is
21 if there is going to be litigation, there are
22 shares to ratepayers, there are shares to
23 shareholders, they are net of the amount of
24 money paid to attorneys and experts;
25 therefore, all parties have an interest, have
26 the same interest, which is maximizing the
27 net recovery from either Mitsubishi or from
28 the NEIL insurance policy. Because Edison

1 gets the money. We get some money. It's
2 different, depending on the size of
3 the allowance. But that's the alignment that
4 we were talking about here.

5 Q Okay. And is it true that -- it
6 seems like the agreement asked the CPUC to
7 give up any oversight of the litigation. Is
8 that the litigation, that 4.11(f)?

9 ALJ DARLING: Is that directed to
10 Mr. Marcus?

11 MS. MERRIGAN: Q Well, maybe -- how
12 about Mr. --

13 WITNESS POCTA: Pocta.

14 MS. MERRIGAN: -- Pocta.

15 WITNESS POCTA: A Thank you.

16 Q It's:

17 The CPUC shall not review
18 the reasonableness or prudence of
19 the Utilities' litigation,
20 settlement, compromise, or other
21 resolution of such claims, and
22 shall not impose any ratemaking
23 adjustment in respect of such
24 claims except as expressly
25 provided in [the] Agreement.

26 My question is, does this paragraph
27 mean that if the third party litigation
28 proves negligence on the utilities' part,

1 the CPUC has no further ability to hold the
2 utility accountable?

3 WITNESS POCTA: A This provision, if
4 you read the top part, is asserting that
5 utilities shall notify the PUC of any such
6 settlement compromise or other resolution of
7 their claims against NEIL, and the PUC would
8 not be reviewing the reasonableness or
9 prudence of the litigation compromise or
10 resolution.

11 So essentially, we feel that the
12 sharing mechanism that's been set forth in
13 the settlement and the incentives are such
14 that utilities are provided the incentive to
15 maximize the amount of settlement and
16 compromise and resolution associated with
17 their claims against NEIL and MHI, and thus
18 by the provision of this settlement, CPUC
19 reviewing the reasonableness of those
20 settlements is not necessary.

21 Q So they're not allowed to review
22 the reasonableness of the lit- -- I mean --

23 A That's what the --

24 Q -- kind of written out?

25 A -- our settlement agreement is
26 recommending that because the incentives are
27 such that it provides SCE and San Diego --

28 Q In exchange --

1 A -- with the incentive --

2 Q I'm sorry.

3 A -- to maximize the --

4 Q Being kind of rude.

5 A -- the basically the -- such
6 resolution of those settlements.

7 ALJ DARLING: Ms. Merrigan, you have
8 about three minutes.

9 MS. MERRIGAN: Okay. Dorah.

10 MS. SHUEY: Thank okay.

11 CROSS-EXAMINATION

12 BY MS. SHUEY:

13 Q This question is directed to
14 Mr. Litzinger.

15 General resolution -- and this is
16 regarding the possible settlement, the awards
17 for Mitsubishi.

18 General recital 3.23 states that
19 SCE has determined that Mitsubishi made
20 errors in designing and manufacturing the
21 replacement steam generators. But doesn't
22 this recital leave out the fact that the NRC
23 cited Southern Cal Edison for a violation of
24 federal regulations because SCE failed to
25 verify or check the adequacy of the design?

26 WITNESS LITZINGER: A Our position is
27 that Mitsubishi Heavy Industries failed in
28 their design, and we are pursuing

1 the litigation on those claims.

2 The NRC did issue a notice of
3 violation and that notice of violation said
4 that Southern California Edison was -- if you
5 give me one second --

6 Q I have it right here.

7 ALJ DARLING: No. Allow the witness --

8 THE WITNESS: No. I got it.

9 ALJ DARLING: To answer the question.

10 WITNESS LITZINGER: In that they
11 pointed out that there were opportunities to
12 discover the design error. They were
13 actually silent as to which party.

14 They noted that MHI was our vendor
15 and that there were numerous occasions where
16 we questioned the results, but that we were
17 ultimately responsible and that MHI had hired
18 consultants and failed to follow-up on issues
19 raised by their consultants. We feel that
20 that is helpful for us in our litigation.

21 With regards to our response to the
22 notice of violation, we recognized -- we
23 made -- in our response, we stated that we
24 are permitted to delegate to our supplier.
25 It can't be expected that a purchaser of
26 a complicated piece of machinery like that
27 would know everything, and we delegated
28 the quality assurance to that. But the NRC

1 rules are clear that the licensee is
2 ultimately responsible. We acknowledged
3 that, that we were ultimately responsible and
4 took that and then the -- well, we reserved
5 our rights to dispute other matters in
6 the future with regards to the violation.

7 All we acknowledged was that
8 the licensee is ultimately responsible, which
9 for most situations at the NRC will be
10 the finding.

11 Q Thank you.

12 ALJ DARLING: And --

13 MS. SHUEY: I think I have another
14 minute.

15 ALJ DARLING: All right, one minute.

16 MS. SHUEY: Okay.

17 Q And my next question is directed to
18 I believe it's Mr. Pocta; is that correct?

19 WITNESS POCTA: A That's correct.

20 Q With ORA.

21 Going back to general recital 3.12,
22 this is the same, following up on what Jean
23 was saying. And it's the one that states
24 that the PUC will be investigating the causes
25 of the outages.

26 And so I know that ORA is an
27 independent advocating body for ratepayers.
28 And how does it fit into these, your legal

1 duties as a ratepayer advocate to join in
2 the settlement that closes off Phase 3 and
3 Phase 4?

4 WITNESS POCTA: A I'm not --

5 MS. MERRIGAN: Is there somebody else
6 who could answer?

7 WITNESS POCTA: A I'm not a legal
8 expert. If you want me to answer that in
9 some other manner --

10 MS. SHUEY: Q I'm sorry. By legal, I
11 simply meant that since you're a government
12 body, that you have some regulations that
13 were about your formation. I'm not asking
14 you to give an opinion as a legal expert.

15 A Well, we advocate on behalf of
16 ratepayers to obtain the lowest rate possible
17 consistent with safe and reliable service.
18 So basically we feel that the settlement does
19 that. It resolves this case in a fair and
20 equitable manner to ratepayers.

21 And as I stated earlier with regard
22 to the replacement steam generators,
23 essentially -- well, not essentially.
24 The settlement agreement would adopt ORA's
25 litigation position. It's a best case result
26 with regard to the replacement steam
27 generators.

28 So addressing the prudence issue at

1 that point isn't going to achieve anything
2 further with regard to getting the lowest
3 possible rate for ratepayers. We have
4 achieved that in the settlement with regard
5 to replacement steam generator issue.

6 Q Okay. Since I know also it was
7 mentioned I believe by Mr. Marcus that
8 providing a speeder refund is an issue, could
9 there be a bifurcation allowing for the known
10 refund now with the disallowances and then
11 if Phase 3 and Phase 4 do go on, there can be
12 adjustments made regarding the ratepayer
13 refund?

14 WITNESS MARCUS: A I think the
15 Commission can theoretically do that.

16 I would not support that because
17 I believe that the settlement achieves
18 a significant amount of judicial economy.
19 And I also think that there are potential
20 litigation outcomes where we might have to
21 give some of the money back that is in
22 the settlement.]

23 I consider them to be part of
24 the -- part of what we had to look at when we
25 settled the case is that there could be --
26 you know -- there are litigation outcomes
27 that might be better for us, but there are
28 also litigation outcomes that might be worse.

1 MS. SHUEY: Thank you. That's all.

2 ALJ DARLING: All right. Thank you
3 very much.

4 Mr. Geesman.

5 MR. AGUIRRE: Could I just ask, you
6 said there was an order. Mr. Geesman said 15
7 minutes. Theirs was 20 minutes. What order
8 are you following? Mine is 40. What order
9 are you following?

10 ALJ DARLING: As I stated on the record
11 earlier, we are taking it in the order that
12 the Nonsettling Parties requested.

13 MR. AGUIRRE: One requested 15 minutes.
14 One requested 20. You took the 20 first and
15 now you're taking the 15 second.

16 ALJ DARLING: The chronologic --

17 ALJ DUDNEY: The order that the
18 requests were received.

19 MR. AGUIRRE: Oh, the order the
20 requests were received. Okay.

21 ALJ DARLING: Mr. Geesman.

22 MR. GEESMAN: Thank you, your Honor.
23 John Geesman on behalf of the Alliance For
24 Nuclear Responsibility.

25 I'm sorry, gentlemen. You're
26 positioned where you need to look over your
27 shoulders. I'm not that much to look at.

28 COMMISSIONER PEEVEY: If you turn the

1 mic, turn it up a little bit.

2 MR. GEESMAN: I think the microphone is
3 on.

4 ALJ DARLING: That's much better.

5 MR. GEESMAN: I'll lean down.

6 CROSS-EXAMINATION

7 BY MR. GEESMAN:

8 Q Mr. Litzinger, if I could start
9 with you. I'd look to go to the settlement
10 agreement itself, Section 2.13 and the
11 definition of CWIP.

12 WITNESS LITZINGER: A Okay.

13 Q That first sentence, I'm looking at
14 the parenthetical reference to retirement
15 work in progress. Now, could you describe
16 for me what retirement work in progress is?

17 A I think that would probably be best
18 answered by Mr. Snow.

19 Q Okay.

20 A Or I've just been instructed Mr.
21 Fisher would be the better responder.

22 ALJ DARLING: All right.

23 MR. GEESMAN: Either would be fine.

24 ALJ DARLING: Okay. I'll need to swear
25 Mr. Fisher in.

26 Mr. Fisher, please stand, raise your
27 right hand.

28 RICHARD FISHER, called as a witness
by Southern California Edison Company,

1 having been sworn, testified as
2 follows:

3 ALJ DARLING: Thank you. Please be
4 seated.

5 WITNESS FISHER: I'm sorry, Mr.
6 Geesman. Can you repeat the question?

7 CROSS-EXAMINATION

8 BY MR. GEESMAN:

9 Q Yes. I'm at Section 2.13 of the
10 settlement agreement, the definition of CWIP.
11 And it's the first sentence of that multipart
12 definition, the reference that's in
13 parentheses to retirement work in progress.
14 Could you explain what retirement work in
15 progress is.

16 WITNESS FISHER: A Sure. Retirement
17 work in progress has to do with the costs
18 incurred when permanently retiring an asset.
19 So that would include cost of removal,
20 disposal, or otherwise permanent abandonment
21 of the asset as well as net of any gross
22 salvage received.

23 Q And that's ordinarily recorded
24 directly in your depreciation account, is it
25 not?

26 A Once the -- correct. It -- once
27 the work order is closed and the work is
28 finished, they'll settle to the accumulated

1 depreciation for that asset, but in the
2 meantime it sits in a retirement work in
3 progress account, but it is on the
4 accumulated depreciation general ledger.

5 Q So when it goes into accumulated
6 depreciation, it reduces ratebase?

7 A Well, that will depend on whether
8 it is a cost of removal or salvage. So a
9 removal cost will actually increase ratebase.
10 It decreases your accumulated depreciation.
11 And gross salvage has the opposite effect.

12 Q Okay. So is this definition of
13 CWIP which includes retirement work in
14 progress the way CWIP is approached in your
15 FERC system of accounts?

16 A No.

17 Q You're combining both additions and
18 subtractions to ratebase in this definition,
19 are you not?

20 A That is correct.

21 MR. GEESMAN: Thank you very much.

22 CYNTHIA FANG,

23 ROBERT SCHLAX,

24 RON LITZINGER,

25 and ROBERT M. POCTA

26 resumed the stand and testified further as
27 follows:

28

1 CROSS-EXAMINATION (resumed)

2 BY MR. GEESMAN:

3 Q Mr. Pocta, my question for you
4 relates to the NEIL insurance claim. And
5 specifically have you done an assessment of
6 the likely size of recovery under the
7 replacement power policy provided by NEIL?

8 WITNESS POCTA: A When you say
9 "assessment," could you be more clear what
10 you mean by "assessment"?

11 Q Well, have you evaluated the
12 likelihood and likely amount of a recovery
13 under the NEIL policies for replacement power
14 costs?

15 A I would just say that we discussed
16 it internally, that we have not submitted
17 testimony on it. We have not gone beyond
18 informally discussing it. That's it.

19 Q And does that imply that you don't
20 have a specific number that you'd be prepared
21 to share with me today?

22 A That's correct. I wouldn't have a
23 number where we assessed this specifically.

24 Q And with respect to the accidental
25 damage policies provided by NEIL, have you
26 made an assessment of the likelihood of
27 recovery or the prospective amount to be
28 recovered under those policies?

1 A Again, similar to the first
2 question, we -- analysts reviewed those
3 policies. We discussed them internally, but
4 again, we didn't come to any specific
5 resolution or determination as to the amount
6 or potential amount that -- of recovery that
7 SCE or SDG&E might or might not expect. It
8 was merely internal discussions.

9 Q Thank you.

10 Mr. Marcus.

11 WITNESS MARCUS: A Yes.

12 Q Same question with respect to NEIL
13 return, and I'd like you to address both the
14 replacement power costs and the accidental
15 damages policy.

16 A I can say that the level of
17 replacement power costs is going to be no
18 higher than the numbers that are provided
19 in -- than the numbers that unpacked yielded
20 SCE 56's replacement power cost, which is 389
21 million net present value, to unpack that.
22 That would be the maximum amount we're
23 talking about.

24 As to the probability of
25 occurrence, we did not handicap that or look
26 at that in any detail, nor did we look at the
27 probability of occurrence to handicap the
28 accidental loss policy.

1 Q And with respect to the accidental
2 loss policy, did it make any difference that
3 Edison has yet to file a proof of loss?

4 A I think -- we understood that was
5 the case, but there's a whole process
6 involved in filing these. What we wanted to
7 make sure was that a number for whatever the
8 loss was was preponderately on the ratepayer
9 side of the ledger since it was paying for
10 replacement power that ratepayers paid for.
11 And numbers are negotiated, but that was
12 why -- that was what our concern was.

13 Q But on the accidental loss policy,
14 the property damages policy, were you able to
15 arrive at a likely number to associate with
16 potential recovery there?

17 A No.

18 MR. GEESMAN: Thank you very much.

19 That's all I have, your Honor.

20 ALJ DARLING: Okay. Mr. Aguirre will
21 be next, but I'm going to call a ten-minute
22 break.

23 MR. AGUIRRE: We have some exhibits,
24 though, we'd like to provide to you. My
25 exhibits have been previously provided to the
26 parties, which is the normal course, and now
27 I'm providing them to you after they have
28 been given a notice of what I'm providing to

1 you, which is the normal way that it is
2 supposed to proceed.

3 ALJ DARLING: Were they provided five
4 days before the hearing, which is what was
5 required by the settlement ruling?

6 MR. AGUIRRE: Well, you have to look at
7 them.

8 ALJ DARLING: I'm asking you, did you
9 provide these five days prior --

10 MR. AGUIRRE: In the same way that they
11 provided them, yes. The same way they
12 provided them. It's all from their records.

13 ALJ DARLING: No. My question is
14 whether they were provided five --

15 MR. AGUIRRE: The answer to your
16 question is as I've just indicated.

17 ALJ DARLING: It's a yes or no
18 question, Mr. Aguirre.

19 MR. AGUIRRE: The question is that you
20 have to look at the documents. They have all
21 the documents.

22 ALJ DARLING: I don't have to look --

23 MR. AGUIRRE: They were provided to
24 them. They were provided to them more than
25 five days before, yes.

26 ALJ DARLING: They were?

27 MR. AGUIRRE: Yes.

28 ALJ DARLING: I haven't seen this one.

1 MR. AGUIRRE: Well, that's because what
2 you do is you show the other parties first.
3 These are all just from the data requests of
4 that sort. But normally what we do is we
5 provide the documents to the parties first
6 and then we provide them to the
7 commissioners, not the other way around,
8 which is the procedure I have followed this
9 morning.

10 ALJ DARLING: Well, actually, that's
11 not what our rules require nor what the
12 ruling requires.

13 Let's hear from Mr. Weissman.

14 MR. WEISSMANN: Thank you, your Honor.
15 I have just received a document just prior to
16 the commencement of today's hearing. I did
17 not receive it prior till today. Leafing
18 through the document, some of the materials
19 here appear familiar and not problematic, for
20 example, the settlement agreement. There
21 appear to be some other things like an
22 excerpt from the Commission's 2005 decision
23 which don't appear to be problematic.

24 There are some things in here that
25 appear to be materials that were generated by
26 counsel or their consultants about San Onofre
27 plant balances.

28 MR. AGUIRRE: Matters that we've

1 asked --

2 ALJ DARLING: No, Mr. Aguirre.

3 MR. AGUIRRE: Sorry.

4 MR. WEISSMANN: Which I have not seen
5 before. I don't know how these were derived.
6 There are some data responses in here which
7 don't appear to be problematic. There seem
8 to be some press releases which I don't -- I
9 don't have any independent knowledge of. Not
10 that press releases are really evidence, but
11 that's as it may be. There's an excerpt from
12 the rules of Practice and Procedure.

13 ALJ DARLING: Right. I mean this is --

14 MR. WEISSMANN: I've not seen this
15 document before today.

16 ALJ DARLING: Nor have I.

17 MR. AGUIRRE: Yes, you have. We've
18 asked you to take judicial notice. This is
19 not evidence. You said evidence. These are
20 all -- can be all judicially noticed
21 documents. The documents that show the net
22 plant all come from the 10-Ks. Those have
23 all been provided to you.

24 ALJ DARLING: Mr. Aguirre, those are
25 not subject to official notice.

26 MR. AGUIRRE: Oh, yes, they are. Of
27 course they are subject to official notice.

28 ALJ DARLING: Oh, no, they're not.

1 MR. AGUIRRE: Your Honor, excuse me,
2 but in the case of -- I have a case.

3 ALJ DARLING: No, I'm not going to
4 entertain -- you know, under 451 or 452?

5 MR. AGUIRRE: 452.

6 ALJ DARLING: First of all, we don't
7 subscribe to the Evidence Code. We use it as
8 guidance.

9 MR. AGUIRRE: No, that's not true. You
10 incorporate it. The official notice
11 incorporates Evidence Codes 450 expressly.

12 ALJ DARLING: And I can tell you
13 exactly that data requests would never be
14 subject to official notice. Okay.

15 So I think what we're going to do is
16 go off the record, take our ten-minute break.
17 The judges will try to parse this into
18 subsets, and we'll have to take it one by
19 one, and you'll need to do an offer of proof
20 to the extent you wish to use it.

21 MR. AGUIRRE: I'm not offering it. I'm
22 just using it to examine the witness. I just
23 want to mark it as an exhibit. I'm not
24 offering it as evidence. It's just to be
25 used as a document to assist in the
26 examination of the witness so that he has
27 readily available information about the
28 questions I'm asking.

1 ALJ DARLING: Mr. Weissmann, do you
2 have any objection to having it be marked?

3 MR. WEISSMANN: No, I don't have an
4 objection to it being marked.

5 ALJ DARLING: All right. So Judge
6 Dudley will mark it. We will take a
7 ten-minute break and be back at about 10
8 after 3.

9 MR. AGUIRRE: Henricks No. 1.

10 ALJ DARLING: Off the record.

11 (Recess taken)

12 ALJ DARLING: Let's go back on the
13 record.

14 And before we proceed with
15 cross-examination, Judge Dudley.

16 ALJ DUDNEY: Mr. Geesman, we just
17 wanted to have you introduce your exhibits.

18 MR. GEESMAN: Your Honor, I had two
19 cross-examination exhibits which TURN and ORA
20 stipulated to the admissibility of. I have
21 inquired of both San Diego and Edison whether
22 they have any objections. They indicate they
23 do not. I've not inquired with the other
24 parties, but I would move their admission
25 into evidence.

26 ALJ DUDNEY: Let's take it a step at a
27 time and get them marked first. From my
28 notes I have labeled the TURN discovery

1 response as ANR-50 and the ORA discovery
2 response as ANR-51.

3 MR. GEESMAN: So I would move A4NR-50.

4 ALJ DUDNEY: Any objections?

5 (No response)

6 ALJ DUDNEY: Hearing none.

7 MR. GEESMAN: I would move A4NR-51.

8 ALJ DUDNEY: Any objections?

9 (No response)

10 ALJ DUDNEY: Hearing no objections,
11 ANR-50, the TURN discovery response is marked
12 for identification and admitted into
13 evidence, and ANR-51, the ORA discovery
14 response, is marked for identification and
15 admitted into evidence.

16 (Exhibit No. ANR-50 and ANR-51 were
17 marked for identification.)

18 (Exhibit No. ANR-50 and ANR-51 were
19 received into evidence.)

20 MR. GEESMAN: Thank you, your Honor.

21 ALJ DUDNEY: Thank you, Mr. Geesman.

22 Mr. Heiden, do you want to introduce
23 the ORA -- or excuse me -- DRA exhibits as
24 well.

25 MR. HEIDEN: Thank you, your Honor. I
26 have a statement of qualifications. It's
27 titled Qualifications and Prepared Testimony
28 of Robert Mark Pocta. I gave copies to some

1 folks before the hearing. If people need a
2 copy, I could distribute it.

3 ALJ DUDNEY: All right. That is marked
4 Exhibit DRA-10. We're sticking with DRA in
5 this proceeding.

6 Any objections to the admission of
7 that exhibit?

8 (No response)

9 ALJ DUDNEY: Hearing none, Exhibit
10 DRA-10 is marked for identification and
11 received into evidence.

12 (Exhibit No. DRA-10 was marked for
13 identification.)

14 (Exhibit No. DRA-10 was received
15 into evidence.)

16 MR. HEIDEN: Thank you, your Honor.

17 ALJ DARLING: All right. Mr. Henricks,
18 you have distributed a set of documents here.
19 It does not conform with --

20 MR. AGUIRRE: Mr. Henricks?

21 ALJ DARLING: I'm sorry. Mr. Aguirre
22 wanted to mark Henricks-1. The difficulty of
23 this stack of different documents is that
24 under Rule 13.7 there should have been a
25 table of contents. Each page should be
26 marked individually so that the parties can
27 all move efficiently to it. So we'll see how
28 it goes, but it's set up to make the

1 proceeding last unnecessarily long as we all
2 flip through pages.

3 So to the extent that you practice
4 before this Commission, you should
5 familiarize yourself with Rule 13.7 as to how
6 exhibits should be presented.

7 MR. AGUIRRE: I think everyone should
8 familiarize their self with the rules of the
9 Commission and comply with them. I agree
10 with that.

11 ALJ DARLING: So --

12 MR. AGUIRRE: May I please ask you now,
13 Mr. Litzinger, if you will.

14 ALJ DARLING: Did you wish to have this
15 exhibit marked?

16 MR. AGUIRRE: It's already been marked.

17 ALJ DARLING: No, it has not been
18 marked on the record.

19 ALJ DUDNEY: It was not marked on the
20 record.

21 MR. AGUIRRE: Oh, marked on the record
22 as Henricks-1, please.

23 ALJ DARLING: It's not your direction.
24 It's the judge's direction.

25 So Mr. Aguirre --

26 MR. AGUIRRE: I was directing my
27 comments to you, your Honor.

28 ALJ DARLING: Judge Dudney.

1 ALJ DUDNEY: All right. Henricks-1 is
2 marked for identification.

3 (Exhibit No. Henricks 1 was marked
4 for identification.)

5 CROSS-EXAMINATION

6 BY MR. AGUIRRE:

7 Q Would you, Mr. Litzinger, would you
8 mind turning to seven pages in and Section
9 3.23 of the agreement, Section 3.23 of the
10 agreement.

11 WITNESS LITZINGER: A Okay.

12 Q It says here, "SCE had determined
13 that Mitsubishi made errors in designing."
14 Do you see that?

15 A Yes.

16 Q Where in the record is there
17 support for the errors in designing that
18 Southern Cal Edison determined were made?

19 A I believe these general recitals
20 were just provided as general background, and
21 that's what we were attempting to accomplish
22 with that statement.

23 Q Sir, the question before you, and
24 I'll repeat it, where in the record -- let me
25 repeat it -- where in the record is there
26 support for the factual assertion that SCE
27 determined there were errors in designing of
28 the steam generators that were deployed at

1 San Onofre?

2 A I'm not aware of the specific spot
3 in the record if any.

4 Q In fact, sir, you are aware that
5 there is nothing in the record that supports
6 the factual assertion in 3.23 that SCE
7 determined there were errors in the design of
8 the steam generators that were deployed at
9 the San Onofre nuclear station, correct?

10 A Again, I'm not aware if there is
11 anything in the record on it. My
12 understanding of the general recitals is they
13 were provided as general background for the
14 settlement agreement.

15 Q Right, right. But I'm not asking
16 about why you provided recitals. I'm asking
17 you a very specific and straightforward
18 question. If you would please answer it I
19 would appreciate it muchly.

20 Do you know -- let me start again.
21 Can you please tell us where if anywhere
22 there is any factual support for the factual
23 assertion that SCE determined there were
24 errors in the design of the steam -- of the
25 replacement steam generators that were
26 deployed in San Onofre?

27 A I cannot.

28 Q What errors -- let me --

1 Did SCE investigate whether SCE
2 made errors in the design of the steam
3 generators that were deployed at the San
4 Onofre Nuclear Power Station as part of the
5 steam replacement program approved by the PUC
6 on December 15th of 2005?

7 A SCE conducted exhaustive
8 investigations utilizing outside experts. We
9 did that in order to pursue our restart and
10 to build our case for making a claim against
11 Mitsubishi Heavy Industries.

12 Q And will you tell us, sir, where in
13 this record the product of your investigation
14 into whether SCE officials had any
15 responsibility for design errors for the
16 replacement steam generators that were
17 deployed in the San Onofre nuclear power
18 plant, where in this record is any such
19 information?

20 A I -- same answer. I cannot.

21 Q Now, you will admit that Southern
22 Cal Edison was involved in the design process
23 for the replacement steam generators as early
24 as November of 2004 when Mr. Nunn sent his
25 letter to the Mitsubishi Heavy Industry
26 Corporation, correct?

27 A I would only say that Southern
28 California Edison was not involved in the

1 design. We contracted the design of the
2 steam generator out to MHI. As an owner we
3 exercised oversight of that design as would
4 normally be expected of an owner in the NRC.

5 Q Okay. Now, were you employed and
6 working on the replacement steam generator
7 program in 2004 as an agent, officer, or
8 employee of Southern Cal Edison?

9 A I was not.

10 Q Were you in any way involved in
11 overseeing, directing, managing, the
12 replacement steam program for the San Onofre
13 plant in the year 2004?

14 A I was not.

15 Q What is the basis of your personal
16 knowledge of Southern Cal Edison executives,
17 agents, officers, employees involvement in
18 the design process?

19 A Reviewing past materials as we
20 investigated causes such that we could come
21 up with a restart plan and pursue that and
22 also investigating causes. To make our claim
23 against Mitsubishi, we read past documents
24 associated with the design phase of the
25 project.

26 Q And are those documents in the
27 record available to the Commission to
28 evaluate the reasonableness of this proposed

1 settlement, sir?

2 A All of those documents are not.

3 Q Sir, did you participate personally
4 in any of the settlement meetings that led up
5 to the proposed settlement?

6 A I did not.

7 Q How is the Commission to make up
8 its mind -- let me start again.

9 Did you participate in any
10 discussions in which the strength of the
11 ratepayer case that Southern California
12 executive -- executives had acted
13 unreasonably in connection with the
14 deployment of the steam generators at San
15 Onofre, did you participate in any such
16 discussion in which the strength of the case
17 was discussed during the course of the
18 settlement discussions?

19 MR. WEISSMANN: Your Honor, I'll
20 interpose an objection and direct the witness
21 not to divulge any privileged attorney-client
22 communications.

23 MR. AGUIRRE: Q Oh, attorney-client
24 privileged communications. Okay. Well,
25 exclude any client, attorney-client -- well,
26 wait a second.

27 The only person that represented
28 Southern California Edison at the settlement

1 conferences was an attorney; is that true?

2 ALJ DARLING: Who are you directing the
3 question to?

4 MR. AGUIRRE: I'm directing the
5 question at the witness, your Honor.

6 WITNESS LITZINGER: A We were
7 represented by Mr. Weissmann, yes.

8 MR. AGUIRRE: Q The question before
9 you, sir, is, was your attorney, Mr.
10 Weissmann, the only representative of
11 Southern California Edison who attended the
12 settlement negotiations?

13 WITNESS LITZINGER: A To my knowledge,
14 he was the only one present.

15 Q And the only source of information
16 that you have about what took place at the
17 settlement negotiations are attorney-client
18 privileged communications that you received
19 from Mr. Weissmann, true?

20 A That is correct.

21 Q Now, did you have any discussions
22 with staff members during the pendency of the
23 settlement negotiations about what was being
24 discussed there?

25 MR. WEISSMANN: Again, your Honor, I'll
26 interpose the same objection. To the
27 extent -- I'll direct the witness to exclude
28 from his answer any attorney-client

1 communications.

2 ALJ DARLING: And I'm also not clear on
3 the question. When you say staff members,
4 what staff, whose staff members? Edison
5 staff members?

6 MR. AGUIRRE: Southern California, his
7 staff.

8 ALJ DARLING: Okay.

9 MR. AGUIRRE: His staff.

10 Q Did you talk with your staff
11 members about the settlement discussions
12 while they were taking place outside the
13 presence of Mr. Weissmann?

14 MR. WEISSMANN: I'll repeat my
15 objection.

16 ALJ DARLING: The objection is
17 sustained.

18 MR. AGUIRRE: Q Outside the presence
19 of Mr. Weissmann, did you have any
20 discussions about the settlement negotiations
21 outside the presence of Mr. Weissmann with
22 any staff members of Southern California
23 Edison?

24 MR. WEISSMANN: There are obviously
25 many attorneys at Southern California Edison.
26 Moreover, to the extent that -- and I don't
27 know if this is true -- anybody repeated
28 information that constituted an

1 attorney-client communication, that would be
2 privileged as well. So I'm simply directing
3 the witness to exclude from his answer any
4 material that is covered by the
5 attorney-client privilege.

6 MR. AGUIRRE: Is this normal for him to
7 give a speaking objection like that and for
8 him to direct what the witness does and
9 doesn't do? Is that normal here?

10 ALJ DARLING: Yes.

11 MR. AGUIRRE: Okay. Because that's not
12 the normal process. Most places the attorney
13 doesn't stand up and in the middle of the
14 examination do this, but that's fine. I'll
15 adjust to the procedure here.

16 ALJ DARLING: An attorney is entitled
17 to object to questions.

18 MR. AGUIRRE: That's not an objection.
19 That's a long speaking objection, your Honor.
20 That's what we call a speaking objection.
21 And we don't usually --

22 ALJ DARLING: I don't know --

23 MR. AGUIRRE: The judge usually doesn't
24 check in with the --

25 ALJ DARLING: -- Mr. Aguirre, but
26 what's happening is appropriate. You've
27 posed a question. He has articulated an
28 objection that is a privilege objection. I

1 sustained that objection. And the witness is
2 directed to response -- to respond bearing in
3 mind the sustained portion of that objection.

4 MR. AGUIRRE: Okay. Let me restate the
5 question so we're clear.

6 Q Forget about any attorney. Any
7 attorney, put that out of your mind.

8 Did you have any discussion with
9 any Southern California Edison agent,
10 officer, employee who was not an attorney
11 about what was taking place at the settlement
12 negotiations? Just yes or no?

13 WITNESS LITZINGER: A Yes.

14 Q Okay. At any time in any such of
15 those discussions that you had was there any
16 discussion about the strength of the case
17 that ratepayers have against Southern
18 California Edison that its officials acted
19 unreasonably in connection with the
20 deployment of the steam generators, the
21 replacement steam generators at San Onofre?]

22 MR. WEISSMANN: Your Honor, another
23 objection. The question seems to be
24 asking --

25 MR. AGUIRRE: Excuse me, your Honor.
26 If the objection is ambiguous, compound,
27 general narrative, misquotes, leading,
28 argumentative, assumes, asked and answered.

1 It's not a speaking objection.

2 ALJ DARLING: You are out of order. He
3 has gotten three words out. You will remain
4 quiet while he lodges his objection. And
5 then we will rule on it.

6 Yes, Mr. Weissmann.

7 MR. WEISSMANN: If the question is
8 seeking the witness to divulge what was
9 discussed in the settlement negotiations, I
10 would instruct the witness not to answer as
11 that would violate the Commission's Rule 12.

12 ALJ DARLING: 12.6.

13 MR. AGUIRRE: Are you making the
14 objection for him, your Honor?

15 ALJ DARLING: He made the objection --

16 MR. AGUIRRE: He said Rule 12. You
17 said Rule 12.6.

18 ALJ AGUIRRE: Twelve includes Rule 12
19 and 1, 2, 3, 4, 5, and 6. And 6 is the
20 applicable rule. And so, yes, the objection
21 is sustained.

22 MR. AGUIRRE: It's a yes or no. That's
23 all it asked. It's a yes or no. It didn't
24 ask for the content of the communication.
25 Just said did you have a discussion about the
26 strength of the case that was against
27 Southern Cal Edison that ratepayers have that
28 they acted unreasonably? That's the subject

1 matter. Was that subject matter discussed?

2 ALJ DARLING: You're asking about the
3 substance of settlement negotiations.

4 MR. AGUIRRE: I'm asking about the
5 subject matter, not the substance. There is
6 a distinction.

7 ALJ DARLING: You're asking whether
8 there was a discussion on a particular matter
9 of substance in the settlement agreement.

10 MR. AGUIRRE: So as far as the
11 Commission is concerned, Southern California
12 Edison has offered nothing to the Commission
13 that would allow the Commission to make an
14 intelligent decision about what SCE thinks
15 the strength of the case that it acted
16 unreasonably --

17 ALJ DARLING: The question is -- you
18 don't direct the question to the witness
19 Mr. Litzinger about what the Commission
20 thinks. So you need to reframe your
21 question, Mr. Aguirre.

22 MR. AGUIRRE: Now you're objecting to
23 my question.

24 ALJ DARLING: You don't get to ask
25 Mr. Litzinger what the Commission thinks.

26 MR. AGUIRRE: No. I'm asking
27 Mr. Litzinger about what he thinks about what
28 the Commission thinks.

1 Q Mr. Litzinger, would you agree that
2 you can point to nothing in the record that
3 would allow the Commission to make an
4 intelligent decision about what Southern
5 California Edison thought the strength of the
6 case against it was that it acted
7 unreasonably in the way that it deployed the
8 steam generators at San Onofre? True?

9 ALJ DARLING: Do you understand the
10 question?

11 WITNESS LITZINGER: I don't think I
12 follow that question.

13 MR. AGUIRRE: Q Let me go over it with
14 you slowly. You admit that there's nothing
15 that you can provide the Commission about
16 what Southern California Edison thought the
17 strength of the case against it was.

18 True or not true?

19 WITNESS LITZINGER: A Again, that was
20 in the record.

21 Q It's in the record. There's
22 nothing in the record where Southern
23 California Edison has explained what it
24 thought the strength of the case against it
25 was that led to the settlement, true?

26 A True, not in the record.

27 Q Not in the record, okay. Now,
28 you're familiar with the fact that Southern

1 California Edison objected to any
2 information -- actually, you're familiar with
3 the anti-vibration bar team, correct?

4 A I am.

5 Q Were you a member of that team?

6 A I was not.

7 Q Do you know who was a member of
8 that team?

9 A I don't recall.

10 Q Have you made -- did you know at
11 some point who the members were?

12 A I read the names.

13 Q Where did you read the names?
14 Where did you read the names?

15 A In past documents.

16 Q And were those documents provided
17 to the Commission for an evaluation of the
18 strength of the case that was -- that the
19 ratepayers have against Southern California
20 Edison that they acted unreasonably in
21 connection with the deployment of the steam
22 generators?

23 A Those documents were not provided,
24 to my knowledge.

25 Q Did you sign any declarations that
26 have been provided to the Commission in which
27 Southern California Edison discusses the
28 strength of the case against Southern

1 California Edison that ratepayers have that
2 it acted unreasonably?

3 A I have not signed any declarations.

4 Q Have you provided any time sheets
5 or time records illustrating your attorney's
6 review of that question to the Commission?

7 A I have not.

8 Q Is there anything that you know of
9 that's before the Commission that would
10 establish the sufficiency of the settling
11 parties' investigation into the extent to
12 which SCE was responsible for the RSG design
13 errors?

14 A Would you repeat that question?

15 Q I will. Is there anything before
16 the Commission to establish the sufficiency
17 of the settling parties' investigation into
18 the extent to which Southern Cal Edison was
19 responsible for the RSG design errors?

20 A There is not.

21 Q Okay. Now, did you conduct an
22 investigation that if the Commission were to
23 find that Southern California Edison acted
24 unreasonably, that it would be -- that the
25 potential recovery to ratepayers would not
26 just be the cost of the replacement steam
27 generators, but it would be the full costs of
28 the failure of those generators rendering the

1 plant unable to produce additional power?
2 Did you conduct any investigation along those
3 lines?

4 MR. WEISSMANN: Objection. I direct
5 the witness to exclude from his answer any
6 attorney-client communications.

7 MR. AGUIRRE: I agree.

8 Q Excluding -- I'm talking about
9 where you got your financial people to sit
10 down and look at the question of if our
11 unreasonable behavior of deploying the steam
12 generators after we were informed of design
13 issues and the Commission were to decide that
14 we acted unreasonably because of that, it
15 could affect not only just the recovery of
16 the replacement steam generator costs, but it
17 could affect our ability to recover for the
18 base plant, for example.

19 MR. WEISSMANN: I object --

20 MR. AGUIRRE: Q Any investigation into
21 those issues?

22 MR. WEISSMANN: I object to the form of
23 the question and reiterate my privilege
24 objection.

25 ALJ DARLING: It is compound. Can you
26 break it apart, please?

27 MR. AGUIRRE: I thought you didn't go
28 with technical objections here, your Honor.

1 Compound is a technical objection. It's
2 only -- excuse me. I thought we only went
3 according to the rules with objections that
4 affect the substantial justice of the
5 parties. And now you're interposing a --

6 ALJ DARLING: I don't know what kinds
7 of rules you think you're operating under
8 here, Mr. Aguirre, but we have a set of
9 rules, practice and procedure. We have a
10 customary way of moving along. You've asked
11 a question which is unintelligible due to its
12 complexity. I'm asking you to break it
13 apart.

14 MR. AGUIRRE: Okay. Simple question.
15 Can the court reporter -- Commission reporter
16 please read back my question -- never mind.
17 I'll relieve you of that. That's all right.
18 We'll start again.

19 ALJ DARLING: You have it written down
20 I think in your computer. Why don't you try
21 that again?

22 MR. AGUIRRE: Well, your Honor must be
23 able to look through my computer and be able
24 to tell me that.

25 ALJ DARLING: So why don't you try
26 reframing the question?

27 MR. AGUIRRE: Okay. I'll go with that.
28 Okay.

1 Q Let me shift the topic a little bit
2 here. You understand that when you came
3 forward with this proposed settlement, that
4 the Commission was going to have to decide if
5 it was reasonable in light of the whole
6 record, it was lawful, and that it was in the
7 public interest, correct?

8 WITNESS LITZINGER: A Yes.

9 Q Now, you have heard it argued no
10 doubt by the opponents that what's in the
11 public interest is to get to the bottom of
12 whether or not Southern Cal Edison was or was
13 not unreasonable after it was put on notice
14 of the design flaws in the U-bend region that
15 produced greater steam quality than in past
16 designs.

17 Do you agree with that?

18 MR. WEISSMANN: Does he agree with
19 everything that you just said?

20 MR. AGUIRRE: Yes.

21 Again, your Honor, I'm sorry. What
22 is this? What is this doing right here?
23 What is that? What do we call that?

24 MR. WEISSMANN: It's called an
25 objection on the grounds that your question
26 is extremely confusing and wasn't actually
27 posed as a question.

28 MR. AGUIRRE: Your Honor, you are

1 violating the fundamental principles of due
2 process by letting this attorney act as the
3 judge in the case. That's what you're
4 letting this happen. You can do it if you
5 want to, but that is highly improper for him
6 to do that.

7 ALJ DARLING: You're entitled to your
8 opinion, Mr. Aguirre. You state a question
9 which was not entirely comprehensible. And
10 counsel interjected an objection. This is
11 the ordinary course of litigation.

12 MR. AGUIRRE: Okay. Your Honor,
13 there's lawyers listening to this all over
14 the State of California. And if you want to
15 take the position that what he's doing is
16 proper, that's fine. There's probably judges
17 listening to it as well. That's fine.

18 Let's go back. Mr. Litzinger, let's
19 go back.

20 ALJ DARLING: Mr. Aguirre, let me just
21 make something very clear. You don't get to
22 run this proceeding.

23 MR. AGUIRRE: I'm not. He is.
24 Mr. Weissmann is.

25 ALJ DARLING: No. You are interrupting
26 the judge. You interrupt counsel. You
27 interrupt witnesses. You have been framing
28 unintelligible questions and to which

1 objections are being interposed. You need to
2 pull your questions together and ask clear
3 and concise questions within the scope of
4 this proceeding.

5 Right now have you withdrawn your
6 last question to which there is an
7 outstanding objection?

8 MR. AGUIRRE: Yeah, I'll withdraw it.

9 Q Okay. Let's go back. You are
10 familiar with the fact that the AVB Design
11 Team reported that the proposed design was
12 creating greater steam quality in the U-bend
13 region, true?

14 WITNESS LITZINGER: A There were
15 numerous issues that our design team brought
16 up with Mitsubishi. And Mitsubishi
17 repeatedly provided assurances when we raised
18 those issues.

19 Q Question before you, sir, is are
20 you familiar with the fact that the AVB
21 Design Team reported to Southern California
22 Edison that the design that was underway for
23 the replacement steam generators was creating
24 greater steam quality in the U-bend region of
25 the generators?

26 MR. WEISSMANN: Objection, your Honor.
27 This is beyond the scope of this hearing.

28 ALJ DARLING: Sustained. Move on.

1 MR. AGUIRRE: Excuse me, your Honor.
2 They make specific reference to this issue.
3 In the factual findings, they talk about
4 design errors. This is a design error. All
5 I'm doing is examining him on that.

6 ALJ DARLING: We are looking at
7 material contested issues of fact.

8 MR. AGUIRRE: This is. This is the
9 material contested issue of fact.

10 ALJ DARLING: You're contesting whether
11 there were design errors?

12 MR. AGUIRRE: I'm contesting whether
13 there was an evaluation made of the claim
14 against Southern Cal Edison that the
15 Commission can evaluate one way or the other
16 the strength of that claim in deciding
17 whether this is a fair settlement, which is
18 what their fiduciary obligation requires
19 them.

20 MR. WEISSMANN: Can I be heard, your
21 Honor?

22 ALJ DARLING: Are you finished,
23 Mr. Aguirre?

24 MR. AGUIRRE: Yeah.

25 ALJ DARLING: Sounded like it.

26 Mr. Weissmann.

27 MR. WEISSMANN: It appears to us that
28 counsel is attempting to transform this

1 hearing on the reasonableness of the
2 settlement into Phase 3 and an evaluation of
3 the prudence of Edison's conduct. That's not
4 appropriate.

5 MR. AGUIRRE: Not so. All I'm asking
6 is this: We can't try that issue here. And
7 we're not going to try that issue. But the
8 Commission must have sufficient information
9 in front of it to make an evaluation of
10 whether this was a fair settlement of that
11 claim. That claim is active, the claim that
12 they acted unreasonably after they learned of
13 the AVB design problems from the AVB Design
14 Team, the design problems that created
15 greater negative void or higher steam quality
16 in the U-bend regions. And they proceeded
17 with it anyway. That's a claim.

18 And we're being asked -- the
19 ratepayers are being asked to settle that
20 claim and to compromise that claim. We can't
21 try that claim now, but we can find out if
22 there was an evaluation made of that claim.
23 And the Commission has an obligation to find
24 that out. And so we have to ask him these
25 questions.

26 ALJ DARLING: You've asked him twice,
27 and he's answered twice, as I recall.

28 MR. AGUIRRE: He hasn't answered yet.

1 He didn't give a responsive answer. I asked
2 him the question. The question is -- let me
3 just ask him.

4 Q Sir, after the design -- I'm sorry.
5 You are familiar with the fact that
6 the AVB Design Team reported that there was
7 greater steam quality in the U-bend region
8 for the new designs of the steam generators
9 that were going to be used as replacement
10 generators to San Onofre, true?

11 MR. WEISSMANN: I renew my objection on
12 scope. He's not asking the question --

13 MR. AGUIRRE: Your Honor, it's
14 either -- come on.

15 ALJ DARLING: Mr. Aguirre, come on, to
16 use your phrase. You need to step back and
17 allow other counsel to have their opportunity
18 to respond. Okay. You have an outstanding
19 question. There is an objection that was in
20 the process of being articulated. And once
21 again you've interrupted Mr. Weissmann. He
22 has as much opportunity to get to the
23 microphone as you do.

24 Mr. Weissmann.

25 MR. WEISSMANN: Your Honor, that
26 question that was just posed goes to the
27 scope of Phase 3. It's not within the scope
28 of this hearing today. Question that was

1 posed was what was known by Edison about the
2 response of people at Edison to statements
3 allegedly made by the AVB Design Team.
4 That's a prudence review.

5 MR. AGUIRRE: Not true. I just asked
6 had he heard that? That's all I asked. Had
7 he heard that?

8 ALJ DARLING: There is no evidence in
9 the record regarding the AVB Design Team
10 report, that I recall.

11 If you think that it's there and you
12 want to make an argument about it in your
13 comments that there is an inconsistent
14 position here, you are free to argue that the
15 settlement is not reasonable in light of the
16 whole record.

17 But there is no -- you only have
18 about 20 minutes. Do you really want to
19 spend the rest of your time talking about the
20 AVB Design Team? Or do you want to talk
21 about the settlement and facts -- material
22 facts, not --

23 MR. AGUIRRE: Your Honor, you have to
24 know whether this is a reasonable compromise
25 of that claim. You can't approve the
26 settlement unless you know that the party
27 reached a reasonable compromise. I have to
28 ask as a foundation if that was ever

1 considered. That's all I'm trying to get to.
2 Was that ever considered as part of the
3 settlement? That's what I'm asking. And
4 they're making comments in the recital that
5 they did discover that there was a design
6 flaw.

7 ALJ DARLING: Right. So move on. They
8 have said there is a design flaw. Is that a
9 material issue?

10 MR. AGUIRRE: Yes, because it doesn't
11 say when. It doesn't say what.

12 ALJ DARLING: Mr. Aguirre, the standard
13 for review is reasonable in light of the
14 whole record. That's the whole settlement.

15 MR. AGUIRRE: Your Honor, no. The
16 whole record. It's not the whole settlement.

17 ALJ DARLING: It's also the settlement
18 is taken as a whole.

19 MR. AGUIRRE: No. But the record is
20 taken as a whole. And the question is this:
21 There is a claim against Southern Cal Edison
22 by ratepayers you are unreasonable. You put
23 in defective steam generators. You knew
24 ahead of time that there was information.
25 You did not get a 5059 certification from the
26 federal government. You were acting --

27 ALJ DARLING: That is beyond scope.

28 MR. AGUIRRE: No, your Honor, because

1 that's the claim. We have a right to say
2 what our claim is. There was a statutory
3 violation. Did they discuss that? How can
4 you evaluate that claim unless we get to
5 whether they discussed that issue? That's
6 all I'm trying to do.

7 I'm not trying to try the issue.
8 I'm just asking him did you discuss whether
9 or not Southern California Edison's failure
10 to get a 5059 license amendment was part of
11 the claim that the ratepayers had against
12 Southern Cal Edison?

13 MR. WEISSMANN: Your Honor, objection.
14 Rule 12.6.

15 ALJ DARLING: Outside.

16 MR. AGUIRRE: I appeal to the
17 Commission for you to make inquiry of the
18 Commission right now because -- and to ask
19 the Commission to whether to sustain or not
20 sustain your objection.

21 ALJ DARLING: First of all, I'm
22 sustaining the objection on two grounds:
23 One, it's been asked and answered, I believe.
24 Second of all, it's outside the scope of this
25 proceeding whether there -- what interactions
26 Edison is meeting its obligation with the
27 Nuclear Regulatory Commission.

28 MR. AGUIRRE: No, your Honor. You're

1 missing the point. There is a
2 claim against --

3 ALJ DARLING: I understand your point.

4 MR. AGUIRRE: No, you don't because you
5 just said you don't understand it. What you
6 said was you don't understand it. The claim
7 is the ratepayers have the potential claim to
8 not have to pay for the rate base because of
9 the unreasonableness of deploying defective
10 steam generators. I'm asking the witness was
11 that a consideration in the settlement?

12 MR. WEISSMANN: Objection, your Honor,
13 if he's asking whether that was the subject
14 of the negotiation --

15 MR. AGUIRRE: No. Was that a
16 consideration?

17 MR. WEISSMANN: May I finish my
18 objection?

19 ALJ DARLING: Mr. Aguirre, you need to
20 conduct yourself in a professional manner or
21 we will end your questioning right now, so.

22 MR. AGUIRRE: Your Honor, don't
23 threaten me. Don't threaten me.

24 ALJ DARLING: I'm not threatening you.
25 I'm pointing out that --

26 MR. AGUIRRE: No. The professionalism
27 here -- let me say whether non-
28 professionalism --

1 ALJ DARLING: No. You need to stop
2 talking, Mr. Aguirre.

3 Mr. Weissmann, would you like to
4 complete your sentence?

5 MR. WEISSMANN: Thank you, your Honor.

6 The question is asking whether that
7 subject to which he alluded was the subject
8 of discussions in the settlement negotiation
9 we object under Rule 12.6.

10 MR. AGUIRRE: No. I'm not asking that
11 question.

12 MR. WEISSMANN: The question is asking
13 whether that was the subject that was
14 discussed with counsel. I object on the
15 grounds of the attorney-client privilege.

16 MR. AGUIRRE: That's not the question.
17 Let's move on. I will move on and just ask
18 it this way.

19 Q Did you understand that the
20 ratepayers were making a claim that Southern
21 Cal Edison acted unreasonably in deploying
22 the steam generators?

23 WITNESS LITZINGER: A I reviewed the
24 positions of all the parties. I don't know
25 that the ratepayers themselves made an actual
26 claim, so I'm not really following your
27 question.

28 Q You didn't read the protests

1 that --

2 ALJ DARLING: Mr. Aguirre, your
3 question was unclear. When you say
4 "ratepayers," are you talking about ratepayer
5 organizations and, if so, which one?

6 MR. AGUIRRE: Q You didn't read the
7 ratepayer protests in this case that
8 asserted -- for example, like Ms. Henricks --
9 that asserted that Southern Cal Edison acted
10 unreasonably in deploying the steam
11 generators?

12 WITNESS LITZINGER: A I realized that
13 a lot of people have called into question our
14 prudence. We believe that we acted prudently
15 based on our review. And were prepared to
16 litigate that. We settled the case. And we
17 believe that disallowing the steam generators
18 and the costs associated with pursuing
19 restart, the hundred million in O&M of the
20 incremental inspection and repair costs, is a
21 reasonable outcome that falls within the
22 range of possibilities, had we been found
23 imprudent. We believe that we were prudent
24 in our actions.

25 Q All right. Then we agree. Where
26 is that in the record? Where is what you
27 just said that verifies that you actually
28 went through that process? Where is that in

1 the record before the Commission so they can
2 evaluate whether in fact you did that?

3 A It is not in the record.

4 Q Okay. Now, let me ask you this:
5 When was the -- what conference did you
6 attend after the -- after you all reached the
7 settlement? And what conference did you
8 attend with the parties that had not been
9 invited to the settlement?

10 MR. WEISSMANN: Object to the form of
11 the question. Would you like me to
12 elaborate?

13 ALJ DARLING: Yes, sir.

14 MR. WEISSMANN: It's an extremely
15 confusing question. First of all, no
16 settlement was reached and no settlement was
17 signed prior to the convening of the
18 settlement conference.

19 MR. AGUIRRE: Your Honor, this is
20 argument. You can't allow this. He's
21 supposed to object. This is my cross-
22 examination.

23 MR. WEISSMANN: I did object. And I
24 request that the opportunity to articulate --

25 MR. AGUIRRE: It's a speaking
26 objection.

27 ALJ DARLING: Yes, Mr. Weissmann. Your
28 objection is that the question is

1 unintelligible?

2 MR. WEISSMANN: Yes.

3 MR. AGUIRRE: Your Honor, you offered
4 that to him. That wasn't his objection. But
5 that's okay.

6 ALJ DARLING: It was his objection. He
7 said the question was confusing.

8 MR. AGUIRRE: No. Okay. Let me go
9 back.

10 ALJ DARLING: You need to reframe your
11 question.

12 MR. AGUIRRE: Q You heard her Honor
13 say this afternoon that there was a
14 conference held. Do you remember her Honor
15 said there was a conference held?

16 ALJ DARLING: I said there was a notice
17 of a settlement conference.

18 MR. AGUIRRE: No. You said there was a
19 conference held. That's what you said.

20 ALJ DARLING: Don't misstate my --

21 MR. AGUIRRE: I'm not misstating it.

22 ALJ DARLING: You are. Mr. Aguirre, if
23 you're going use my words, you're going to
24 use them accurately or not at all.

25 MR. AGUIRRE: The record will reflect
26 what you said twice.

27 ALJ DARLING: Yes, it will.

28 MR. AGUIRRE: Q Okay. Was there a

1 conference? Did you attend a conference
2 after the March 20 letter was sent -- the
3 ex parte communication was sent to Judge
4 Darling?

5 WITNESS LITZINGER: A I did not
6 personally attend the settlement conference.

7 Q Okay. Let me ask you the question
8 again: Did you attend any conference with
9 any of the non-settling parties after
10 March 20th?

11 A No.

12 Q Okay. And do you know if any such
13 conference was held?

14 A The only conference I'm aware of is
15 the settlement conference that was noticed.

16 Q Let me ask you this: I asked you
17 first though how do you know that there was a
18 settlement conference held if you weren't in
19 attendance besides the notice? How do you
20 know it was actually held?

21 ALJ DARLING: Mr. Aguirre, you need to
22 ask one question, not three.

23 MR. AGUIRRE: Q How do you know that
24 there was a conference held if you didn't
25 attend it?

26 WITNESS LITZINGER: A The conference
27 was noticed. It was reported back to me.

28 Q Who reported it back to you?

1 A I don't recall precisely who. But
2 I got several reports that the conference was
3 conducted.

4 Q At that conference that you
5 understood was conducted, were the terms of
6 the proposed settlement opened to
7 modification?

8 MR. WEISSMANN: Objection, your Honor.
9 Rule 12.6.

10 ALJ DARLING: Sustained.

11 MR. AGUIRRE: No. I'm saying at the
12 conference. Was there anything said at the
13 conference to the people there that the --

14 ALJ DARLING: All right. Let's have an
15 offer of proof. Where do you think you're
16 going with this line of questioning,
17 Mr. Aguirre? What material issue of fact are
18 you attempting to --

19 MR. AGUIRRE: Noncompliance with
20 Rule 12.

21 ALJ DARLING: No. I want -- I'm asking
22 what material -- that's a conclusion of law.

23 MR. AGUIRRE: No. That's a question of
24 whether --

25 ALJ DARLING: Did they meet the
26 standards? My question is where are you
27 going in terms of a material contested issue
28 of fact?

1 MR. AGUIRRE: That is a material
2 contested issue of fact. Whether there was a
3 conference is a fact. And it's material
4 because if it wasn't -- because you can't
5 approve it unless there was such a
6 conference. That's a material issue, and
7 it's a factual issue. And I'm asking about
8 it.

9 MR. WEISSMANN: May I be heard, your
10 Honor?

11 ALJ DARLING: Mr. Weissmann.

12 MR. WEISSMANN: Under the Commission's
13 rules, what is discussed at the settlement
14 conference is a confidential settlement
15 communication under Rule 12.6.

16 MR. AGUIRRE: I'm not asking about what
17 was discussed at the settlement conference.
18 I'm asking what was discussed at the meeting
19 that they called in which they announced that
20 there was a settlement and the terms of the
21 settlement couldn't be changed.

22 ALJ DARLING: And I'm asking you,
23 Mr. Aguirre, to give me an offer of proof
24 that there is relevance to a material issue
25 of fact.

26 MR. AGUIRRE: Because it says. Rule 12
27 says --

28 ALJ DARLING: In the settlement

1 agreement.

2 MR. AGUIRRE: It says -- it says prior
3 to signing any settlement, the settling
4 parties shall convene at least one conference
5 with notice and opportunity to participate
6 provided to all parties for the purpose of
7 discussing settlements in the proceeding.
8 And the question was was that complied with?
9 That's a contested issue in the case. And
10 underlying that is contested issues of
11 fact --

12 ALJ DARLING: You've asked him whether
13 he was there. And he said no. You need to
14 move on, Mr. Aguirre. If you want to make an
15 argument --

16 MR. AGUIRRE: Oh, my word.

17 ALJ DARLING: -- in your comments that
18 there was -- that the notice which is in
19 docket was a false representation, then you
20 may make that representation and make that
21 argument.

22 But it is not relevant to the
23 purpose of this hearing which is to determine
24 the underlying statements of fact in this
25 settlement agreement. What is the effect of
26 the agreement? What are the provisions of
27 the agreement?

28 MR. AGUIRRE: I'm sorry, your Honor. I

1 don't -- I've never heard of such a thing. I
2 have to say that is the most unintelligible
3 analysis that I've ever heard ever about the
4 process for approving settlement, having been
5 a lawyer for 40 years and been class counsel
6 for numerous very large class settlements
7 going back and looking at the supreme court
8 decisions on their -- on precedent --

9 ALJ DARLING: Mr. Aguirre, you are
10 entitled --

11 MR. AGUIRRE: I was in the middle of
12 saying something. I'm sorry.

13 ALJ DARLING: No. I'm tired because
14 this is not a fruitful line of inquiry.
15 Let's go on to a question which will deal
16 with a contested issue of fact.

17 MR. AGUIRRE: Q Okay. Do you agree
18 that there was some opposing parties who were
19 not invited to the settlement conference?

20 WITNESS LITZINGER: A I believe all
21 parties were invited to the settlement
22 conference.

23 Q And when did the settlement
24 conference begin?

25 MR. WEISSMANN: Objection. The
26 question is ambiguous when he refers to the
27 term "settlement conference." Are you
28 referring to the March 27th meeting?

1 MR. AGUIRRE: Excuse me, your Honor.
2 That's proper?

3 ALJ DARLING: He's asking for
4 clarification of the question.

5 MR. AGUIRRE: That's proper?

6 ALJ DARLING: He's asking for a
7 clarification of the question.

8 MR. AGUIRRE: Q Okay. I said when did
9 the settlement conferences begin?

10 WITNESS LITZINGER: A They were held
11 on March 27th. I did not recall the precise
12 time.

13 Q I mean, when did the settlement
14 conferences begin between Southern California
15 Edison, Office of Ratepayer Advocacy, and
16 TURN? When did that begin?

17 ALJ DARLING: Define "conference,"
18 Mr. Aguirre.

19 MR. AGUIRRE: Q When did the
20 conferences begin -- the settlement
21 conferences?

22 ALJ DARLING: Define "conference." Do
23 you mean one that's required by our rules?
24 Or do you mean informal negotiations and
25 discussions between parties?

26 MR. AGUIRRE: Q I mean -- I mean when
27 did you start talking with the Office of
28 Ratepayer Advocate and the other settling

1 parties -- I'm sorry.

2 When did you start talking with TURN
3 and the Office Ratepayer Advocate about
4 settling the case?

5 WITNESS LITZINGER: A We had reached
6 out to TURN. It was late in May of 2013.
7 And I believe the initial discussions were
8 held mid to late June of 2013.

9 Q So for this -- we're in May of
10 2014. So a year ago, you reached out. Who
11 did you reach out to?

12 A I believe Mr. Weissmann reached out
13 to TURN's counsel Mr. Freedman.

14 Q Okay. And then the parties started
15 meeting in July, correct, of 2013?

16 A In June.

17 Q In June of 2013. And they started
18 exchanging settlement agreements, drafts
19 starting in July of 2013, correct?

20 A I don't know when drafts were
21 exchanged.

22 Q Okay. If I told you that you
23 responded to a data request and said that the
24 drafts began to be distributed in July, would
25 that refresh -- of 2013, would that refresh
26 your recollection?

27 A I don't recall that data request
28 coming to me.

1 Q Now, while you were having those
2 secret negotiations that some of the settling
3 parties were not invited -- some of the
4 opponents were not invited to participate,
5 you also were having ex parte meetings with
6 members of the Commission, true?

7 MR. WEISSMANN: I object to the form of
8 the question.

9 ALJ DARLING: Why don't you just ask
10 the last part, if that's what you want?

11 MR. AGUIRRE: Q Okay. Go ahead.
12 Answer the last part of that what your Honor
13 said.

14 WITNESS LITZINGER: A Whether I had
15 ex parte meetings with the commissioners?

16 Q Was Southern California Edison
17 having ex parte meetings with the
18 commissioners while the secret negotiations
19 were taking place?

20 A The only ex parte communications I
21 had with commissioners was following the
22 Phase 1 proposed decision. And it was
23 noticed.

24 Q Were other Southern California
25 Edison agents, officers, employees having
26 ex parte communications with the
27 commissioners during the time of the secret
28 negotiations?

1 MR. WEISSMANN: Object to the form of
2 the question.

3 ALJ DARLING: It is argumentative. But
4 I'm going to let that part go. But after
5 this next question, Mr. Aguirre, you're going
6 to have to give me an offer of proof of how
7 this is going to lead to relevant evidence
8 related to material contested issues of fact.

9 MR. AGUIRRE: Q Okay. Go ahead. Were
10 you -- were they?

11 WITNESS LITZINGER: A Southern
12 California Edison has ex parte communications
13 with commissioners on multiple matters all
14 the time.

15 Q How many times have you spoken to
16 Mr. Peevey since November of 2012?

17 MR. WEISSMANN: Objection, your Honor.
18 Relevance.

19 ALJ DARLING: Sustained.

20 MR. AGUIRRE: Let me give you my offer
21 of proof. It's our contention that the
22 representation by the Commission that there
23 was going to be an investigation into the
24 reasonableness of Southern California
25 Edison's deployment of the defective steam
26 generators was a promise of an investigation
27 with the intent not to perform it.

28 It is our contention that you,

1 Ms. Darling, Judge Darling, entered a ruling
2 that put the investigation off into the
3 remote future in order to avoid any such
4 investigation.]

5 It's our position that Mr. Peevey
6 helped to orchestrate this settlement through
7 Mr. Freedman and others, and it wasn't
8 a settlement negotiation. It was a meeting
9 to figure out how not to have
10 the reasonableness investigation.

11 The rulings that you made
12 prohibiting any kind of discovery into the
13 relevant issues, when the dis- -- when
14 the settlement was announced, the coordinated
15 press releases that falsely stated, from
16 Mr. Florio and Mr. Peevey, that the parties
17 had settled which was picked up as part of
18 the blitzkrieg in which the ratepayers were
19 misinformed that they were going to get
20 a \$1.4 billion refund was a collusive, not
21 bona fide basis for this settlement. And we
22 have a right to try to develop that record,
23 which you are not permitting us to do.

24 And let me just ask this.

25 ALJ DARLING: All right.

26 MR. AGUIRRE: Let me just ask
27 Mr. Peevey a question.

28 ALJ DARLING: No. You don't have --

1 MR. AGUIRRE: Mr. Peevey --

2 ALJ DARLING: -- any questions.

3 MR. AGUIRRE -- did you have any
4 discussions with any parties?

5 ALJ DARLING: No.

6 MR. AGUIRRE: -- about the settlement
7 process while it was taking place, sir?

8 Will you put that on the record?

9 And same with Mr. Florio. Will you
10 put that on the record?

11 ALJ DARLING: Mr. Aguirre, you are in
12 the middle of an offer of proof. You segued
13 into trying to interrogate people who are not
14 under oath or on as witnesses in this
15 proceeding. So let me just stop you here.

16 MR. AGUIRRE: They have an obligation
17 to put that on the record --

18 ALJ DARLING: First of all, if your
19 offer of proof is that you think by exploring
20 that line of questioning that you may develop
21 some evidence of collusion, that is not
22 a material contested issue of fact --

23 MR. AGUIRRE: It is.

24 ALJ DARLING: -- as it relates to the
25 settlement.

26 If you want to make some kind of
27 allegation of bias, this is not the
28 proceeding to do that.

1 MR. AGUIRRE: It is the course --

2 ALJ DARLING: No.

3 MR. AGUIRRE: -- to develop it.

4 The evidentiary --

5 ALJ DARLING: No. Not under that
6 parameters of this hearing. Under our rules,
7 you have other procedural remedies available,
8 and this isn't it.

9 MR. AGUIRRE: Your Honor.

10 ALJ DARLING: So you may move on, Mr.
11 Aguirre.

12 MR. AGUIRRE: Your Honor, you wanted
13 the basis for you not to find the settlement
14 to be fair, legal and reasonable is if there
15 was collusion. You are now interfering.

16 ALJ DARLING: No.

17 MR. AGUIRRE: There is an obligation.

18 ALJ DARLING: No.

19 MR. AGUIRRE: You are fiduciaries.

20 Mr. Peevey, you are a fiduciary.

21 Mr. Florio, you are a fiduciary.

22 You have an obligation to put on
23 the record if you had any knowledge of
24 the settlement negotiations or in any way
25 participated in them while they were
26 underway.

27 Did you -- or I'm asking either one
28 of you and both of you. Did or did you not

1 have such information and such participation?

2 ALJ DARLING: Your questions are out of
3 order, Mr. Aguirre. They're out of the scope
4 of this proceeding.

5 MR. AGUIRRE: What's out of order is
6 this proceeding.

7 ALJ DARLING: No.

8 MR. AGUIRRE: Yes. That's what's out
9 of order.

10 ALJ DARLING: The purpose of this
11 proceeding is to get to explore contented
12 material issues of fact in the settlement
13 agreement as to its terms, provisions, and
14 implementations.

15 You have other mechanisms. And if
16 you're -- as a lawyer, I'm sure you are
17 available -- able to make use of them, but
18 this is not it.

19 MR. AGUIRRE: Okay.

20 ALJ DARLING: So you may move on within
21 the scope because you've got about three
22 minutes.

23 MR. AGUIRRE: Q Okay. Did you,
24 Mr. Litzinger, you are -- you are not just
25 a president of the company but you are also
26 a shareholder, are you not?

27 WITNESS LITZINGER: A I am.

28 Q Do you live in the southern -- in

1 SCE's territory?

2 A I do.

3 Q Okay. Now, when you announced this
4 settlement, your -- the value of your stock
5 shot up about \$160,000; true?

6 MR. WEISSMANN: Objection. Relevance.

7 MR. AGUIRRE: It's relevant --

8 ALJ DARLING: Sustained.

9 MR. AGUIRRE: It's relevant to his
10 testimony. He's under oath. His credibility
11 is at issue. Whether he's making money off
12 of this settlement is an issue that you have
13 to take into consideration.

14 The step -- the moment he put his
15 hand up and swore, his credibility was
16 at issue.

17 This is a proper financial
18 motivation cross-examination question that
19 any court would allow.

20 ALJ DARLING: Well, it's amazing how
21 you're able to jump to the conclusion of what
22 any and every court will do. Unfortunately,
23 that isn't the rules that are operated in
24 this commission. You have a narrow scope
25 here and you have exceeded and you may move
26 on.

27 MR. AGUIRRE: So you're not going to
28 make him answer the question of whether his

1 stock value shot up \$160,000 the day --
2 the few days after this announcement was
3 made?

4 ALJ DARLING: You offer me some proof
5 as to how that leads to a relevant evidence
6 as to a contested issue of fact.

7 MR. AGUIRRE: Because it goes to the
8 fact that he wants that approved not because
9 it's far to the ratepayers, but because he's
10 going to make money off it as the others are.
11 That's why.

12 I stand with the Commissioners that
13 they don't realize that this is about people
14 making money and the ratepayers having to pay
15 for it. And if that comes as a shock to the
16 commissioners, I'm really sorry that this
17 is -- the people are that naive, seriously.

18 ALJ DARLING: You're free to make your
19 argument in briefs, Mr. Aguirre.

20 MR. AGUIRRE: Okay. Last question.

21 Q Southern California Edison has
22 reported that after it took San Onofre out of
23 commission, that its earnings went up as
24 a result; is that true?

25 ALJ DARLING: Reported where,
26 Mr. Aguirre?

27 MR. AGUIRRE: Q Reported in a analyst
28 meeting that Mr. Litzinger participated in in

1 November of 2013.

2 Is that true, sir, that Southern
3 California Edison, through you, reported to
4 the financial analyst community that
5 San Onofre -- or that Southern California
6 Edison earnings went up as a result of taking
7 San Onofre out of commission? Did you do
8 that?

9 WITNESS LITZINGER: A Our previous
10 guidance to investor analysts were based on
11 no return on investment at San Onofre. Given
12 this settlement, included a debt level return
13 on the debt portion of our financial
14 structure for the base plant and half of
15 a preferred return on the preferred portion
16 of the financial structure. We provided our
17 analysts with a small estimate of earnings
18 increase if the settlement were to be
19 approved.

20 Q And so the answer to my question is
21 yes?

22 A Yes.

23 MR. AGUIRRE: Thank you.

24 ALJ DARLING: Does that conclude your
25 questions, Mr. Aguirre?

26 MR. AGUIRRE: Well, I have many more
27 questions but I know that I'm being
28 restricted.

1 We're spending three hours on
2 a \$3 billion settlement.

3 ALJ DARLING: All right. So the answer
4 is no, Mr. Aguirre?

5 MR. AGUIRRE: Excuse me. I'm making --

6 ALJ DARLING: The answer is no --

7 MR. AGUIRRE: I'm making my record.

8 ALJ DARLING: No. You are not making
9 a record.

10 MR. AGUIRRE: A billion dollars an
11 hour.

12 ALJ DARLING: No.

13 MR. AGUIRRE: You spend five days --
14 seven days --

15 ALJ DARLING: Mr. Aguirre.

16 MR. AGUIRRE: -- on the entire process.

17 And I renew my objection. This inadequate
18 time, an inadequate review, inadequate
19 record, and I renew my objection to the
20 shortness of the hearing. It is not a bona
21 fide evidentiary hearing. And I again
22 request that you allow for a proper review
23 with proper findings, proper basis for those
24 findings as I have already indicated in our
25 prior objections to these proceedings.

26 ALJ DARLING: Duly noted.

27 All right, Mr. Weissmann.

28 MR. WEISSMANN: Yes, your Honor.

1 ALJ DARLING: Any further recross --
2 redirect?

3 MR. WEISSMANN: No, your Honor.

4 ALJ DARLING: All right. Commissioner
5 Florio, President Peevey, any comments?

6 COMMISSIONER PEEVEY: The only comment
7 I would make is that I came here today hoping
8 to be educated. I walk out of here without
9 that happening. I am very disappointed by
10 the whole back and forth here. It has not
11 illuminated the settlement one iota.

12 As far as TURN goes, I think it's
13 general knowledge my relationship with TURN
14 is, to be fair, chilly. And I have never
15 talked to Mr. Freedman on this topic during
16 that whole time at all. Period.
17 Mr. Freedman. That's it. Sorry.

18 MR. AGUIRRE: What about Southern Cal
19 Edison?

20 COMMISSIONER PEEVEY: Sorry.

21 Edison?

22 MR. AGUIRRE: Yeah.

23 COMMISSIONER PEEVEY: I'm not here to
24 answer your questions.

25 ALJ DARLING: Mr. Aguirre.

26 COMMISSIONER PEEVEY: I'm not here to
27 answer your goddamn question. Now shut up.
28 Shut up.

1 MR. AGUIRRE: Really. That's how you
2 perform yourself?

3 COMMISSIONER PEEVEY: No. That's how
4 the way you perform yourself for hours.

5 MR. AGUIRRE: No. Answer the
6 question --

7 COMMISSIONER PEEVEY: -- that's how you
8 performed yourself.

9 ALJ DARLING: Mr. Aguirre.

10 COMMISSIONER PEEVEY: I don't have to
11 answer anything.

12 You asked me one specific
13 question --

14 MR. AGUIRRE: No. I asked you --

15 COMMISSIONER PEEVEY: -- did I talk to
16 Freedman, and I said no.

17 ALJ DARLING: Mr. Aguirre, if you do
18 not stop talking right now, I'm asking to
19 cite you for Rule 1, do you hear me?

20 Do you understand?

21 Mr. Aguirre, do you understand?

22 MR. AGUIRRE: I hear you.

23 ALJ DARLING: Thank you.

24 COMMISSIONER PEEVEY: You come here and
25 berate this place. That's unfair and
26 unreasonable on your part, and you know it.

27 MR. AGUIRRE: No. You are the one that
28 should be ashamed for what you've done in

1 failing to sustain the public interest, sir,
2 and for protecting the ratepayers, which is
3 your sworn fiduciary duty. The travesty.

4 COMMISSIONER PEEVEY: We're not -- it's
5 a political circus for you, but the rest of
6 us take our job seriously.

7 MR. AGUIRRE: It's not political
8 circus. This is a kangaroo court. That's
9 not a political circus.

10 ALJ DARLING: Commissioner Florio?

11 COMMISSIONER FLORIO: I would simply
12 add that at numerous points on the record of
13 this proceeding, I urged the parties to
14 pursue settlement and I was pleased when one
15 was achieved.

16 I had no part in formulating
17 the settlement and was not aware of it until
18 it was published online in the 8-K.

19 MR. AGUIRRE: Thank you.

20 ALJ DARLING: All right. Judge Dudney,
21 are there any exhibits -- they're all marked
22 and admitted; right?

23 We're not admitting Henricks-1.

24 ALJ DUDNEY: All the exhibits have been
25 marked and admitted.

26 ALJ DARLING: All right. Thank you.
27 This hearing is adjourned.

28 (Whereupon, at the hour of
4:05 p.m., this matter having been

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concluded, the Commission then
adjourned.)

* * * * *

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
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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 May 14, 2014.

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

EXECUTED this 14th day of May, 2014.

Alejandrina E. Shori
CSR No. 8856

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

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Order Instituting Investigation on)	
the Commission's Own Motion into the)	
Rates, Operations, Practices,)	Investigation
Services and Facilities of Southern)	12-10-013
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)	Application
)	13-01-016
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CERTIFICATION OF TRANSCRIPT OF PROCEEDING

I, Thomas C. Brenneman, Certified Shorthand Reporter No. 9554, 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 May 14, 2014.

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

EXECUTED this 14th day of May, 2014.

Thomas C. Brenneman
CSR No. 9554

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

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Order Instituting Investigation on)	
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Rates, Operations, Practices,)	Investigation
Services and Facilities of Southern)	12-10-013
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And Related Matters.)	Application
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)	Application
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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 May 14, 2014.

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

EXECUTED this 14th day of May, 2014.

Michael J. Shintaku
CSR No. 8251