PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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Ratesetting

TO PARTIES OF RECORD IN INVESTIGATION 12-10-013 ET AL.:

This is the proposed decision of Administrative Law Judges Melanie M. Darling and Kevin Dudney. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's November 20, 2014 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).

/s/ TIMOTHY J. SULLIVAN
Timothy J. Sullivan
Chief Administrative Law Judge (Acting)

TJS:sbf

Attachment

Decision **PROPOSED DECISION OF ALJS' DARLING & DUDNEY**
(Mailed 10/9/14)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.	Investigation 12-10-013 (Filed October 25, 2012)
And Related Matters.	Application 13-01-016 Application 13-03-005 Application 13-03-013 Application 13-03-014

PROPOSED DECISION APPROVING SETTLEMENT AGREEMENT AS AMENDED AND RESTATED BY SETTLING PARTIES

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PROPOSED DECISION APPROVING SETTLEMENT AGREEMENT AS AMENDED AND RESTATED BY SETTLING PARTIES

Summary

This decision approves a settlement agreement between Southern California Edison Company (SCE)and San Diego Gas & Electric Company (SDG&E) (collectively, the Utilities) and four other settling parties which provides resolution of rate recovery issues related to the premature shut down of San Onofre Nuclear Generating Station (SONGS), following a steam generator tube leak on January 31, 2012. The original settlement agreement was amended and restated (Amended Agreement), *inter alia*, to provide that SCE and SDG&E shall each equally share net litigation proceeds from Mitsubishi Heavy Industries between their respective ratepayers and shareholders, and to improve Commission oversight of utility implementation of the settlement, particularly as to development of the revised rates.

The primary result of the settlement is ratepayer refunds and credits of approximately $1.3 billion. The Utilities must also stop further collection of the Steam Generator Replacement Project (SGRP) costs in rates, return all SGRP costs collected after January 31, 2012 to ratepayers, and accept a substantially lower return on other prematurely retired SONGS assets.

Ratepayers will still pay approximately $3.3 billion in costs over ten years (2012-2022), including costs of power the Utilities purchased for its customers after the outage, and recovery of the undepreciated net investment in SONGS assets (*e.g.*, Base Plant), excluding the failed SGRP.

However, instead of the usual authorized rate of return, the settlement reduces shareholders return on SONGS investments to less than three percent.

The effect is ratepayers save approximately $420 million over the ten-year depreciation period.

After a leak was detected in a new Unit 3 replacement steam generator (RSG) on January 31, 2012, neither SONGS reactor unit (Units 2 and 3) generated electricity for ratepayers.[1] In June 2013, SCE decided to permanently shut down both units. The Utilities initially asked to keep several different categories of expenses, both unusual and routine, collected from ratepayers in 2012 and thereafter.

SCE and SDG&E both have an ownership interest in SONGS.[2] The Commission filed this Order Instituting Investigation (OII) on October 25, 2012, commencing an investigation into the SONGS shut down. The OII was consolidated with our deferred general rate reviews of 2012 SONGS-related expenses for each utility[3] and the reasonableness review of each utility's recorded costs for replacing four steam generators at SONGS.[4] The Utilities and other parties provided substantial testimony, evidence, and argument during the proceedings to date, including claims by some that SCE bore fault in the design of the RSGs.

Although hearings were held for early phases of the OII, no final decisions have been adopted by the Commission in the consolidated proceedings.

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[1] Unit 2 was non-operational in January 2012 due to a scheduled refueling outage.

[2] Edison is the majority owner and the operator of the SONGS facility; The City of Riverside also holds a fractional ownership share.

[3] (Application (A.) 13-01-016 (Edison);

[4] A. 13-04-013; The replacement of the four steam generators was approved by the Commission in D.05-12-040 which ordered a reasonableness review of the Utilities' expenses related to the replacement project after completion.

Furthermore, hearings have not been held on issues related to review of expenses for the Commission-approved SGRP.[5] As part of that cost review in Phase 3, we would have looked at whether SCE acted reasonably as a plant operator, and how the SGRP expenses should be divided between utility customers and utility shareholders.

On April 2, 2014, six parties: SCE, SDG&E, Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), Friends of the Earth (FOE), and Coalition of California Utility Employees (CCUE) (collectively, Settling Parties) served a Joint Motion for Adoption of Settlement Agreement to resolve all issues in the consolidated proceedings. The Settling Parties fairly reflect a diverse array of affected interests in this proceeding.

Alliance for Nuclear Responsibility, Women's Energy Matters, Coalition to Decommission San Onofre, and Ruth Henricks (collectively, Opposing Parties) filed comments challenging various elements of the proposed settlement. Opposing Parties primarily reject the settlement because the Commission has not completed its investigation into whether SCE shares culpability with Mitsubishi Heavy Industries (Mitsubishi), the designer and manufacturer, for "design errors" in the RSGs. Opposing Parties are optimistic the evidence will show SCE has whole or partial fault related to the defective RSG design, shifting liability for some costs.

On September 5, 2014, the Assigned Commissioner and Administrative Law Judges issued a ruling requesting the Settling Parties make certain modifications to the proposed settlement agreement in support of the public

[5] Decision (D.) 05-12-040 (A.04-02-026)

interest. The ruling identified our public interest concerns with some provisions, including a failure to address "external" consequences of the shutdown, *i. e.*, increases to greenhouse gases due to power purchases from non-nuclear sources. The Settling Parties accepted the changes and submitted the Amended Agreement.[6]

Based on the entirety of the record established to date, and after thorough consideration of the Settling Parties' arguments, the opposition by Opposing Parties, and other parties' comments, we determine that the modified settlement, is a reasonable, efficient and timely resolution of this investigation. Although more parties have since voiced support, it is not an all-party settlement.

The settlement establishes ratemaking treatment for the different expense categories, primarily by establishing February 1, 2012 as the key date for reducing ratepayer costs and calculation of refunds.

Significant features of the settlement include the following:

- As of February 1, 2012: (1) ratepayers stop paying for SCE's investment in the shutdown RSGs; (2) SGRP capital-related revenue collected thereafter is refunded to ratepayers; and (3) depreciation of approximately $100 million previously collected, when the RSGs produced electricity, is retained by the utilities;
- As of February 1, 2012, approximately $1 billion of non-SGRP investment in the SONGS plant (Base Plant) is removed from rate base and recovered at a reduced rate of return (less than 3% through 2014) and over an extended (10-year) amortization period; the net difference is estimated to be a reduction to the Utilities of approximately $419 million;

[6] Joint Submission of Amended Settlement Agreement September 24, 2014.

- For 2012, SCE will keep $389 million for Operations and Maintenance (O&M) expenses and refund approximately $99 million spent in excess of the amount provisionally authorized in its 2012 General Rate Case (GRC). SDG&E will refund $5.1 million;
- The Utilities recover all costs for power purchased from January 1, 2012 until after the settlement is adopted.
- A sharing formula allocates between ratepayers and shareholders any recovery from insurance[7] or claims against Mitsubishi. Excluding litigation costs, as modified, the ratepayers and shareholders will share 50%/50% in all recovery from the pending multi-billion arbitration claim by the Utilities against Mitsubishi.
- Refunds due to ratepayers will be credited to each utility's under-collected Energy Resource Recovery Account balance upon adoption of the settlement by the Commission to reduce otherwise approved rate increases.
- Directs the Utilities to develop a multi-year project associated with the University of California (UC) or UC-affiliated entities, funded by shareholder dollars, to spur immediate, practical, technical development of devices, methodologies, and processes to reduce emissions at existing and future California power plants tasked to replace the lost SONGS generation.

In this decision we address, and are unpersuaded by the arguments by Opposing Parties urging the Commission not to adopt the settlement. Several other parties, namely California Large Energy Consumers Association, Alliance for Retail Markets/Direct Access Coalition, Joint Minority Parties, and World Business Academy have subsequently voiced general or conditional support (*e.g.*, with implementation advice) for the proposal.

[7] Nuclear Energy Insurance Limited.

In sum, the Commission is satisfied that the amended and restated settlement will result in just and reasonable rates, is consistent with the law, reasonable in light of the whole record, and in the public interest.

1. Background

In Decision (D.) 05-12-040, the Commission authorized replacement of the four steam generators at the San Onofre Nuclear Generating Station (SONGS) Units 2 (U2) and 3 (U3), to be followed by a reasonableness review of the project costs after completion. The Commission provided a conditional presumption of reasonableness for the Steam Generator Replacement Project (SGRP) expenses, if actual total costs did not exceed the adopted estimate of $689 million (in $2004). However, the Commission reserved the option to undertake a reasonableness review of costs, even if within the accepted cost cap.[8] To what extent ratepayers are responsible for the costs of the SGRP is at issue in this proceeding.

Southern California Edison Company (SCE) contracted with Mitsubishi Heavy Industries (Mitsubishi) for the design and manufacture of the Replacement Steam Generators (RSG). U2 went online in January 2010 with its new RSGs, and U3 followed in January 2011. On January 10, 2012, U2 was taken out of service for a scheduled Refueling Outage (RFO) and expected to return to service on March 5, 2012. U3 was taken offline on January 31, 2012, after station operators detected a radiation leak in a steam generator tube. Evidence of similar types of excess vibration wear were found in the tubes of both the U2 and U3 RSGs, although less advanced in U2. The Utilities began recovering associated SGRP costs in rates after each unit went online.

[8] D.05-12-040 at Ordering Paragraph (OP) 11, as modified by D.11-05-035.

In February 2012, the United States Nuclear Regulatory Commission (NRC)[9] sent an inspection team to examine the RSG tube damage and SCE's response, but did not permit SCE to restart the RSGs.[10] The team found SCE's plant operators responded to the January 31 tube leak "in accordance with procedures and in a manner that protected public health and safety. Plant safety systems also worked as expected during the event."[11] Nonetheless, SCE was faced with a set of decisions including how much time and money to spend figuring out what went wrong, whether it was feasible to fix the RSGs to NRC specifications, and how to manage reliability of electrical service during the extended outages.

During and after 2012, SCE recorded expenses for various SONGS-related actions including inspection, analysis, and repair activities related to the RSGs, as well as for continuing operations and some previously planned capital projects. In June 2012, SCE began preliminary work to put U3 into Preservation Mode.[12] SDG&E, as a minority owner, was billed by SCE for its share of SONGS-related expenses. SCE and San Diego Gas & Electric (SDG&E) (collectively Utilities) have also had to purchase power to replace power lost due to the SONGS

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[9] *Arizona v. United States*, 132 S. Ct. 2492, 2501 (Radiological safety represents an arena of preemption that "Congress, acting within its proper authority, has determined must be regulated by its exclusive governance…."

[10] NRC Confirmatory Action Letter (March 27, 2012); OII Attachment A.

[11] SONGS--NRC Augmented Inspection Team Report 05000361/20122007 and 05000362/20122007 (June 18, 2012) (AIT Report) at Executive Summary; *available at* http://pbadupws.nrc.gov/docs/ML1218/ML12188A748.pdf

[12] SCE-10 at Q4 (Preservation Mode is a temporary state of non-operation where the nuclear fuel is removed).

outages. To the extent these purchases have been more costly than the price of the lost power, ratepayers have borne the consequential expense.

Although SCE submitted a plan to NRC in October 2012 to restart the units, neither U2 nor U3 generated electricity again. Instead, the NRC eventually referred SCE's proposed restart plan[13] to the Atomic Safety Licensing Board (ASLB) which concluded SCE would need to obtain a license amendment, a potentially lengthy process.[14] On June 7, 2013, SCE announced it would not seek to restart either SONGS unit.

During 2012, both SCE and SDG&E had pending general rate cases (GRC) wherein each utility included forecasts for test year 2012 SONGS-related expenses which assumed a fully operational generation facility. The Commission declined to give final approval to either utility's estimated SONGS-related expenses in the GRCs, due to the non-operation of both units after January 2012. Instead, the Commission deferred final reasonableness review of that portion of revenue requirement to this investigation, to be instead based on actual 2012 expenses in light of the changed circumstances.[15] The Utilities have already collected the majority of their 2012 and 2013 SONGS-related expenses in rates, subject to refund. Rate recovery of these expenses and for excess power purchases is at issue here.

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[13] SCE Response to NRC Confirmatory Action Letter (October 3, 2012), *available* at http://pbadupws.nrc.gov/docs/ML1335/ML13357A058.pdf

[14] ASLB Memorandum and order, Henricks' Request for Official Notice (Motion #1) (May 8, 2014), Attachment 3.

[15] Each utility was permitted to collect an amount up to the preliminarily approved amounts, pending review in applications to be filed and consolidated with the OII.

In addition, Public Utilities Code[16] Section (§) 455.5(a) grants the Commission discretion to remove from rates the value of any portion of an electric generation facility which remains out of service for nine or more consecutive months, along with "related" expenses. This proceeding concerns what portion of the SONGS plant the Commission could remove from rate base and when. Parties differed as to whether all plant value and costs at SONGS should be removed from rates as no longer "used and useful,"[17] or whether some portions of the plant (*e.g.*, cooling systems, toxic control-related structures and systems, storage of spent nuclear fuel) and related expenses (*e.g.*, security, personnel) are still necessary and, therefore, recoverable from ratepayers.

Some parties contend that if SCE acted imprudently in managing the design of the RSGs, then ratepayers have no responsibility to pay for any costs at SONGS after January 31, 2012 (and perhaps before).

SCE,[18] the NRC,[19] and Mitsubishi[20] have all undertaken studies to determine the cause of the excess tube-to-tube wear (TTW) in the RSGs. Although responsibility for the problem is disputed, there is apparent agreement that the cause of the unexpected TTW was due to Fluid Elastic Instability (FEI) or in plane-vibration arising from thermal flow. The AIT Report found that both the U2 and U3 SGs were susceptible:

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16 Unless otherwise indicated, all references to code sections refer to the Pub. Util. Code.

17 § 454.8

18 SCE-04 at 82 (On April 23, 2012, SCE issued U2 tube wear Root Cause Analysis (RCA) which identified the cause of TTW as Fluid Elastic Instability (FEI)).

19 Investigation (I.) 12-10-013 OII Attachment A, AIT Report.

20 Mitsubishi Root Cause Analysis (June 12, 2012) at http://pbadupws.nrc.gov/docs/ML1306/ML13065A097.pdf.

> "…the NRC team concluded that both units' steam generators were of similar design with similar thermal hydraulic conditions and configurations. **Therefore, SONGS Unit 2 steam generators are also susceptible to this phenomenon (emphasis added)**."[21]

The RSGs include some differences from the design of the original steam generators (OSGs). These differences have sparked questions about the nature and purpose of the design changes, and what SCE knew or should have known about the safety implications of the changes. Responsibility for failure to discover the potential for the excess wear, and consequential damages therefrom, are subjects of a pending arbitration claim filed by SCE, since joined by the SONGS co-owners, against Mitsubishi.[22]

Additionally, SCE and SDG&E state they have submitted claims and proofs of loss to Nuclear Energy Insurance Limited (NEIL) to recover a portion of the costs to purchase power to replace that lost from SONGS.[23] It is unclear whether the Utilities are pursuing additional claims under the accidental property damage coverage, arising from facility damage related to the eventual shut down of the SONGS plant.

In December 2013, the NRC issued a Notice of Non-Conformance[24] to Mitsubishi based on finding the company did not establish measures for design control interfaces: the output of the thermal-hydraulic code and input to the

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[21] I.12-10-013 OII Attachment A, AIT Report.

[22] International Chamber of Commerce Arbitration (October 16, 2013); *available* at http://songscommunity.com/docs/101613_SCE_RFA_Redacted_Final.pdf.

[23] Joint Motion at 7.

[24] Attachment A.

flow induced vibration analysis software vibration code were not in accordance with Mitsubishi design requirements.

The NRC also issued a Notice of Violation[25] to SCE which found design control measures were not established to provide for verifying or checking the adequacy of the output of the thermal-hydraulic code and input to the vibration code to be in accordance with NRC requirements.

These Notices have been admitted to the record by ALJ ruling.[26]

2. Procedural History

Pursuant to § 455.5, the Commission issued an Order Instituting Investigation (OII) on October 25, 2012, initiating a multi-part investigation into the actions and expenses of Utilities associated with the extended outage at SONGS:

> "This investigation will consider the causes of the outages, the utilities' responses, the future of the SONGS units, and the resulting effects on the provision of safe and reliable electric service at just and reasonable rates."[27]

The OII identified rate recovery issues including: (1) review of all post 2011 Operations & Maintenance (O&M) costs and capital spending; (2) costs of scheduled RFO and emergent activities; (3) removal of non-useful generation assets from rate base; and (4) various questions around the costs, viability, and prudency of the SGRP approved in D.05-12-040.

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[25] Attachment B.

[26] Administrative Law Judges (ALJs) Ruling on Requests for Official Notice (September 11, 2014), Notice of Non-Conformance to Mitsubishi and Notice of Violation to SCE.

[27] OII at 21.

SCE and SDG&E were ordered to separately record all SONGS-related expenses, beginning as of January 1, 2012, into a SONGS memorandum account (SONGSMA),[28] subject to refund, and report the expenses to the Commission on a regular basis.[29] The Commission later confirmed the order in the decision on each utility's GRC application.[30]

Within the OII, the Commission stated its intention to consolidate other future proceedings to encompass review of the full range of post-outage costs and activities.[31] Subsequently, SCE and SDG&E each filed applications for reasonableness review of 2012 recorded O&M, non-O&M costs, and capital spending,[32] for approval of the totality of the SGRP costs,[33] and for power purchased during 2012, including replacement of power lost due to the outages.[34] In these applications, the Utilities sought full recovery in rates for all of the identified expenses.

The Utilities served Opening Testimony on December 5, 2012, in response to the broad scope of the OII. On December 12, 2012, the ALJ ordered the utilities to provide supplemental testimony, *inter alia*, regarding SONGS: outage history, historic forecast and actual expenses, 2012 treatment of fuel contracts,

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[28] SDG&E called its SONGS memorandum account SONGS Balancing Account (SONGSBA).

[29] SCE reports to the Commission monthly by Advice Letter (AL) and SDG&E reports by AL quarterly.

[30] D.12-11-051 at Findings of Fact (FOF) 366, Conclusions of Law (COL) 21-22, Ordering Paragraphs (OP) 9, 10 (SCE); D.13-05-010 at FOF 19, COL 7,8 (SDG&E).

[31] OII at 8.

[32] A.13-01-016 (SCE), A.13-03-013 (SDG&E).

[33] A.13-03-005 (SCE), A.13-03-014 (SDG&E).

[34] A.13-04-001 (SCE), A. 13-34-017 (SDG&E).

reasonableness support for 2012 recorded expenses, calculation of replacement power costs, support for meeting a reasonable or prudent manager standard post-outage, and for production of reports from NRC and others addressing the cause of the outage. Other parties had an opportunity to serve reply testimony, and the Utilities were permitted to serve rebuttal.

A prehearing conference (PHC) was held on January 12, 2013. Due to the potentially wide scope and quantity of information necessary for review, the assigned Commissioner and ALJ determined that to promote efficient administration of the OII, it would be divided into several phases, each with its own PHC and Scoping Memo. Among the expected benefits of this approach were: (i) resolving the hold-over 2012-2014 revenue requirement first; (ii) building a chronological record of 2012 activities to inform the second phase determination of whether to remove some or all of SONGS plant from rate base; (iii) pacing for certain information not yet known (*e.g.*, pending NRC actions, Mitsubishi arbitration, insurance claims); and (iv) consistent decisions between phases.

On January 28, 2013 assigned Commissioner Michel Peter Florio and ALJ Melanie M. Darling[35] issued a Phase 1 scoping memo that set dates for parties to serve testimony, established dates for evidentiary hearings, and defined the scope of inquiry. In Phase 1, the Commission focused on the Utilities' applications[36] for review of 2012 expenses recorded in the SONGS memorandum accounts, including an assessment of the reasonableness of SCE's

[35] On May 1, 2013, ALJ Kevin Dudney was co-assigned to the OII.

[36] These proceedings were consolidated with the OII in an April 19, 2013 ALJ ruling.

actions and expenditures following the U3 steam generator leak. On May 3, 2013, the ALJs created a sub-phase, Phase 1A, to develop a method for calculating 2012 costs of replacement power.

In response to the OII, the Utilities argued the Commission lacked authority to (1) review and refund 2012 estimates of O&M and capital spending, as deferred by the GRC decision; and (2) remove any SONGS assets and associated O&M from rate base pursuant to § 455.5, prior to SCE's 2015 GRC. After parties briefed these legal issues, the Assigned Commissioner and Administrative Law Judge issued a ruling resolving the questions:[37]

(1) Regarding Phase 1, the Commission has legal authority to conduct the deferred final reasonableness review of SONGS-related expenses (100%) sought in SCE's 2012 GRC and immediately order refunds, if warranted.

(2) Regarding Phase 2, the Commission has authority pursuant to § 455.5 to remove SONGS assets and associated expenses from rate base in this consolidated proceeding which has been categorized as ratesetting.

Several parties participated in Phase 1 and Phase 1A by submitting testimony, conducting cross-examination of witnesses, and/or filing post-hearing briefs. In addition to SCE and SDG&E, these parties are Office of Ratepayer Advocates[38] (ORA), The Utility Reform Network (TURN), Alliance for Nuclear Responsibility (A4NR), World Business Academy (WBA), Women's Energy Matters (WEM), Joint Parties (comprised of National Asian American

[37] Assigned Commissioner and Administrative Law Judge Ruling on Legal Matters (April 30, 2013)

[38] Formerly known as Division of Ratepayer Advocates and filed as such during these proceedings.

Coalition, Ecumenical Center for Black Church Studies, Latino Business Chamber of Greater Los Angeles and Chinese American Institute for Empowerment), and the Coalition to Decommission San Onofre (CDSO).[39]

Ruth Henricks (Henricks) and other parties filed several, primarily procedural, motions during the Phase 1 period. Motions to alter the Scoping Memo, to immediately order refunds, strike testimony, etc. have been filed and ruled upon, none of which altered the course of the OII set forth in the Scoping Memo, except to clarify that ordinary review of power purchases by both Utilities would continue to occur in their respective Energy Resource Recovery Account (ERRA) proceedings.

On February 21, 2013, the ALJ ordered SCE to file its SGRP application by March 15, 2013, and to provide supplemental testimony regarding interim collection of SGRP costs in rates, calculation of the SGRP revenue requirement, and to explain some aspects of SCE's first SONGSMA report. Other parties had an opportunity to serve reply testimony, and the Utilities were permitted to serve rebuttal. On April 30, 2013, the ALJs ordered SCE to collect and summarize relevant cost data which appeared throughout their testimony, and to create a chronology of key operational facts and decisions related to the outage. Even though no new information was to be included in the reorganized SCE exhibit, other parties had an opportunity to submit rebuttal exhibits. [40]

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[39] Other entities were granted party status in the OII and participated at some point are : Friends of the Earth (FOE), (CLECA)Direct Access Customer Coalition jointly with the Alliance for Retail Energy Markets (DACC/AReM). Several other parties did not participate in these proceedings.

[40] The ruling merely ordered a more coherent presentation of previously served, and revised, cost data, not any new information. However, some corrections were made on the record to the proffered exhibit, SCE-10.

Evidentiary hearings in Phase 1 were held from May 13 to 17, 2013. Opening and Reply Briefs were filed by SCE, SDG&E, DRA, TURN, A4NR, WBA, CDSO, Joint Parties and WEM on June 28, 2013 and July 9, 2013, respectively. Evidentiary hearings in Phase 1A were held on August 5 and 6, 2013. Opening Briefs were filed on August 29, 2013 by SCE, SDG&E, DRA, and A4NR. Phase 1A Reply Briefs were filed by SCE, SDG&E, TURN, A4NR, DRA, and WEM.

In addition, the ALJs sought input about the OII issues from the public during 2013. They held four public participation hearings regarding the SONGS outages: two in Costa Mesa on February 21, 2013 and two in San Diego on October 1, 2013.

A proposed decision (PD) for Phase 1 was published for comment on November 19, 2013. Opening Comments were filed on December 9, 2013 by WEM, CDSO, Joint Parties, SCE, TURN, CCUE, SDG&E, WBA, and A4NR. Reply Comments were filed on December 16, 2013 by SCE, SDG&E, TURN, DRA, Joint Parties, WBA, and A4NR. However, the Commission has not acted on the PD. [41]

Regarding Phase 2, the ALJs ordered the Utilities to provide testimony by July 22, 2013 that provided an accounting of the assets and amounts currently in rate base for the entire SONGS facility.[42] The ruling also required each utility to

[41] On January 14, 2014, four Commissioners (Peevey, Florio, Sandoval, Peterman) participated in a noticed all-party meeting to discuss the PD.

[42] ALJ Ruling on Miscellaneous Issues and Setting Phase 2 prehearing Conference (July 1, 2013).

make a proposal for which assets should be removed from rate base, and related monthly O&M costs, as of November 1, 2012, and other dates as preferred.

A PHC for Phase 2 occurred on July 12, 2013. Based on § 455.5, the Phase 2 Scoping Memo focused on the value of SONGS assets in rate base at different points in time, which of these assets and associated costs should be removed from rate base, and the ratemaking treatment for removed assets and costs.[43]

Phase 2 evidentiary hearings were held October 7 to 11, 2013. Phase 2 Opening Briefs were filed and served on November 22, 2013 by SCE, SDG&E, ORA, TURN, A4NR, WBA, CDSO, WEM, and Henricks.[44] Reply Briefs were filed and served on December 13, 2013 by SCE, SDG&E, DRA, TURN, ANR, WBA, CDSO, and DACC/AReM. No PD for phase 2 has yet been published for comment. A list of the exhibits admitted into the record during Phases 1, 1A, and 2 is attached hereto as Appendix A.

Through many weeks of evidentiary hearings, and review of a substantial amount of testimony and other evidence, the parties have had an opportunity to weigh the claimed facts associated with (1) the deferred review of 2012 General Rate Case SONGS-related expenses; (2) replacement power costs; and (3) the values of SONGS assets in rate base; and (4) which of these assets should be removed from rate base pursuant to Public Utilities Code § 455.5.

On March 20, 2014, SCE, SDG&E, TURN, and ORA served a notice of settlement conference to be held on March 27, 2014. On April 3, 2014, SCE,

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[43] Assigned Commissioner and Administrative Law Judges' Ruling Determining Phase 2 Scope and Schedule (July 31, 2013).

[44] WBA (on November 22) and CDSO (on November 27) filed and served "corrected" Phase 2 opening briefs; all references to WBA's and CDSO's opening briefs in this decision refer to these corrected briefs.

SDG&E, TURN, ORA, FOE, and California Coalition of Utility Employees (CCUE) (collectively, Settling Parties) filed and served a Joint Motion for Adoption of Settlement (Joint Motion). Settling Parties assert the proposed Settlement Agreement (Agreement), if approved, "would resolve all issues in the OII and consolidated proceedings.[45] It is not an all-party settlement, and is strongly opposed by some.

On April 24, 2014, the ALJs issued a ruling that: (1) ordered Settling Parties to post documents supporting or clarifying the Agreement on SCE's SONGS discovery website; (2) ordered Settling Parties to serve supporting testimony by May 1, 2014 to provide clarifying information, and support for certain numbers referenced in the Agreement in response to questions posed by the ALJs in the ruling; (3) scheduled and set the agenda for an evidentiary hearing pursuant to Rule 12.3 to hear material contested issues of fact asserted in the Agreement; and (4) scheduled and set the agenda for a community information meeting near SONGS on June 16, 2014.[46] Settling Parties, jointly and separately, timely served the supplemental testimony.

On May 6, 2014, comments on the Joint Motion were filed by WBA, CDSO, Joint Parties, A4NR, CCUE, CLECA, Arem/DAAC, WEM, and Henricks.[47] On May 14, 2014, the ALJs conducted the evidentiary hearing, took submission of the supplemental testimony, heard sworn oral testimony from Settling Parties and permitted cross-examination of the Settling Parties' witnesses by non-

[45] Joint Motion at 1.

[46] Commissioners Peevey, Florio, and Picker attended the scheduled Community Information Meeting on June 16, 2014 as observers.

[47] Henricks filed an "Objection" which Docket Office characterized as "comments."

settling parties.[48] A list of the exhibits admitted into the record at the hearing on the Agreement is included in Appendix A. On May 22, 2014, Reply Comments on the Joint Motion were filed by Henricks, Joint Parties, Settling Parties, SCE, CDSO, SDG&E, A4NR, and WEM.

As part of her Reply Comments, Henricks included a request that ALJ Darling be reassigned pursuant to Rule 9.4 based on "demonstrated bias in favor of SCE and prejudice against ratepayers in this case." Henricks objected to introductory statements made by ALJ Darling at the evidentiary hearing for the benefit of webcast viewers. The Chief ALJ, in consultation with the President of the Commission, denied the motion based on Rule 9.5 which expressly finds it is not bias for an ALJ to express views on a legal, factual, or policy issue presented in the proceeding.[49]

On September 5, 2014, the Assigned Commissioner and the ALJs issued a Ruling Requesting the Settling Parties to Adopt Modifications (Modification Ruling) to the proposed settlement Agreement. The request was based on a preliminary assessment which identified a few provisions that needed to be clarified or modified to meet the public interest even when considered as part of the whole settlement package. The Settling Parties dispute the view that the identified provisions are not in the public interest, however, they voluntarily accepted the requests and amended and restated the Agreement to accomplish our public interest objective.[50] Several non-settling Parties filed comments ten

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[48] Commissioners Peevey and Florio attended the hearing as observers.

[49] Chief Administrative Law Judge's Ruling denying request for Reassignment for Cause (June 26, 2014).

[50] Joint Settling Parties Comments on Modification Ruling.

days later confirming their continued opposition. On September 24, 2014, the Settling Parties filed and served an "Amended and Restated Settlement Agreement" (Amended Agreement) which included the requested modifications.

This proceeding was submitted on September 24, 2014

3. Standard of Review

The Commission's standard of review for this contested settlement pursuant to Rule 12.1(d) is that the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest." The standard of proof is a preponderance of the evidence.[51]

In determining whether a settlement is fair, adequate, and reasonable, the Commission reviews a number of factors. These factors include whether the settlement reflects the risks, expense, complexity, and likely duration of further litigation; whether it fairly and reasonably resolves the disputed issues and conserves public and private resources; and whether the agreed-upon terms fall clearly within the range of possible outcomes had the parties fully litigated the dispute.[52] The Commission also has considered factors such as whether the settlement negotiations were at arm's length, whether the parties were adequately represented, and how far the proceedings had progressed when the parties settled.[53]

Below we review the settlement provisions, and the parties' arguments in support and in opposition.

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[51] D.13-04-012 at 3.

[52] D.1466 CPUC 2d 314, 317 (1996).

[53] D.00-11-041 at 6.

4. The Settlement Agreement

4.1. Joint Motion to Adopt Settlement Agreement

Settling Parties present the Agreement as a fair compromise of contested issues which resolves all issues in the consolidated proceedings, duly authorized by Article 12 of the Commission's Rules of Practice and Procedure.[54] The Joint Motion includes the general positions advocated by the parties in the OII, the terms of the Agreement, argument that the Agreement meets the Commission's standards for review of settlements, proposes a process for consideration of the Agreement, including possible Commission-proposed modifications, and requests the Commission expedite consideration, stay the OII and make specific findings with respect to the Agreement.

The Settling Parties assert the Agreement is the result of "hard-fought" negotiations over many months by SCE, SDG&E, DRA and TURN where each party "compromised substantially" from positions taken in testimony and briefs.[55] Although CCUE, which represents utility employees, and FOE, an environmental organization, did not participate in the negotiations prior to the Settlement Conference, each joined in the Agreement, contending it is a "fair compromise of the disputed issues."[56] The Settling Parties state the combination of Utilities, DRA, TURN, FOE and CCUE represents a broad coalition of interests represented in the OII.

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[54] Joint Motion at 1-2.

[55] *Id.* at 8.

[56] *Ibid.*

However, Rule 12.1(a) provides that settlements need not be joined by all parties. This is not an all-party settlement. As discussed below, some parties ask the Commission to deny the motion and reject the Agreement.

4.2. Terms of Settlement Agreement

Generally, the Agreement divides costs from certain categories (*e.g.* O&M, capital cost of RSGs) into different categories for payment (*e.g.* refunds to ratepayers, allowed past or current rate recoveries, future rate recoveries). The Settling Parties responded to the September 5, 2014 Ruling Requesting Modifications by preparing and serving an Amended and Restated Settlement Agreement (Amended Agreement) incorporating the requested changes. The Amended Agreement is attached hereto as Appendix B.

a. Steam Generator Replacement Project

¶ 4.2 specifies that the "Capital-Related Revenue Requirement for the SGRP will be terminated as of February 1, 2012." The Utilities will refund all Capital-Related Revenue Requirement[57] of the SGRP collected after that date, but will retain all amounts collected in rates prior to that date. The Utilities will not recover the Net Book Value[58] of the SGRP as of that date, which is $597 million for SCE and $160.4 million for SDG&E according to ¶3.36.

b. Base Plant

¶4.3 specifies that the Utilities share of Base Plant[59] will be removed from rate base as of February 1, 2012, and this amount will be recovered at a reduced

[57] defined in Agreement ¶2.9

[58] Agreement ¶2.24.

[59] Agreement ¶2.6

rate of return over ten years (February 1, 2012 to February 1, 2022). As of February 1, 2012 SCE's share of Base Plant was $622 million and SDG&E's share was $165.6 million, excluding Construction Work in Progress (CWIP).[60] The Utilities will retain all Capital-Related Revenue Requirement for Base Plant collected before February 1, 2012; amounts collected after that date that exceed what would be allowed by the Agreement will be returned.[61] The rate of return for Base Plant after February 1, 2012 will be calculated as "the Utility's Authorized Cost of Debt plus 50% of the Utility's Authorized Cost of Preferred Stock, weighted by the amount of debt and preferred stock in the Utility's authorized ratemaking capital structure."[62] The rate of return for SCE for 2012 is 2.95% and 2.62% for 2013-2014. For SDG&E, the rate of return for 2012 is 2.75% and 2.35% for 2013-2014.[63] Finally, ¶4.4 provides that each Utility would be allowed to exclude the Base Plant regulatory asset from future measurements of its ratemaking capital structure.

c. Materials and Supplies (M&S), Construction Work In Progress (CWIP), and Nuclear Fuel

M&S, CWIP, and Nuclear Fuel are all recovered in a manner similar to Base Plant, with some variations. For M&S and Nuclear Fuel, the Utilities receive an incentive (5%) to salvage the value of the asset as best as possible. For

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[60] Agreement ¶3.37

[61] Agreement ¶4.12

[62] These Authorized Cost terms are defined in Agreement ¶¶2.4 and 2.5. This rate of return is adjusted for deferred taxes. The rate of return on common equity is excluded from the calculation.

[63] In both cases, these rates of return do not reflect income taxes associated with the return on preferred equity, property taxes, or franchise fees and uncollectibles; each Utility would gross-up its revenue requirement accordingly.

CWIP, the recovery period depends on whether or not the project is completed and goes into service. Details are summarized in the following table.

Item	Amortization Period	Rate of Return	Dollar Amount (12/31/2013)	5% Incentive	Notes	References (Agreement Section)
M&S	Same as base plant	Same as base plant	SCE: $99 million; SDG&E: $10.4 million	Yes		4.5, 2.21, 3.39
Nuclear Fuel	Same as base plant	Commercial paper	SCE: $477 million; SDG&E: $115.8 million inventory (excludes cancellation and sales)	Yes, of net proceeds (proceeds less cost of storage, sale, and making fuel saleable), AND of purchase obligations minus cancellation costs	Amount recovered will be existing investment plus cancellation cost, less proceeds from sales	4.6, 4.7, 2.17, 2.18, 2.30, 3.38
CWIP - Cancelled	Same as base plant	AFUDC until 1/31/2012 then same as base plant	SCE: $153 million; SDG&E: unstated	no		4.8, 2.13(a), 3.40
CWIP - Completed	10 years after the earlier of project completion or the end of the month of the effective date of this decision	AFUDC until 1/31/2012 then same as base plant	SCE: $302 million; SDG&E unstated	no		4.8, 2.13(b), 3.41

d. O&M and Non-O&M Expenses

Under the agreement, the Utilities will generally recover the lower of their recorded or preliminarily authorized[64] expenses. Costs for inspections and repair of the RSGs are included in recorded O&M, distinguished from "Base" or routine O&M. Excess recoveries, or amounts later recovered from the Nuclear Decommissioning Trusts will be refunded to ratepayers. 2014 costs are subject to review by this Commission in the future. ¶4.9 (k) specifies that the "Utilities shall utilize a formula agreeable to all Settling Parties for allocating company-wide expenses to SONGS" for purposes of Non-O&M Expenses. Details are provided in the following table.

Item	Year	Recovery
O&M	2012	Retain revenue provisionally authorized; revenue can be applied to recorded O&M (Base and SGIR) and severance; SDG&E to refund any revenues beyond recorded O&M
O&M	2013	Recover recorded costs up to the provisionally authorized amounts; any excess recoveries or amounts recovered from the decommissioning trusts to be refunded
Non-O&M	2012	Retain all revenue, except that SCE will refund to ratepayers any revenues that exceed the provisional authorization by more than $10 million; SDG&E will retain revenue for all recorded Non-O&M Expenses
Non-O&M	2013	All recorded expenses recovered; Utilities shall seek recovery from decommissioning trusts, and refund such recoveries
O&M and Non-O&M	2014	Recover recorded, refund excess recoveries and any recoveries from decommissioning trusts

[64] By the previous GRC decisions: D.12-11-051 and D.13-05-010.

e. Replacement Power

¶4.10 allows the Utilities to recover all "replacement power costs" associated with the non-operation of SONGS and amortize these costs in rates by December 31, 2015.

f. Third Party Recoveries

As modified by the Amended Agreement, ¶4.11 orders each utility to establish two memorandum accounts (or sub-accounts) to track SONGS litigation costs and recoveries[65] from Nuclear Electric Insurance Limited (NEIL) and Mit6subishi. The accounts will track all costs recorded since January 31, 2012. Any positive balance of these accounts (*i.e*. Recoveries in Excess of Costs) will be shared between ratepayers and the Utilities according to ¶4.11 (c). For NEIL recovery: the Utilities' share is 5% and 95% to rate payers in the Outage account; the Utilities' share is 17.5%, with 82.5% to ratepayers in the Other Recoveries account. Ratepayers will receive their share via a credit to each Utility's ERRA account.

The original Agreement provided for a three-tiered allocation of recoveries from Mitsubishi with the Utilities getting a significant majority of the first $1.1 billion. As modified, the ratepayers and Utilities share the net Mitsubishi recoveries equally (50/50).

The first portion of Mitsubishi recoveries will be distributed to balancing accounts of the Utilities: SCE ratepayers' first $282 million will be credited to SCE's Base Revenue Requirement Balancing Account (BRRBA) and SDG&E ratepayers' first $71 million will be credited to SDG&E's Non-Fuel Generation

[65] *See*: Agreement ¶2.43-2.44 for definitions.

Balancing Account (NGBA). Any further ratepayer recoveries will be distributed by reducing the regulatory assets described above.

The Utilities will have full discretion to settle or otherwise resolve claims against NEIL and Mitsubishi, and will notify the Commission promptly of such resolution, subject to two conditions: the confidentiality of the resolution and that the Commission will not review the reasonableness of the resolution; except that, the Amended Agreement requires the Utilities to provide documentation of any final resolution of third-party litigation and of SONGS Litigation Costs. The Commission may review the documentation to ensure Litigation Costs are not out of proportion to the recovery obtained and that ratepayer credits are accurately calculated. SONGS Litigation Costs shall not be considered in the recorded costs used to develop future general rate case forecasts.

Close Proceeding and Proposed Findings of Fact

¶4.16 and ¶4.17 state the intent of the Agreement to resolve all proceedings consolidated with this Investigation, enumerate several factual findings for the CPUC to make, and request the withdrawal of the PD on Phase 1 and Phase 1A. The proposed findings are summarized below:

Proceeding(s)	Findings
A.13-03-005, A.13-03-014	Total cost of SGRP was $612.1 million in 2004 dollars (100% share). SCE used appropriate inflation indexes to deflate these costs to 2004 dollars. No further reasonableness review of SGRP costs is required, and each Utility may retain all revenues for the SGRP prior to February 1, 2012.
A.13-01-016, A.13-03-013	No further reasonableness review of the 2012 costs recorded in SCE's SONGSMA and SDG&E's SONGSBA is required.

5. Parties' Positions

5.1. Settling parties

Settling Parties contend the proposed Agreement meets the Commission's requirements for approval: it is consistent with the law, reasonable in light of the whole record, and in the public interest. The Joint Motion also identifies four factors the Commission has included when previously reviewing settlements: (1) the risk, expense, complexity and likely duration of further litigation; (2) whether the settlement negotiations were at arms-length; (3) whether major issues were addressed; and (4) whether the parties were adequately represented.[66]

In support of approval, Settling Parties assert "[T]he Utilities, TURN, and ORA----represented by experienced CPUC practitioners---negotiated in good faith, bargained aggressively, and, ultimately, compromised.[67]" Furthermore, they argue, the result is a comprehensive resolution of all major issues, which reduces ratepayer costs for protracted litigation, conserves scarce Commission resources, and reduces the risk of unacceptable results.

Additionally, the Settling Parties assert it is "critical" to consider the Agreement as a whole, not just the individual provisions.[68]

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66 Joint Motion at 36 [citing *e.g.*, 40 CPUC 2nd 301, 326].

67 *Ibid.*

68 *Id*. at 36-37 [citing, D.11-05-018 at 16 (…we do not base our conclusion on whether any single provision is the optimal result. Rather, we determine whether the settlement as a whole produces a just and reasonable outcome.")].

5.1.1. The Agreement is Reasonable in Light of the Whole Record

The Agreement is reasonable in light of the whole record, Settling Parties argue, because on "a basic level" ratepayers pay for power they received and don't pay for the SGRP after the outages.[69] The result is presented as a fair and reasonable solution, reached as a result of substantial negotiations, and is within the range of potential outcomes proposed by the Settling Parties during the OII.

Settling Parties assert the record contains sufficient information for the Commission to make this finding, given the thousands of pages of written testimony on a wide range of issues, from many different witnesses, covered by three phases of hearings over 12 days, with lengthy post-hearing briefs filed by the Settling Parties. The Utilities separately note they have already responded to over a thousand data requests from the parties.[70] Settling Parties claim the magnitude of information and depth of analysis in the record underpinned the success of the substantial negotiations undertaken by the Utilities, TURN and ORA.

Settling Parties claim the negotiated outcomes of various provisions in the Agreement, including recoveries and disallowances, demonstrate that compromises were reached for thoroughly litigated positions.[71] On the other hand, they claim that potential Phase 3 findings on the causes of tube wear and SCE's prudence in managing the SGRP are unnecessary to find the Agreement is reasonable in light of the whole record. Instead, they argue the primary purpose

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[69] Joint Motion at 39.

[70] *Id.* at 37.

[71] *Ibid.*

of this settlement is to avoid the costs, time, and burden on all parties to get to the cause of the damage and reasonableness of consequential costs.

Lastly, Settling Parties state the Agreement reflects a fair resolution of their respective litigation positions. In support, they provide an illustrative comparison of the present value of the SONGS revenue requirement for each settling party's litigation position with the results of the proposed Agreement.[72] The reduction to the Utilities' original revenue requirements indicates significant concessions which, according to Settling Parties, reflects write-offs of more than $800 million ($nominal) in SGRP-related costs after January 31, 2012.[73]

Coalition of California Utility Employees (CCUE) offered additional comments in which it stated its support for the Agreement was primarily based on treatment of 2012-2013 O&M costs, particularly severance costs because they argue staff retention was necessary to operate plant equipment when restart was still a possibility.[74]

In an attachment to the original agreement, Settling Parties included an estimate of the Present Value Revenue Requirement (PVRR) for each Utility based on the litigation positions of the Utilities, DRA, and TURN, in comparison to the outcome under the Agreement. The table below shows an excerpt of this PVRR with the combined revenue requirements of the two Utilities. Note that the PVRR is calculated at a discount rate of ten percent.

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[72] *Id.*, Attachment 2.

[73] *Id.* at 39.

[74] CCUE Opening Comments (OC) at 2-3.

100% Share	All values in $ millions			
	TURN Litigation	DRA Litigation	Settlement	Utilities Litigation
PVRR @ 10%	$ 2,692.5	$ 2,542.9	$ 3,317.5	$ 4,732.9
RSG	$ -	$ 100.9	$ -	$ 917.7
Base Plant	$ 1,127.3	$ 908.9	$ 1,319.4	$ 1,738.5
O&M	$ 900.5	$ 868.5	$ 970.6	$ 1,039.6
Nuclear Fuel	$ 520.0	$ 519.9	$ 477.3	$ 519.9
Replacement Power	$ 144.7	$ 144.7	$ 517.2	$ 517.2

5.1.2. The Agreement is Consistent with the Law

Settling Parties state the terms of the Agreement comply with all applicable statutes and prior Commission decisions, and assert they considered these statutes and decisions during the settlement process.[75] In particular, Settling Parties claim the Agreement is consistent with § 451 and § 455.5.

Section 455.5, authorizes the Commission to remove from rate base the value of portions of a generating facility that has been out of service for nine or more months, along with related expenses. Settling Parties believe the Agreement is consistent with applicable law because the SGRP and SONGS Base Plant are removed from rate base as of February 1, 2012, and $99 million in post-outage RSG inspection and repair costs are disallowed.[76]

Section 451 requires that rates be just and reasonable. Settling Parties, referencing the revenue requirement comparison chart attached to the Joint Motion, claim the terms are just and reasonable because the parties have compromised their positions.

[75] Joint Motion at 39.

[76] *Id*. at 39-40.

5.1.3. The Agreement is in the Public Interest

The Commission has previously determined that a settlement meets the "public interest" criterion if it "commands broad support among participants fairly reflective of the affected interests"and "does not contain terms which contravene statutory provisions or prior Commission decisions."[77] Settling Parties cite the fact they are comprised of both utilities, two "prominent ratepayer advocate groups in Commission practice, a global network of environmental activists, and a labor group representing hundreds of affected SONGS employees;" these parties all participated in the OII prior to the Agreement.[78] ORA and TURN were especially active in all phases of the consolidated proceedings to date. Settling Parties emphasize that all signatories to the Agreement have stated it is a reasonable compromise of their respective positions.

Settling Parties argue the public interest is also served by settlement of the entire OII because, if adopted, it avoids the cost of further litigation and frees up Commission resources for other proceedings.[79] They view the potential Phase 3 as extremely time-consuming and complex litigation, potentially taking a year or two, delaying refunds, and generating discovery for up to a ten year period and thousands more pages of largely technical testimony. Instead, Settling Parties contend the Agreement provides "substantial relief to ratepayers by eliminating the need for more litigation and freeing the Commission and other parties to

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[77] Joint Motion at 40 [citing *e.g.*, D.10-06-015 at 11-12].

[78] *Id*. at 40.

[79] *Id*. at 41.

concentrate limited resources on other pressing energy-related matters, including meeting Southern California's energy needs in the near future.[80]

5.2. Other parties

With one exception (CLECA), parties who did not join the Agreement, are basically divided between: (1) those who do not generally oppose the settlement, but prefer some modifications, and (2) those who oppose the Agreement and prefer the Commission undertake Phase 3 to confirm SCE's fault for approval of the RSG design, as well as explore a variety of other questions each seeks to have answered. One party, Henricks, alleges there must be "collusion" among the Utilities, Settling Parties, Commissioners, and the ALJs for a settlement to occur at this time which would obviate the need for a Phase 3 inquiry into the RSG design decisions.

5.2.1. Parties Not Opposed to the Settlement Agreement

5.2.1.1. CLECA

CLECA, who became a party in time to weigh in on the Agreement, offers essentially unqualified support, finding it "reasonable and balanced between shareholder and ratepayer interests" including a reasonable "bottom line."[81] They agree with Settling Parties that the Commission has historically supported qualifying settlements in order to reduce the litigation burden on parties and the Commission.[82]

In addition, CLECA appreciates the diversity of Settling Parties, including utilities, ratepayer advocates, environmental, and labor parties. Of significance

[80] *Id*. at 42.

[81] CLECA OC at 1.

[82] *Id*. At 2.

to CLECA, the overall result is closer to TURN's litigation position than that of the Utilities.

5.2.1.2. AReM/DACC

AReM and DACC find the Agreement to be a reasonable resolution of this proceeding and do not oppose its adoption by the Commission. These parties filed joint comments stating their primary interest is the fair and equitable treatment of direct access (DA) ratepayers in light of the closure, especially as to how the costs and refunds authorized by an adopted settlement will be implemented in rates, and in particular, the Power Charge Indifference Amount (PCIA).[83]

AReM and DACC claim the inclusion of the ongoing full SONGS revenue requirement in the calculation of the PCIA rate, without accounting for the lost SONGS generation, results in extraordinary increases to the 2014 PCIA. They wish to ensure that these increases do not continue and that the implementation of the Agreement does not cause an unfair burden to fall on DA ratepayers.[84]

Their second concern is the rate treatment of the Replacement Power costs. According to AReM and DACC, these amounts were for short-term purchases made only on behalf of bundled customers---not on behalf of DA customers. Thus, these replacement purchases cannot and should not be included in the Total Portfolio Amount used to calculate the PCIA.[85]

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[83] AReM/DACC OC at 2.

[84] *Ibid*.

[85] *Id*.at 3.

Therefore, they recommend the Commission specifically direct the Utilities to: 1) utilize the provisions of the Consensus Protocol when implementing the rate adjustments associated with the Settlement; and 2) omit the short-term SONGS replacement costs from any Total Portfolio Costs.

5.2.1.3. Joint Parties

Joint Parties were generally supportive of the Agreement, finding it "reasonable and fair" and the result of "protracted and difficult negotiations."[86] Joint Parties are very supportive of the Commission's modifications and believe they are in the public interest and are consistent with long-standing precedents favoring settlements, including settlements where the hearings have not been completed.[87] However, they seek a modification related to community outreach and education efforts in service areas near SONGS, an issue advanced by Joint Parties throughout Phase 1 of the consolidated OII proceedings.

Joint Parties reiterate their request that SCE be required to expand its public education about SONGS and the future decommissioning, beyond the 20 -mile designated public education zone to 50 miles.[88] In addition, they ask the Commission to "be particularly sensitive to pockets of alternative language users and coordinate with community based organizations to ensure wide distribution of public information and availability of emergency planning information."[89]

Second, Joint Parties were initially concerned that current third party recovery provisions were not structured to properly incentivize the recovery of

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[86] Joint Parties OC at 2.

[87] Joint Parties' Comments on Modification Ruling at 2.

[88] Joint Parties OC at 3.

[89] *Ibid*.

funds from Mitsubishi and NEIL. However, the modifications to ratepayer share of the recoveries seems to abate that objection.[90]

5.2.1.4. World Business Academy (WBA)

WBA generally supports the Agreement, but voices a few concerns. WBA initiated settlement discussions with SCE in February 2012 when its President[91] requested a meeting with SCE representatives to present WBA's "Settlement Principles," a set of nine concepts which WBA viewed as the basis for a fair and equitable settlement. According to WBA, the proposed Agreement in large part reflects these settlement principles.[92]

These principles include:

- SCE should not collect money for power not delivered by SONGS;
- SCE should be able to recover the actual costs of power purchased to replace lost SONGS output;
- Ratepayers should not pay the costs of amortizing undepreciated value of SONGS base plant after June 7, 2013;
- SCE should be allowed to keep SGRP costs recovered in rates through January 31, 2012;
- SCE should be allowed to retain recorded labor costs through June 7, 2013, and associated with gradual lay-off for 90 days thereafter; and
- Ratepayers should pay for CWIP plant upgrades to extent equipment or systems were put into service before January 31, 2102 and incurred by June 7, 2013.

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[90] Joint Parties' Comments on Modification Ruling at 3.

[91] WBA's President is Rinaldo S. Brutoco.

[92] WBA OC at 3.

Although the Agreement does not achieve all of WBA's objectives in the OII, WBA believes the Agreement will resolve key issues of dispute between parties and bring a "much-needed resolution of the contested claims" when adopted in a final form.[93] Nonetheless, WBA asks the Commission to carefully consider issues raised by non-settling parties. To improve transparency, WBA also suggests it would be in the best interests of ratepayers to provide a table in this decision which clearly illustrates the components of the proposed refund to ratepayers.[94]

Additionally, WBA identifies what it calls "overly-broad or unnecessary language" which it suggests be deleted from the Agreement because such language may not be fully supported by the record. Three examples are provided: (1) delete the word "unexpected" from ¶3.8, which states, in part, that the tube wear (discovered in February 2012) "caused unexpected and extensive property damage to" U2 RSGs; (2) delete ¶3.9 which refers to inspections in February and March 2012 of U3 RSGs and similarly states the tube-to-tube wear "caused unexpected and extensive property damage….;" and (3) delete all but the first sentence of ¶3.23 (describes SCE's grievances with Mitsubishi's performance.)[95]

5.2.2. Parties Opposed to the Settlement Agreement

5.2.2.1. Alliance for Nuclear Responsibility

The modifications adopted by the Settling Parties did not alter A4NR's

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[93] *Id.* at 1.

[94] WBA OC at 2.

[95] *Id.* at 2-3.

Objections to the settlement. A4NR's Comments were primarily a restatement of its views opposing the proposed settlement. Although the modifications included a program response to A4NR's criticism that the settlement did not address "externalities," A4NR expresses "disappointment with the Ruling's timid consideration of the shutdown's impact on CO2 emissions and electricity prices."[96]

A4NR urges the Commission to reject the Joint Motion, not adopt the proposed settlement, and to make a counter proposal to resolve the OII. Although A4NR says it supports the core framework of the Agreement as it relates to removal of assets from rate base, and reduced return for Base Plant assets only, it argues for conduct of Phase 3 based on a conclusion that SCE was imprudent in managing the SGRP and is liable for all consequential damages. As a result, A4NR states Phase 3 should consist only of fashioning remedies for SCE's imprudence.

During the proceedings, A4NR has consistently rejected rate recovery for any post-outage SONGS-related expenses. As soon as SCE became aware of the extent of vibratory damage to the steam generator tubes in both units, A4NR argues that SCE should have decided to shut down permanently. Therefore, A4NR concluded that all post-outage facility-related rates should be refunded.[97] Furthermore, A4NR argued that all SONGS assets, including CWIP not in service, should be removed from rate base no later than November 1, 2012, if not February 1, 2012, and zero return on investment authorized. [98]

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[96] A4NR Comments on Modification Ruling at 8.

[97] A4NR Phase 1 Opening Brief (OB) at 2.

[98] A4NR Phase 2 OB at 24.

Particular to the proposed settlement, A4NR argues it is untimely and does not meet the criteria necessary for Commission approval.[99] A4NR's premise is that the NRC citation issued to SCE for failure to properly supervise Mitsubishi's design of the RSGs "places SCE at the head of the chain of causation."[100] A4NR characterizes SCE's decision to not contest the NRC citation as an admission of imprudence of its regulatory duty as the operator to "retain responsibility for the quality assurance program."[101] Thus, A4NR concludes that SCE is factually unable to meet the reasonable manager standard for an operator.

A4NR contends the Agreement is unduly expansive and pre-emptive of issues the Commission should consider as "core priorities" (*e.g.*, review of purchased power costs, SCE violations of NRC regulations, increased emissions).[102] Instead, the Agreement ignores these issues, "absolves SCE management of culpability for an admitted violation of NRC regulations concerning design control, and ignores the large majority of multi-billion dollar consequences that flowed from that violation."[103] Moreover, A4NR is troubled by statements made by some at SCE or its parent company, Edison International, which imply the terms of the settlement will have nominal impact on SCE's earnings.[104]

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[99] A4NR Opening Comments (OC) at 1.

[100] *Id*. at 2; *See*, Ruling Taking official Notice of Documents and Ruling on Various Motions (September 11, 2014) at 4.

[101] A4NR OB at 5.

[102] *Id*. at 7-12.

[103] *Id* at 15.

[104] *Id*. at 17-21.

Terms of the Agreement which authorize recovery of nearly all preliminarily authorized O&M, a different result from a proposed decision in Phase 1, must be unreasonable in light of the record, argues A4NR. Similarly, it claims the treatment of CWIP unreasonably fails to account for the "extraordinary and continuing growth in CWIP" since the SONGS closure.[105] The calculation of replacement power costs, including ratepayer credits for lost energy sales revenue, omission of expanded community education, and the third party recovery incentives are also rejected by A4NR as being neither consistent with, nor reasonable in light of, the record.

A4NR criticizes the original proposed sharing formula for third party recoveries as unsupported, and lacking any independent assessment of the merits of SCE's claims. The formula is inverse to the public interest, states A4NR, because it incentivizes SCE to settle as soon as it has been made whole. The formula should be reversed or eliminated, and the Commission's ability to review any such recovery for reasonableness should be restored, states A4NR.

Furthermore, A4NR disputes that the utility recovery authorized in the Agreement, particularly for 2012-2013 O&M and CWIP that didn't enter service, is consistent with § 451.[106] A4NR contends that the terms authorizing the utilities to retain all SGRP costs prior to the outage, are improperly calculated by SCE and not in the public interest.[107] Similarly, A4NR is unconvinced the 5% sales incentives for M&S and NFI will actually benefit ratepayers, and render the refund amounts unknown for now.

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[105] *Id.* at 27.

[106] *Id.* at 39-41.

[107] *Id*. at 43-44.

Lastly, A4NR views the implied use of nuclear decommissioning trust funds for certain CWIP and 2014 expenses to be misguided, premature, and likely in violation of California's Nuclear Facility Decommissioning Act of 1985.[108]

5.2.2.2. Women's Energy Matters (WEM)

WEM opposes the Agreement and asserts it does not meet the criteria for Commission approval. Instead, WEM recommends the Commission order large refunds of funds collected in 2012-2013, and continue with Phase 3.[109] The modifications adopted by the Settling Parties did not alter WEM's disapproval of the Agreement.[110]

First, WEM argues the Agreement is not reasonable in light of the whole record because it does not reflect the entire record, as evidenced by omission of any reference to expanded community outreach addressed in Phase 1. In addition, because the Agreement settles the contested OII, WEM contends it "diminishes" the contributions of other, non-settling parties, which WEM concludes is *per se* "unreasonable.[111]

WEM's contention the Agreement is inconsistent with the law is primarily based on its view that when ORA became a settling party, it violated its duty to ratepayers under § 309.5. Section 309.5 establishes the Office of Ratepayer Advocates (ORA) "to represent and advocate on behalf of the interests of public utility customers….[T]he goal of the division shall be to obtain the lowest

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[108] *Id.* at 56.

[109] WEM OC at 6.

[110] WEM Comments on Modification Ruling.

[111] WEM OC at 5.

possible rate for service consistent with reliable and safe service levels." In WEM's view, ORA moved too far from its litigation position of rejecting cost-of-service ratemaking for SONGS, including seeking disallowance of all SGRP inspection and repair costs, reduced recovery with zero rate of return on Base Plant, reduced 2012-2013 O&M, and capping replacement power costs in June 2013.[112]

Lastly, WEM argues the Agreement is not in the public interest because it stops the investigation before review of the SGRP. The Commission "promised the public an investigation" when it opened the OII, claims WEM, and the resulting Agreement prevents the public from knowing whether SCE was imprudent in connection with the SGRP.[113] WEM disagrees with TURN's view that removing the SGRP costs is a "proxy" for finding some sort of imprudence because a finding of imprudence or negligence could lead to the disallowance of additional costs (*e.g.*, post-outage O&M, CWIP).[114]

In related arguments, WEM opposes the terms of third party recovery as not beneficial for ratepayers, in part due to the low portion of recovery on the first $900 million. By ignoring the issues of SCE's "contributory negligence," WEM thinks the Agreement does not accurately reflect that recovery is "unlikely."[115] Moreover, adverse to the public's interest, the Agreement strips Commission oversight of both the reasonableness of any settlement or charged costs, including attorneys' fees.

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[112] *Ibid*.

[113] WEM OC at 1-3.

[114] WEM Reply Comments (RC) at 2.

[115] WEM OC at 4

5.2.2.3. Coalition to Decommission San Onofre

The modifications adopted by the Settling Parties did not alter CDSO's disapproval of the settlement.[116] CDSO's Comments were instead a restatement of its views opposing the proposed settlement.

During this proceeding, CDSO has favored immediate refunds of SONGS expenses collected in rates, and opposed ratepayer funding of any post-outage SONGS-related costs, except costs required to maintain safety-related components of the plant, as defined by the NRC.[117] Underlying CDSO's position is its allegation that SCE "deliberately misrepresented the SGRP to the NRC, the Commission, and the public, and knew the moment it discovered tube wear during the U2 RFO, that repairs were imprudent.[118]

In Phase 2, CDSO argued for removal of nearly all SONGS plant from rate base, both SGRP and Base Plant, as of November 1 at the latest, if not the first day of outage when the plant became no longer "used and useful" due to lack of generation.[119] These assets should be considered abandoned and, CDSO argues, shareholders should recover nothing after the outage.[120] "Nuclear Waste Operations" (NWO) assets as described by CDSO, constitute the primary exception to plant which may remain "used and useful" post-outage.[121] CDSO claimed these assets are approximately 7.5% of total base plant, or about

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116 CDSO Comments on Modification Ruling.

117 CDSO Phase 1 OB at 4.

118 *Id.* at 5.

119 CDSO Phase 2 OB at 12.

120 *Id* at 32.

121 *Id* at 22, 27.

$342 million in net investment. CDSO's position was that these few assets should be amortized over 12 years and earn no more than a 5.54% return.[122]

CDSO opposes the proposed settlement and recommends the Commission deny approval, define "acceptable" settlement criteria, and require a particular settlement "process."[123] The proposed criteria include: (1) the settlement should not be linked to future resolution of third party litigation; (2) proper incentives to parties; and (3) settlement terms should be "open and verifiable." Moreover, CDSO prefers to continue with Phase 3 because there was no record made regarding the reasonableness of the SGRP as a whole.[124] As to specific settlement terms, CDSO advocates the following:

- SGRP – remove all expenses, including depreciation, collected in rates prior to February 1, 2012 because replacement is assumed to be premature and intended to cover the period of a license extension;
- Base Plant/CWIP – Most Base Plant should be treated as abandoned with no recovery other than salvage value; original investment of $342 million in NWO-related assets (depreciated to just $83 million) should be "transferred/sold" (sic) to the "decommissioning activity" for the full cost basis, plus $8 million return on the depreciated balance, and another $69 million in NWO-related CWIP;[125] only recovery for all other CWIP is salvage value;

[122] *Id*. at 29, 33.

[123] CDSO OC at 5.

[124] CDSO RC at 5.

[125] CDSO OC at 36.

- Materials & Supplies – the 5% recovery to SCE for salvage revenues is not an effective incentive to maximize return; refunds should not be delayed for salvage operations;
- Nuclear Fuel Inventory - disallow the portion for fuel loaded into U2 in February 2012 as part of the scheduled RFO because SCE should have known U2 would not return to service;
- Replacement Power – inappropriate for ratepayers to pay for replacement power if SCE gets any return on base plant assets; no recovery for "foregone sales;"
- Base O&M – same as CWIP: only NWO-related costs should be recovered post-outage (approximately $93 million);[126]
- SGIR O&M – disallow it all; and
- Third Party recoveries –change provision because it is poor policy to hinge refunds on uncertain future returns from legal proceedings between SCE and its insurers and Mitsubishi; if assume no recovery of remaining investment in Base Plant and zero return, then utilities should keep 100% of recoveries.[127]

In its comments, CDSO focused on supporting neither recovery of, nor return on, investment in SGRP and the consequential "abandoned" Base Plant. CDSO included a summary interpretation of several previous Commission decisions wherein all, or portions of, plant ceased to function due to regulatory changes, changed conditions, or where a failure occurred and fault was disputed between the utility and a contractor.[128] CDSO relied on these previous decisions to assert that (1) even where a utility was not imprudent, the Commission

[126] *Id*. at 39.

[127] *Id.* at 40.

[128] 18 PUC2d 700 (Application of PG&E re Helms Pumped Storage Project, filed April 6, 1982).

authorized zero return on remaining investment;[129] and (2) where the Commission found SCE's unreasonable and imprudent acts contributed to an accident at Mohave Generating Station, all costs resulting from the pipe rupture were disallowed from rate recovery.[130]

Another linchpin of CDSO's position, is that SCE's decision to not seek a license amendment from the NRC, was error and imprudent. This is clear, argues CDSO, because SCE must have known there were vibration problems with the design in 2005-2006, but did not make corrections due to a decision to avoid the time and expense of a license amendment.[131] Therefore, CDSO argued that, absent a phase 3, the Commission must conclude that SCE's imprudence lead to the failure of the RSGs, and act accordingly.

Lastly, CDSO cites the lack of Phase 3 as fatal to the Commission's ability to evaluate the proposed settlement as reasonable in light of the whole record.[132] CDSO argues it is in the public interest to identify, in Phase 3, which executives made the decision to approve RSG design changes and to not seek a license amendment from the NRC.[133] CDSO placed significant weight on the limitations of SCE's witness[134] at the hearing on the proposed settlement. The witness was unable to cite to the record to identify SCE employees who were involved in the

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[129] 18 CUC 2d 592 (Humboldt Bay Power Plant); 47 CPUC 2d 143 (Geysers 15).

[130] D.94-03-048, rehearing denied D. 94-07-067 (July 20, 1994).

[131] CDSO OC at 25-26.

[132] CDSO RC at 9.

[133] *Id.* at 9-10.

[134] President Ron Litzinger.

RSG design process, investigated the design process, and internally evaluated the utility's prudence and position in settlement.[135]

5.2.2.4. Ruth Henricks

Henricks did not participate in the hearings or briefing for either Phase 1 or Phase 1A. Similarly, she did not participate in Phase 2, other than to submit an opening brief in which she stated opposition to rate recovery for any SONGS-related expenses after January 31, 2012 and sought immediate refunds of all post-outage expenses already collected in rates.[136] The remainder of the brief consisted of objections to several rulings regarding relevance of cross-examination and admissibility of evidence during the phase 2 evidentiary hearings.

The modifications adopted by the Settling Parties did not alter Henricks' disapproval of the settlement.[137] Her Comments were instead a restatement of her opposition to the proposed settlement. Henricks opposes the Joint Motion and the proposed settlement on a variety of grounds. She is particularly critical of news releases by Settling Parties and the Commission which she alleges are misleading about the effects of the proposal. Her opposition to the Joint Motion is primarily based on allegations of "collusion" between Settling Parties and Commission employees, as well as objections to the process by which the settlement was developed, (not) noticed to other parties, and reviewed by

[135] CDSO RC at 10-14.

[136] Henricks Phase 2 Opening Brief at 2.

[137] Henricks Comments on Modification Ruling.

evidentiary hearing.[138] A more detailed description of her views, along with our discussion, are set forth in Section 7 below. Henricks also asserts the Settling Parties have not provided the required statement of factual and legal contentions necessary to advise the Commission of the scope of the settlement and the grounds for adoption.[139]

Other objections by Henricks to approval of the proposed settlement include that (1) the terms of the Agreement are ambiguous and incomprehensible; (2) the value to ratepayers is neither substantiated nor verified; (3) the terms exceed the scope of the proceeding because they implicate annual proceedings related to power purchases and triennial proceedings related to nuclear decommissioning; (4) the "refunds" are merely bookkeeping entries "in a regulatory shell game;" (5) key facts about SCE's imprudence are not in the record; and (6) failure to complete Phase 3 of the investigation means SCE will evade any reasonableness review of the failed SGRP (*i.e.*, whether SCE executives acted knowingly, recklessly, or negligently).[140] Ms. Henricks also (mistakenly) contends the Commission has not allowed discovery about matters expected to be within the scope of Phase 3.[141]

The foundation for Henricks' opposition to any cost recovery from ratepayers is her claim the SONGS shutdown was the result of unreasonable

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[138] Henricks Objection to Order Setting Evidentiary hearing 14 May 2014 and the Failure of the CPUC to Set a Rule 7.2 Prehearing Conference (Henricks Objection) at 3-4.

[139] Henricks' Amended Opposition to Joint Motion (April 14, 2014) Henricks Comments) at 26.

[140] *Id.* at 4-5, 25-28.

[141] *Id.* at 11; For example, Henricks states the ALJs prohibited discovery of names of witness to the deployment of the RSGs, but in the January 7, 2014 ruling, the ALJs denied her Motion to Compel without prejudice after finding she had not met the requirements to prevail.

conduct by SCE in deploying the RSGs. She argues that SCE officials "knowingly violated an NRC statutory safety requirement in place to avoid the very failure of the steam generators as occurred."[142] Based on inferences drawn primarily from a Mitsubishi document, Henricks concludes that SCE was required by the NRC to seek a license before proceeding with the RSG design.[143] Because SCE did not seek a license amendment, as she alleges was required by the NRC, then SCE is "presumptively negligent." Therefore, Henricks concludes the Commission cannot adopt the proposed settlement because it would impose unjust and unreasonable rates in violation of § 451.[144]

Henricks also argues the proposed settlement does not meet the requirements for approval in Rule 12.1. The failure to complete the investigation into the extent SCE was responsible for the design errors, is not in the public interest, and results in an incomplete record, insufficient to determine whether the Agreement is reasonable in light of the whole record.[145]

5.3. Settling Parties' Reply Comments

5.3.1. Joint Settling Parties:

Settling Parties re-assert the Agreement should be adopted because it complies with Rule 12.1(d). Moreover, the majority of comments support the

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[142] Henricks Objection at 9.

[143] 50 C.F.R. 50.59 requires a license of a nuclear power plant to seek a license amendment for certain changes to substantial equipment.

[144] Henricks Reply Comments (RC) at 2.

[145] Henricks RC at 8-9.

Agreement and the comments in opposition do not "undermine the fairness of the overall end-result" of the Agreement.[146]

5.3.1.1. Agreement is Consistent With The Law

WEM, A4NR, CDSO and Henricks oppose the settlement as inconsistent with the law because of claims they were denied an opportunity to participate in settlement negotiations, that adoption of the Agreement before Phase 3 is completed is improper, or that allowing utilities to collect O&M expenses after January 31, 2012 violates the Public Utilities Code. Settling Parties assert these comments reflect a misapprehension of the Commission's settlement rules and the Code. [147]

Settling Parties dispute allegations by CDSO and Henricks that the settlement negotiations were "secret," non-inclusive, and a violation of Rule 12.1. Settling Parties contend Commission rules and precedents are "crystal clear" that the Utilities were entitled to negotiate with a limited number of parties.[148] Given that more than 20 parties intervened in the OII, Settling Parties assert negotiations with every party would have been impracticable, particularly when some parties made clear they did not believe a settlement should occur prior to completion of Phase 3. Furthermore, Settling Parties contend ratepayer interests were represented as evidenced by the proposed revenue requirement which is much closer to the litigation positions of TURN and ORA than to that of the Utilities.[149]

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146 Joint Reply Comments by Settling Parties (Settling Parties' RC) at 2.

147 Settling Parties' RC at 3-4.

148 *Id*. at 5-6 [citing D.10-12-035].

149 *Id*. at 6.

Settling Parties dispute that adoption of a settlement, prior to conducting Phase 3, is an improper attempt to avoid a prudency review of the SGRP and would result in unreasonable rates in violation of §§ 451, 454, 454.8, 455.5, and 701 of the Public Utilities Code. First, Settling Parties reply that the Commission's rules and prior decisions encourage cases to be settled. There is no inconsistency with the cited statutes, they argue, because the consolidated proceedings are categorized as "ratesetting," and the identified sections simply refer to the Commission's authority and task of ensuring utilities charge just and reasonable rates.[150] Settling Parties contend they can fulfill this duty without completing an investigation of SCE's prudence, and observe the Agreement does not ask the Commission to make any findings with respect to prudence.[151]

Settling Parties also dispute A4NR's view that collection of post-outage O&M expenses violates § 451 and § 455, or that § 455.5 requires that ratepayers "be held harmless" from all post-outage O&M expenses. To the contrary, they claim none of these sections require complete disallowance of all O&M costs the minute a plant begins a forced outage.[152] Instead, the Code anticipates that some reasonable O&M may be incurred as a result of a forced outage and § 455.5 permits, but does not require, the Commission to disallow expenses related to an out-of-service generation facility. Moreover, Settling Parties urge the Commission to consider the O&M provision as part of the whole Agreement

[150] *Id.* at 8.

[151] *Id.* at 11.

[152] *Id.* at 9.

which includes provisions for a substantial reduction in recovery of capital investment.[153]

Settling Parties dismiss as baseless Henricks' unsupported allegations of utility-Commission "collusion" and financial benefits to organizations participating in the settlement.[154]

5.3.1.2. Agreement is Reasonable in Light of the Whole Record and in the Public Interest

Opposing parties argue that adoption of the Agreement would be unreasonable in light of the whole record and contrary to the public interest because (1) Phase 3 will never be litigated; and (2) the Agreement could have different terms the non-settling parties deem preferable.

Settling Parties reply that because the Commission's rules and prior decisions encourage cases to be settled, parties must be allowed to settle cases before all relevant issues have been fully litigated. According to Settling Parties, Rule 12.1 does not require that a record be completely developed as to all contested issues, it requires a settlement to be reasonable in light of the developed record.[155] In support, they refer to a settlement over whether Pacific Gas and Electric Company imprudently constructed Diablo Canyon Power Plant where the Commission stated that settlement "necessarily …occurs before the

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[153] *Ibid.*

[154] *Id*. at 7.

[155] Rule 12.1(d) [citing D.06-02-003 (finding a settlement agreement met the Commission's standards for adoption because the agreement was "reasonable in light of the record developed in this proceeding.")

parties are aware of what the precise litigated result would have been after full hearing."[156]

Additionally, the proposed disallowances represent one of the possible outcomes if the Utilities were found to be imprudent in a phase 3, an important indicator of reasonableness.[157] At the May 14, 2014 hearing on the proposed settlement, TURN's witness, William Marcus, testified the proposed disallowances are "essentially a proxy for a finding of some kind of imprudence."[158] ORA's witness Mark Pocta testified that "addressing the prudency issue…isn't going to achieve anything further in getting the lowest possible rates for ratepayers. We achieved that in the settlement with regard to RSG issues."[159]

Settling Parties contend there is no basis to require an investigation for its own sake as sought by WEM and CDSO to determine whether the utilities behaved improperly; the Commission's duty is to ensure that rates are fair. Because the Agreement imposes substantial disallowances on the Utilities, Settling Parties state the reduced revenue requirement can be evaluated for reasonableness without a record on prudence.[160]

SCE also vigorously contests assertions by A4NR and CDSO that it should be presumed imprudent for failing to obtain a license amendment for the RSGs, by approving Mitsubishi's design, or by not contesting the NRC Notice of

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156 Id. at 12 [citing D.00-09-034, 2000 WL 1810229 at 10].

157 Settling Parties' RC at 11.

158 *Ibid*.; Reporter's Transcript (RT) at 2709.

159 *Ibid*.; RT at 2717- 2718.

160 Settling Parties' RC at 13.

Violation. Settling Parties assert these disputed claims have not been litigated in the record, and there is no legal or factual basis to presume in either direction.[161] Similarly, CDSO's claim that replacement of the steam generators was itself imprudent because the OSGs would have operated past February 1, 2012, is dismissed by Settling Parties as speculation and hindsight.

5.3.1.3. The Commission Should Reject Alternative Terms

Settling Parties ask the Commission to reject the various suggestions by objecting parties for alternative terms of settlement because settlements must be evaluated as a whole to determine whether the "overall end-result of the proposed settlement and its rates" are just and reasonable and, "not whether the settlement or its individual constituent parts conform to any particular ratemaking formula."[162] Adoption of the settlement does not bind the Commission in this or other proceeding, it represents a set of compromises among parties with different views on the optimal result in each cost category. Thus, Settling Parties ask the Commission to view the present value revenue requirement as the best indication of the overall end-result.

Specifically, Settling Parties disagree with proposed alternate terms as follows:

- Incentives for Third Party recovery are reasonable, and § 6.2 of the Agreement provides Commission oversight by requiring the utilities to file a Tier 2 AL to implement the sharing formula for recoveries. No reasonableness review

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[161] *Id*. at 14.

[162] *Id*. at 15 [citing D.04-12-017, 2004 WL 2961187 at 5 (quoting *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944)].

of the claims or settlements is necessary because the sharing mechanism creates proper incentives for the Utilities to maximize recovery in alignment with ratepayer interests.[163] Thus, the time and expense of such a review would be a waste of resources. The allocations are related to the terms of the Agreement and litigation costs are only paid if there is a recovery.

- Incentives for M&S and Nuclear Fuel - although a percentage higher than 5% might have provided a better incentive to sell nuclear fuel and M&S, it was Settling Parties' judgment that it would be unfair for the Utilities to retain 100% of sales proceeds.[164] No reasonableness review is necessary for costs of M&S sales because SCE has an incentive to minimize such costs. SCE also has an incentive to reduce its fuel purchase obligations and to minimize associated costs.
- CDSO proposals to appoint a "magistrate judge," and order new settlement discussions using its set of "criteria" and settlement terms, should be rejected. The proposals would diverge drastically from the proposed Agreement, and CDSO concedes its proposal would not necessarily achieve a different present value revenue requirement. It is inappropriate for the Commission to reject a settlement simply because alternatives exist.[165]
    - CDSO's view of prior Commission decisions regarding abandoned or prematurely retired plants ignores meaningful differences between these decisions and the situation at SONGS. CDSO's interpretations are flawed and, in any event, the Commission does not need to

[163] *Id*. at 17-20 [citing D.94-05-020, 54 CPUC2d 391, 395].

[164] *Id*. at 22-24.

[165] *Id.* at 25 [citing D. 93-03-021, 48 CPUC 2d 352, 363].

find the Agreement is directly consistent with prior Commission precedents.[166]

- WBA's proposals to delete certain language are unnecessary and inappropriate because the "General Recitals" portion of the Agreement, "simply provides a high-level overview of relevant background facts for context."[167] The identified references are from the Phase 1 record. The Agreement and supplemental testimony provide the summary information WBA seeks, and any "arrangements" with the federal government regarding spent fuel rod storage is not relevant to the Agreement.[168]
- Proposed reassignment by WEM and A4NR of certain costs from ratepayers to utility shareholders should be rejected because the Commission should not dissect individual provisions (*e.g.*, CWIP) which were settled as part of the numerous trade-offs in the Agreement. A4NR's analysis of CWIP treatment is flawed and inconsistent with treatment of CWIP at a plant undergoing early retirement.[169] The Agreement makes no finding as to when the plant could be considered "inoperable," nor is it bound to reflect the terms of a PD not adopted by the Commission.
    - A4NR cites no record support or Commission precedent for requiring "externalities" (*e.g.*, increased carbon emissions, impacts on wholesale electricity costs, "social costs") to be monetized and converted to a disallowance as a result of a plant shut-down.
    - Neither regulatory reports regarding the potential impact of the Agreement on future income, nor

166 *Id.* at 26.

167 *Id*. at 27-28.

168 *Ibid*.

169 *Id.* at 30.

executive stock sales or bonuses, are relevant to the reasonableness of the agreement as a whole.

- SCE submitted written testimony with its application for review of the SGRP costs which explained why the Handy-Whitman index is appropriate to convert nominal SGRP expenses to $2004.[170]

- The Agreement does not authorize any "raids" on the nuclear decommissioning trust funds. It merely acknowledges that the Utilities intend to seek recovery for qualified expenses, but leaves protests of such withdrawal requests intact, and negates double recovery.
- Omission of any provisions regarding community outreach about the SONGS outages does not render the Agreement unreasonable because circumstances have changed and SCE has permanently shut down SONGS.[171] If more should be done, the Commission could address outreach for decommissioning in another proceeding.
- AReM/DACC's requests regarding the implementation of the Agreement are not relevant to the Commission's determination of whether the Agreement should be adopted. Instead, the issues raised should be addressed through the Consensus Protocol's AL process in each utility's ERRA forecast proceedings. Although the Utilities agree the Consensus Protocol should apply to the Agreement, the requested rate treatment of replacement power costs is inconsistent with the Consensus Protocol.[172] DA customers and bundled customers should be treated symmetrically.

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[170] *Id*. at 32 [A.13-03-005].

[171] *Id.* at 34.

[172] *Id.* at 35-36.

5.3.2. SCE

SCE submitted separate Reply Comments to more thoroughly dispute four arguments made by opposing parties: (1) SCE "admitted" that it "violated NRC regulations" and contributed to Mitsubishi's design errors; (2) SCE failed to obtain a necessary license amendment for the design changes in the RSGs; (3) SCE should not recover certain categories of costs; and (4) the Agreement is unreasonable because it does not address indirect effects of the SONGS shutdown.[173]

Of particular significance, SCE maintains that Mitsubishi was responsible for the defects in the RSGs; SCE appropriately relied on Mitsubishi's expertise to design the RSGs, and was unaware of the imbedded flaws in the RSGs at the time they were designed and installed.[174] SCE acknowledges a licensee retains responsibility for the quality assurance program, but asserts the violation cited was minor and SCE did not admit it could have prevented Mitsubishi's errors. SCE argues the Commission would not automatically hold it liable for Mitsubishi's errors, nor construe the NOV as conclusory as to SCE's prudency, culpability, or financial responsibility for the consequences of Mitsubishi's acts or omissions.[175]

In addition, SCE states it sought and obtained all necessary license amendments for the SGRP, as described in publicly available documents.[176]

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[173] SCE Reply Comments at 1-2.

[174] *Id*. at 4.

[175] *Id*. at 5.

[176] *Id*. at 6-7 (The NRC's AIT report concluded "the steam generators major design changes were appropriately reviewed in accordance with 10 C.F.R. 50.59 requirements").

CDSO provided no support for it allegation that SCE rejected design changes to avoid license amendment requirements.

5.3.3. SDG&E

SDG&E submitted separate Reply Comments to address "inaccurate assertions by A4NR" about purported excessive growth of CWIP post-outage.[177] SDG&E claims A4NR misreads the record when it contends SDG&E's CWIP increased from $98.813 million as of January 31, 2012 to $239.886 million by December 31, 2013. Instead, SDG&E-22 identifies a CWIP balance of $110.854 million as of December 31, 2012 and an aggregate total of $129.031 million by December 31, 2013.[178] As of the end of 2013, no SGRP-related CWIP remained in CWIP. Therefore, SDG&E CWIP only increased $30.218 million (31%) post-outage.

6. Due Process Considerations

Henricks and CDSO raised procedural concerns about the process that led to the development of the Agreement, as well as the Commission's process for review of the Motion and Agreement. We find the processes by which the Settling Parties developed the Agreement, submitted it to the Commission, and the Commission considered it, are consistent with Article 12 of our Rules, as well as principles of due process.

We discuss the parties' various due process-related concerns and contentions below.

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[177] SDG&E RC at 1-2.

[178] *Id.* at 2.

6.1. The Settlement Conference

Both Henricks and CDSO argue the Joint Motion is procedurally defective because no settlement conference occurred which conformed with their understanding of Rule 12.1. CDSO "demand[s] that all parties be included" in any settlement.[179] CDSO and Henricks reject DRA and TURN as "hand-picked" ratepayer representatives that violate the rule's (alleged) requirement for utilities to bargain with all parties equally.[180] The core of this complaint is that Settling Parties arrived with a finished document at the noticed settlement conference, thus other parties present had no opportunity to engage in negotiations. Both Henricks and CDSO argue this is an insurmountable defect and a basis for rejection. We disagree.

Rule 12.1(b) provides, in relevant part:

> "Prior to signing any settlement, the settling parties shall convene at least one settlement conference with notice and opportunity to participate provided to all parties for the purpose of discussing settlements in the proceeding. Notice of the date, time, and place shall be served on all parties at least seven (7) days in advance of the conference…."

On March 20, 2014, SCE e-mailed a letter to the ALJs, the Commissioners, and the OII service list, which provided notice that SCE, SDG&E, DRA, and TURN would hold a settlement conference on March 27, 2014, "for the purpose of discussing terms to resolve the OII." No one disputes that a meeting occurred, although attendance is not in our record. CDSO complains that no settling party

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[179] CDSO Support of Henricks' Objection (May 8, 2014) at 2.

[180] CDSO RC at 15 ("The March 27, 2014 meeting did not provide parties in the proceeding with equal opportunity to participate"); Henricks Comments at 24-25. Rule 12.1 has no requirement that utilities must bargain with all parties "equally."

ever solicited information or opinion from it about whether or how to settle the OII. Moreover, CDSO asserts the two-hour meeting was insufficient to do anything other than receive clarification about the pre-determined Agreement. The Agreement was signed on March 27, 2014 by six parties.

We are not persuaded that due process violations occurred based on the above arguments. The Commission both allows and encourages settlements which meet our standard of review. Our rules recognize that proceedings may have numerous parties, with varying positions and interests, and possibly some have little or no interest in settlement. Thus, Rule 12.1 permits settlements which do not include all parties.

As a practical matter, complicated proceedings, such as the consolidated proceedings in this OII, have myriad issues that may lead to protracted discussions and various trade-offs among negotiators. It is neither prohibited nor unreasonable for parties to undertake negotiations prior to a noticed settlement conference. Participants in a settlement are voluntary and our rules do not require "equal" opportunity for all parties to be included in all stages of negotiations. Thus, a sub-group of parties may engage in negotiations, prior to a settlement conference, and that alone does not render them suspect.

What must minimally occur, based on plain reading of the rule, is that before any settlement agreement is signed, all parties must have notice of, and an opportunity "to participate," in a discussion about settlement. A settlement conference provides the opportunity to learn what the voluntary negotiators have worked out in their view as a fair and reasonable compromise of some or all issues. Parties have an opportunity to discuss it, determine whether they agree with the compromise, or explore whether settlement supporters are interested in accepting modifications or expanding negotiations to gain support of additional

parties. After the settlement conference on March 27, FOE and CCUE agreed to become signatories of the settlement agreement. Other parties did not.

This is a reasonable process for a complicated settlement of five consolidated proceedings. We expect that reaching compromise was a lengthy and difficult process, perhaps most efficiently undertaken with less than the full complement of parties to the proceeding. No party was prohibited from approaching any other party to discuss settlement. In fact, WBA which is not a Settling Party, established its "Settlement Principles" and engaged in settlement discussions with SCE in February 2014. There is no evidence that CDSO or Henricks ever initiated any settlement discussions with the Utilities or other parties, or otherwise indicated interest in resolution without full litigation. These objecting parties now seem disappointed they were not asked to be included in early discussions, but this is not a violation of due process.

Therefore, the Commission is unpersuaded that no conforming settlement conference was held, and concludes there is no basis to reject the Joint Motion on that ground.

6.2. Timing of the Settlement Agreement

A4NR raised process questions about the timing and scope of the Agreement, which A4NR claims are both limited under the Commission's Rules, to protect the public from harm that can arise from "arbitrarily pre-emptive and/or unduly expansive settlements."[181] We address timing below as a process matter, and the scope issue in § 7.1.1 .

[181] A4NR OC at 7.

Rule 12.1(a) limits the time for settlement proposals to "any time after the first PHC and within 30 days after the last day of hearing."[182] According to A4NR, the Agreement is dated "128 days after the Phase 1 Proposed Decision, 197 days after the close of the Phase 2 hearings, 263 days after the close of the Phase 1A hearings, and 344 days after the close of the Phase 1 hearings."[183] A4NR suggests this proposal may defeat the purpose of the timing restrictions, *i.e.*, to preclude attempts to resolve issues before their broad outlines have been defined at a PHC, and to tie efforts to resolve issues more closely to the evidence-gathering stage of a proceeding.

We are not persuaded that the Joint Motion is untimely and conclude the Joint Motion was filed consistent with Rule 12.1. It was filed and served on April 3, 2014, long after the first PHC was held on January 12, 2013. The January 28, 2013 initial scoping memo provided for hearings in a Phase 3 (as yet unscheduled), thus, the Joint Motion was also filed before the last days of hearing.

6.3. The Hearing on the Settlement Agreement

6.3.1. No Prehearing Conference

Henricks' objected to the ruling setting the May 14 evidentiary hearing because, she asserts, Rule 7.2 first required a PHC to be held. She also asserted there was insufficient time to review the underlying facts and circumstances leading to the settlement terms, given months of "secret" settlement negotiations.[184] CDSO supported Henricks' objections.

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[182] *Ibid*.

[183] *Id*. at 8.

[184] Henricks' Objection; CDSO Support of Henricks' Objection (May 8, 2014).

The objection is without merit. Rule 7.2 is part of Article 7 "Categorizing and Scoping Proceedings" governing the commencement of Commission proceedings. It does not apply to these facts.[185] Article 12, specifically governs the Commission's process for reviewing settlements.

Specifically, Rule 12.3 provides for a hearing if there are "material contested issues of fact." The settling parties must provide one or more witnesses to testify concerning the contested issues. Contesting parties may present evidence and testimony on the contested issues. Article 12 neither requires nor mentions a PHC before such a hearing, because the scope of issues are contested facts in the settlement agreement. If there are no material contested issues of fact, the Commission may decline to set any hearing. The scope of the hearing is not intended to include argument as to questions of law or policy which parties may present in Comments on the Joint Motion.

Therefore, the Commission is unpersuaded that it was required to hold a PHC, and finds no basis to reject the Joint Motion on that ground

6.3.2. Conduct of Hearing

CDSO argues the evidentiary hearing on the Agreement was too short for any reasonable review of the issues raised by the Agreement.[186] CDSO asserts error largely based on allegations that: (1) the ALJ "allowed counsel to coach the (SCE) witness" during objections to cross-examination questions by Henricks' counsel; (2) the ALJ improperly excluded questions by Henricks' counsel to

[185] Rule 7.2 governs the setting of a prehearing conference (PHC) for 45 to 60 days after the initiation of a proceeding, as a precursor to the issuance of a scoping memo.

[186] CDSO RC at 17.

SCE's President[187] regarding results of stock transactions made after the Agreement was announced; and (3) Commission President Michael Peevey, attending as an observer not a witness, did not respond to repeated questions by Henricks' counsel about his purported "collusion" with the Utilities and TURN, despite the fact the questions were ruled outside the scope of the hearing and inappropriate to a non-sworn person.[188]

Henricks criticizes the hearing because she was not permitted to explore SCE's internal analysis of the strengths and weaknesses of its legal position, or SCE's stock price after the settlement was announced, or reported sales of stock by SCE executives at a profit. She also erroneously charges she was prevented from presenting any evidence during cross-examination.

The Ruling Setting Hearing established the conduct of the hearing where Settling Parties had 20 minutes to present the Agreement, and non-settling parties had 75 minutes to examine the witnesses about "the meaning of the language in the proposed agreement, and any material contested issue of fact arising from the Agreement."[189] Furthermore, non-settling parties were afforded an opportunity to present evidence or testimony on material contested issues of fact if it was served on all parties five (5) days prior to the hearing. No evidence or testimony was submitted prior to the hearing.

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[187] Ron Litzinger.

[188] Eventually, Peevey responded in part, then affirmed his attendance did not make it appropriate for Henricks' counsel to demand he answer party questions at the settlement hearing.

[189] ALJ Ruling Setting Hearing and Requiring Supplemental Information on Joint Motion (Ruling Setting Hearing) (April 24, 2014) at 4.

Parties opposed to the Agreement contest the scope of the hearing as set forth in the April 24 ruling. The scope is identified by Rule 12.3 and is confined to material contested issues of fact. Instead, non-settling parties attempted to expand the scope to include a wide range of questions about the underlying facts and circumstances in the record. The Commission has previously described the purpose is not to conduct a "mini-hearing" on the issues in the proceeding.[190]

We are not persuaded the ALJ committed error in allowing counsel for SCE's witness to make and explain objections to questions posed by Henricks' counsel. For example, several objections arose regarding Henrick's questions about settlement negotiations which are generally considered inadmissible. Rule 12.6 provides, in relevant part:

> No discussion, admission, concession or offer to settle, whether oral or written, made during any negotiation on a settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission. Participating parties and their representatives shall hold such discussions, admissions, concessions, and offers to settle confidential and shall not disclose them outside the negotiations without the consent of the parties participating in the negotiations.

Objections were made by SCE's counsel when Henricks sought information from SCE's witness about what was discussed and by whom, during and surrounding the months-long settlement negotiations. Some expanded argument was made as a result of Henricks' attempts to parse aspects allegedly outside the prohibition. It was also reasonable to exclude cross-examination

[190] D.00-09-034, 2000 Cal. PUC LEXIS 694.

about discussions of SCE's legal position to the extent it involved SCE's attorney-client privilege.

Similarly, Henricks was unable to articulate a persuasive argument for the relevance of information about securities transactions (regarding either SCE or its parent, Edison International) purportedly made by SCE's witness, President Litzinger. It was unclear how Henricks' charge of bias from alleged profits cast doubt on Litzinger's testimony in support of the settlement. Henricks seemed to suggest Litzinger was personally motivated to have SCE settle to advance share prices for personal profit. Henricks did not explain how this constitutes bias against Henricks.

Lastly, Commission President Peevey was under no obligation to answer demands for information made by Henricks' counsel at the settlement hearing. The evidentiary hearing was conducted by the ALJs, as Presiding Officers, in conformity with the process set forth in the Commission's Rules of Practice and Procedure. Henricks' counsel engaged in disrespectful and improper conduct by shouting questions at Commissioners Peevey and Florio who attended the hearing as observers not witnesses. Moreover, the questions were coated in unsubstantiated conclusory charges about purported "collusion" with the Utilities and other Settling Parties. Henricks failed to establish any basis for the claims and questions, in addition to posing them in the wrong forum. The ALJ's ruling that the questions were out of order was reasonable and proper.

7. Discussion of Settlement Terms

The Commission's decisions express a strong policy favoring the settlement of disputes if a settlement is fair and reasonable in light of the whole

record.[191] The policy favoring settlements supports many beneficial goals, including the reduction of litigation expense, the conservation of scarce Commission resources, and the reduction of risk to the parties that litigation will produce unacceptable results.[192]

Any arguments raised by parties but not addressed herein, are considered to be without merit.

7.1. Agreement is Consistent With the Law

We agree with Settling Parties that the terms of the Agreement are not inconsistent with the applicable statutes (*e.g.*, § 451, § 455.5), rules, and prior Commission decisions.

The non-settling parties criticize the proposed settlement as inconsistent with the law generally on the following grounds:[193] (1) the Commission lacks authority to adopt a settlement of an investigation; (2) the motion to adopt the Agreement is defective because it lacks necessary information or the Agreement exceeds the scope of these consolidated proceedings; (3) the resulting rates will be unfair and unreasonable in violation of § 451 or other applicable Public Utilities Code sections; (4) prior Commission decisions require that the Utilities be authorized no rate of return on SONGS investment; (5) the NRC's Notice of Violation (NOV) is determinative of imprudence as to expenses related to all SGRP-related costs, before and after the outages; (6) ORA's participation in the

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[191] *See, e.g.*, D.88-12-083 (30 CPUC 2d 189, 221-223); D.91-05-029 (40 CPUC 2d 301, 326); D.05-03-022, mimeo., at 8

[192] *See,* D.92-07-076, 45 CPUC2d 158, 166; D.92-12-019, 46 CPUC 2d 538, 553.

[193] WEM, A4NR, CDSO and Henricks also raised due process concerns with the processes for development and consideration of the proposed settlement which the Commission separately addressed in Sections 7.0 through 7.3.2 of this decision.

proposed settlement is in violation of § 309.5; and (7) allegations by Henricks that the proposed settlement is the product of illegal collusion between the Utilities, one or more Commissioners, one or more ALJs, Commission staff and the non-utility Settling Parties.

The first issue is moot because it was answered in the Assigned Commissioner's and ALJs' Ruling Requesting Modifications of Proposed Settlement Agreement (Ruling re Modifications).[194] The Ruling re Modifications affirmed the Commission's authority to resolve an open investigation, just as for other proceedings, by adoption of a settlement, providing the specific proposal meets the Commission's criteria for approval in Rule 12.1.[195]

We discuss the other issues raised below.

7.1.1. Agreement Is Not Defective Pursuant to Rule 12.1

Both A4NR and Henricks focus on the portion of Rule 12.1 which provides that "Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings."[196] Both raise concerns about the breadth of the proposed settlement, and Henricks claims the Joint Motion is deficient due to insufficient information.

A4NR advises caution because the rule serves to deter parties from "comprehensive problem-solving" which could lead to overreach, missed details,

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[194] Ruling re Modifications (September 5, 2014).

[195] *Id*. at 4.

[196] A4NR OC at 7.

and unforeseen consequences.[197] Henricks suggests the Agreement's refund provisions may violate the scope language in the rule. [198]

Neither complaint as to scope is specific or supported. We are not persuaded that the Agreement is so far reaching as to exceed the broad scope of the issues included by the five consolidated proceedings. This is complex litigation and the proposed settlement necessarily has many provisions to resolve many questions. The Commission is accustomed to providing regulatory review of complex utility matters, and the Agreement does not require future ERRA proceedings to do anything other than follow the math of the applied credits. `

Henricks also charges the Joint Motion lacks a statement of sufficient factual and legal considerations to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged. We disagree. The 46-page Joint Motion describes the positions of the parties taken in the proceedings to date, describes and contrasts the terms of the Agreement, and sets forth their legal arguments as to how the Agreement is consistent with the criteria for adoption set forth in Rule 12.1. In conjunction with the record to date, including supplemental explanatory testimony provided by the Settling Parties, we also do not find the terms "ambiguous" or "incomprehensible."

The Commission has carefully considered the Agreement provisions and finds the substantial issues of ratemaking have been addressed and the terms of

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[197] *Id.* at 8.

[198] Henricks Comments at 26.

the Agreement do not exceed the scope of the issues in the consolidated proceedings.[199]

7.1.2. Resulting Rates Will Not Violate §451, §455.5, and §463(a)

If adopted as modified, the resulting customer rates applied would be just and reasonable, and would not violate the legal standards set forth in the Code. According to the Joint Motion, the proposed PVRR of $3.299 billion is approximately $1.409 billion less than the Utilities sought from the Commission, and between $600-$800 million more than either ORA's or TURN's previous litigation positions.[200]

Section 451 requires that rates be just and reasonable. Section 455.5 specifically guides the Commission in the event of a long-term outage.[201] It requires the Commission to open an investigation, and authorizes, but does not require, the Commission to remove from rate base the value of portions of a generating facility that have been out of service for nine or more months, along with related expenses. Section 463(a) authorizes disallowance of expenses arising from a utility's unreasonable error or omission related to the planning, construction, or operation of any portion of plant estimated to cost more than $50 million.

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[199] For 2014 general rates related to SONGS not addressed by the Agreement, we have ordered the Utilities to file applications for reasonableness review of their 2014 recorded costs; *see*, OP 4.

[200] Joint Motion at Attachment A.

[201] § 455.5 (e) also authorizes the Commission to review the effects of an outage lasting less than nine months.

A4NR and Henricks argue that various terms, and the Agreement as a whole, are not just and reasonable, in violation of §§ 451, 455.5, and 463(a), and cannot be charged to ratepayers. We disagree. The parties did not establish these statutes require the Commission to prohibit rate recovery of any and all post-outage expenses.

A4NR asserts, without support, that because "used and useful" is a "core requirement" of § 451's "just and reasonable" rates, the proposed settlement terms which allocate any costs accrued after January 31, 2012 to ratepayers must be illegal. The three identified provisions are:

- Excess O&M for closed facility = $785.0 million (2012 +2013)
- CWIP that never entered service = $584.0 million
- Replacement Power Costs through Effective Date = (approximately) $1.4 billion

We observe that § 451 does not include the words "used and useful," a capital-related concept, and that it requires a public utility to furnish and maintain more than efficient, just, and reasonable service (*e.g.,* also instrumentalities, equipment, and facilities necessary to promote the safety, health, comfort and convenience of patrons, employees and the public.) Thus, § 451 does not wield a ratepayer hatchet to O&M or other costs and projects at the moment a unit goes offline. Our previous decisions have recognized that outages may be scheduled or unscheduled, and may result in the need for longer-term activities which impact the health and safety of the public.

A4NR argues that no CWIP project could enter service after January 31, 2012 to become "used and useful," and it is unjust and unreasonable to recover

those capital costs from ratepayers.[202] Moreover, A4NR states, SCE failed to establish the Utilities are entitled to treat any CWIP as abandoned plant which would support recovery of investment, albeit without any return.[203]

We do not accept A4NR's broad exclusionary view. A4NR does not distinguish between CWIP projects completed or that entered service after January 31, 2012, but before June 12, 2013, when SCE announced the permanent shutdown. The CWIP category of costs includes projects related to the U2 RFO completed in March 2012, projects scheduled to meet existing regulatory requirements, and other projects arguably necessary for the safety of employees and the public, as presented in Phase 2. Thus, some portion of post-outage CWIP is at issue in these proceedings and we find it is not unjust or unreasonable, *per se*, for the settlement to provide limited rate recovery on CWIP investment.

Similarly, § 455.5 is not mandatory. We agree with Settling Parties that removal of SGRP Plant and SONGS Base Plant from rate base as of February 1, 2012, and disallowance of $99 million in post-outage RSG inspection and repair costs does not violate § 455.5.[204] These issues were the basis of Phase 2 and a substantial record exists as to the net investments in SGRP and Base Plant. Although the proposed exclusions from rate base and reduced returns are not the only possible ratemaking treatment, the proposed treatments are consistent with the requirements of §455.5.

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[202] A4NR excepts decommissioning-related project costs which should be recovered through the Nuclear Decommissioning Trust Funds (NDTF).

[203] A4NR OC at 41-42 [cite to, *e.g.*, 49 CPUC 2d 218, 221 (a burden of proof decision where the commission offers dicta about the application of §455.5 to replacement power costs)].

[204] *Id*. at 40.

Lastly, A4NR argues that the three cost categories, comprising the ratepayer allocation under the terms of the Agreement, violate §463(a). Section 463(a) requires the Commission to establish the utility incurred costs as a result of an unreasonable error or omission relating to the planning, construction, or operation of any portion of the SGRP. Despite the persistent allegations of the non-settling parties, the record does not establish that SCE made an "unreasonable error or omission" that resulted in certain expenses. [We do not otherwise opine on the applicability of §463(a) to these proceedings, or to all or portions of non-SGRP costs, *e.g.*, Base Plant.]

Based on the foregoing, the Commission is not persuaded that the proposed settlement terms violate § 451, § 455.5, or § 463(a).

7.1.3. Settlement is Not Inconsistent With Prior Decisions

CDSO relies on past Commission decisions involving removal of non-operating generation plant from rate base, in order to advance its argument that, based on our precedents, the Commission must remove all SGRP Plant and Base Plant from rate base as of January 31, 2012, and provide no return on the undepreciated SONGS investment.[205] We disagree because the decisions are more nuanced than argued and our decisions are not "one-size-fits-all."

CDSO argues the decisions support their view that the appropriate rate treatment here is to remove all SONGS assets from rate base and provide no return on net investment. However, CDSO has selectively extracted text, misstated a ruling, and overstated the implications of the decisions cited.

[205] CDSO OC at 12-23.

Instead, the decisions present a variety of ratemaking treatments tailored to the circumstances in the record.

Certainly, several of the decisions articulate the core principle that utility plant should be removed from rate base when it is no longer used and useful. The Agreement does not violate that principle. When looking to these decisions for guidance, we keep in mind that the parties herein disagreed as to when the RSGs, and other SONGS assets, became no longer used and useful. In the Geysers decision, the Commission affirmed removal of non-generating plant from rate base and no return on investment as of the time it was known the plant would never operate again.[206] This is a hotly disputed date in these proceedings.

The decision for Humboldt Bay Power Plant has distinguishable facts because Pacific Gas and Electric was allowed to collect its authorized rate of return for years before the Commission ordered removal from rate base and zero return on investment.[207] This was due, in part, to the fact the utility was trying to determine whether it could restart the unit.

Additionally, CDSO misstates the holding of the Hill Street Water Facility (*Hill Street*) decision where the *Hill Street* facility was retired because it could not produce drinkable water. The Commission actually authorized the utility to recover a return on the retired investment equal to the utility's incremental cost of debt.[208] The Commission also extended the amortization period to avoid rate shock.

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[206] 47 Cal. CPUC 143 (1992).

[207] 18 CPUC 2d 592.

[208] D.11-09-0176 at 8.

Similarly, the Commission allowed shareholders a return on the coal plant at Mohave for some years after it stopped generation, but before the Commission approved removal from rate base in 2012.

The Commission's decisions regarding SONGS 1 and the Helms Pumped Storage Plant (*Helms*) are also factually distinguishable. Approval of the SONGS 1 settlement is not binding precedent. The SONGS 1 dispute was factually distinct, including that SCE conditionally collected the authorized rate of return for several years while it was only operating intermittently (*e.g.*, one outage was 20 months) and then at substantially reduced capacity. Between 1980 and 1984, SONGS 1 operated at 13% capacity before it was removed from rate base.[209] Notably, in the decision closing the incomplete investigation to review the reasonableness of SCE's management of the SONGS 1 shutdown, the Commission confirmed its authority to adopt a settlement: "The settlement does not resolve the cost-effectiveness issue regarding SONGS 1. The settlement, instead, is a reasonable resolution of various ratemaking and resource planning issues in light of the continuing controversy over SONGS 1 cost-effectiveness."[210]

The *Helms* decision, which relieves ratepayers from certain costs subject to utility claims of third party liability for equipment failure, also has limited impact on our deliberations. In contrast to these proceedings, the Commission concluded in *Helms* that PG&E failed to perform at the appropriate standard of performance, based on findings of unreasonable acts, including that the utility

[209] D.92-038-036 at 6.

[210] *Id.* Finding of Fact (OF) 12.

ignored worksite safety violations, allowed inaccurate bid estimates, disregarded geological data, and failed to carry out required inspections, etc.[211]

Based on the foregoing, we are not persuaded that the proposed settlement, including provisions to allow for a limited rate of return on Base Plant over an extended period, is inconsistent with previous Commission decisions.

7.1.4. NRC Notice of Violation to SCE is Not Determinative of SCE's Imprudence

The four opposing parties, A4NR, WEM, CDSO, and Henricks, urge the Commission to reject the settlement and argue we have a duty to hold a Phase 3 to answer various questions about the SGRP. For example, WEM argues the public has a "right to an investigation," and CDSO argues the common law legal doctrine of "*res ipsa loquiter*" applies to establish imprudence.[212] Neither theory is supported.

SCE replied there is also no legal basis for CDSO's assertions that *res ipsa loquitur* allows this Commission to "presume" imprudence in the OII. In fact, the Commission has expressly held that it "does not consider the doctrine to establish a conclusive presumption" of imprudence.[213]

On the other hand, A4NR offers a different legal theory. A4NR contends that after the NRC issued a Notice of Violation (NOV)[214] to SCE in December

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[211] 18 CPUC 2d 700, 1985 Cal. PUC LEXIS at *49-50.

[212] Latin, "the thing speaks for itself;" D.94-07-067, 55 CPUC sd 499, 500-01 (July 20, 1994) (Commission does not consider the doctrine of *res ipsa loquitur* to establish a conclusive presumption of imprudence..

[213] 55 CPUC 2d 499, 500-01 (1994).

[214] *See*, http://pbadupws.nrc.gov/docs/ML1335/ML13357A058.pdf.

2013, the Commission must legally treat the NOV as conclusive that SCE was imprudent as to the entire SGRP and other related and consequential costs. The NRC found that SCE failed to verify the adequacy of Mitsubishi's design of the RSGs, which resulted in significant and unexpected steam generator tube wear and the loss of tube integrity on Unit 3 Steam Generator.[215] The NRC stated the finding is appropriately characterized as White, a finding of low to moderate safety significance. SCE provided explanatory comments, but did not contest the NOV.[216]

A4NR concludes the NOV compels SCE to admit imprudence and the Commission to assume SCE did not conform to the "reasonable manager standard" because regulatory compliance is an important factor. According to A4NR, if the settlement is rejected, the resulting Phase 3 would simply establish the costs to be allocated to shareholders.

We disagree with A4NR that the existence of this NOV alone, is legally sufficient to establish SCE's overall imprudent management of the SGRP. A4NR provided no citation support for its theory of strict and broad liability arising from a single low to moderate safety violation by SCE. Instead, other evidence would be necessary.

In a Phase 3 inquiry, SCE's decisions that led to costs would be evaluated with regard to information available to it at the time and not with the benefit of hindsight. This promises to be a fact-intensive record. The consequence of

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215 *Ibid.*

216 *See*, http://pbadupws.nrc.gov/docs/ML1329/ML13296A018.pdf.

finding SCE imprudent at some point during the SGRP would likely be to disallow costs, but the range of evidentiary outcomes is wide.

For example, SCE views the NOV as a technical violation, and responds that it contracted with Mitsubishi to perform the design functions, purportedly an industry standard for utilities purchasing nuclear plant components. [217] This type of industry practice evidence is what the Commission typically considers as part of its effort to determine whether a utility has acted reasonably.[218] We acknowledge that an NOV is a significant regulatory action, and that this one relates specifically to the RSG design process. However, not all violations are equal nor of a severity as to invoke an automatic presumption or conclusion of imprudent management over a five to seven year project.

Here, there are fingers pointed between SCE and Mitsubishi in a pending arbitration. In fact, the NRC also issued a Notice of Noncompliance to Mitsubishi because it found errors with Mitsubishi's modeling of the vibration analysis it relied upon to assure SCE the design was compliant with NRC requirements.[219] Therefore, SCE's knowledge, when making decisions to incur costs between 2005 and 2009, is still unsettled and cannot be overlooked when evaluating the reasonableness of SCE's SGRP-related decisions.

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[217] http://pbadupws.nrc.gov/docs/ML1329/ML13296A018.pdf; "Contracting with the equipment vendor to perform required nuclear quality assurance activities, as authorized by 10 CFR Part 50, Appendix B, Criterion I, is the normal and standard practice for utilities engaged in purchasing nuclear plant components."

[218] 53 CPUC2d 452 1994 CPUC LEXIS at *30 (Mohave Coal Plant Accident).

[219] http://pbadupws.nrc.gov/docs/ML1331/ML13311B101.pdf (Nonconformance with Criterion III of Appendix B to 10 CFR Part 50 (Specifically, the code and inputs to the flow induced vibration analysis software (FIVATS) vibration code were not verified to be in accordance with MHI design requirements).

Based on the foregoing, the Commission does not find that the NOV issued to SCE is determinative of the company's prudence when managing the SGRP.

7.1.5. ORA's participation Violates § 309.5

WEM argues that ORA violated its statutory duties by participating in the proposed settlement. Section 309.5 provides that the purpose of ORA is "to represent and advocate on behalf of the interests of public utility customers…..goal…is to obtain the lowest possible rate for service consistent with reliable and safe service levels."

According to WEM, ORA's original litigation position was to apply performance-based ratemaking principles, rather than cost-of-service principles. Because the Agreement is more aligned with cost-of-service ratemaking, WEM charges that ORA "abdicated its responsibilities" to ratepayers.[220]

We are not persuaded there is any merit to WEM's argument which lacks any clear analysis or citation support.

7.1.6. Allegations of Collusion

Henricks has made numerous unsupported claims of collusion and financial benefit to the non-utility Settling Parties as the pillar of her opposition to the proposed settlement. She identifies the key "factual" evidence as follows:

- the delay and avoidance of the central issues;
- the failure to allow depositions to be taken;
- the misrepresentation to the public of the terms of the agreement;

[220] WEM OC at 5.

- allowing for a "silent" stay of the proceedings based on a letter from SCE; and
- other factors identified in the fact section of [Henricks Comments].[221]

These "facts" are misstatements of evidence and rulings, and opinion which lacks foundation. It is not enough for a party to simply repeat unsupported allegations, and then argue that it must be true because the allegations have not been specifically refuted. Settling Parties call the charges "baseless" and we agree. We particularly take exception to Henricks' misrepresentations of both the motives and rulings of the Assigned Commissioner and ALJs.

There is no evidence of collusion. The parties' identities are separate and their interests distinct. We note that settlement negotiations have taken more than a year, each side relied on in-house and outside counsel to research and conduct settlement negotiations and the Agreement was reached after the parties had exchanged information, litigated three phases of the OII, and engaged in comprehensive independent discovery. The negotiation process allowed the parties a further opportunity to review the relative strengths and weaknesses of their litigation positions. Every indication is that counsel on each side adequately analyzed the risks and benefits of their clients' respective positions, and advised their clients competently. Notably, not every party who engaged in negotiations signed the Agreement, and some parties who did not participate in negotiations signed it.

[221] Henricks Comments at 27-28.

Argument suggesting Settling Parties did not explore their co-signors analyses or motives for settlement, [222] is neither determinative nor particularly troublesome. In a settlement, each party undertakes an analysis of its own interests in light of its organizational goals, including the probable risks and benefits of litigation, as well as other factors that may move a party to modify its position. The Commission's duty is to test the result against the Rule 12.1 criteria.

We are perplexed by the peculiar claim that non-utility Settling Parties supported the proposed settlement in order to financially benefit from the Commission's Intervenor Compensation program. A key requirement of whether an intervening party may receive ratepayer funds for participating in a proceeding is the party's substantial contribution to the final decision.[223] Therefore, parties would conceivably earn more if the Agreement was rejected and Phase 3 was continued.

Henricks' claims lack facts, as well as clear analysis or citation support. Therefore, we do not find merit to her claims of collusion.

7.1.7. Other Legal Claims

Henricks posed about two dozen questions which she claims are material contested facts that require a hearing pursuant to Rule 12.1. [224] About half are

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[222] CDSO RC at 10-14.

[223] *See*, http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/; (Intervenor Compensation Program Guide at 2 (The Intervenor Compensation Program is intended to ensure that individuals and groups that represent residential or small commercial electric utility customers have the financial resources to bring their concerns and interests to the CPUC during formal proceedings).

[224] Henricks Comments at 30-34.

challenges to the conduct of Settling Parties during their negotiation process (*e.g.*, did they act in good faith, were negotiations hard fought, were positions truly compromised and accurately described, etc.) but she offered no facts to rebut the record statements of the six Settling Parties. Some questions fail to acknowledge that the topics are part of the existing record (*e.g.*, when the U2 RFO began, when U3 went offline, SCE's efforts at restart of U2, effects of the NRC's Confirmatory Action Letter, etc.) Other questions relate either to the decisions of the Assigned Commissioner and/or ALJs on how to administer the proceedings, or to express disagreement with a ruling.

Henricks had almost six weeks to serve pre-hearing discovery related to the proposed Agreement, an opportunity to make these inquiries at the evidentiary hearing, and an ability to bring forth evidence of contested facts.[225] Henricks' did not offer testimony or other evidence into the record on the settlement, and chose to focus cross-examination in areas which bore little illumination to the claimed contested facts. In addition, her implication that parties were precluded from undertaking discovery on Phase 3 issues is misleading.[226]

Based on the foregoing, the Commission finds the proposed settlement Agreement is consistent with the law and precedent, and it does not contravene any statute or Commission decision or rule.

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[225] ALJs Ruling Setting Hearing at 8 (All discovery requests related to the Agreement shall be served by May 15, 2014 and responses concluded by May 20, 2014).

[226] *See, e.g.*, ALJ Ruling on Various Motions (January 7, 2014) (Henricks moved to compel discovery of specific personnel and other records related to the RSG design, but she failed to specifically identify any substantive information that she sought that was not included in the documents already produced by SCE; the motion was denied without prejudice).

7.2. Agreement is Reasonable in Light of the Whole Record

In view of the complexity of the legal and factual issues, the terms of the settlement are reasonable. The Agreement is reasonable in light of the whole record as it reasonably responds to the issues framed by the OII and consolidated proceedings, the scoping memos, and to concerns expressed by parties during Phases 1, 1A, and 2. The overall result for ratepayers is also within the range of possible outcomes supported by the record as illustrated by the PVRR provided by Settling Parties.[227]

The record includes, but is not limited to, the following: written testimony and exhibits submitted by the Utilities and other parties in Phases 1, 1A, and 2; transcripts from more than two weeks of evidentiary hearings; Opening and Reply Briefs for all three sets of hearings; supplemental testimony, exhibits, and transcript from the evidentiary hearing on the proposed settlement; and Opening and Reply Comments on the proposed Agreement.

We also observe that SCE, pursuant to our order, has publicly web-posted hundreds of data requests and responses connected to these proceedings, links to NRC documents and filings, and various meeting notes from the Mitsubishi-SCE RSG Design Review Team and Anti-Vibration Bar Team. These posted documents are not in the record, may be incomplete, and have not been subject to cross examination. However, some of these documents relate to Phase 3 issues and were available to parties prior to the proposed settlement for review and

[227] Joint Motion at Attachment 2.

inquiry. Furthermore, despite a claim to the contrary, the ALJs did not prohibit discovery related to Phase 3 issues.[228]

On September 11, 2014, the ALJs issued a ruling which took official notice of final actions by the NRC which (1) found Mitsubishi failed to conform its modeling procedures to NRC requirements and fully anticipate vibration stresses in connection with the larger RSGs; and (2) found SCE in violation of a duty to ensure quality assurance programs related to the Mitsubishi design. Other documents related to SONGS and the SGRP that the Commission has officially noticed are NRC's Grant of SCE License Amendment re U2 and U3 Technical Specifications (June 25, 2009); NRC Augmented Inspection Team Report (July 18, 2012); and Notice of Closure of Investigation (July 28, 2014). The record of this proceeding establishes, *inter alia*, the Utilities' recorded (1) SONGS-related post-outage expenses; (2) costs of power purchases (including replacement power) to meet reliability and service needs; (3) the present net value of SGRP assets in rate base; (4) the present net value of other Base Plant at SONGS; and (5) the amounts collected in rates from ratepayers for these categories. In addition, the record establishes that Mitsubishi, the NRC, and SCE all conducted inspections to determine the causes of the U3 RSG leak and each concluded that excess vibration arising from fluid elastic instability, likely a design error, was a key factor in the failure. The NRC Notices to Mitsubishi and SCE reveal a regulatory view that both companies erred in some way during the design development for the RSGs.

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[228] After the ALJs' Ruling Setting Hearing on the settlement, SCE apparently assumed that the ALJs restraint on moving forward proposed decisions for Phases 1, 1A, and 2 pending review of this settlement, was a basis to not further respond to Phase 3-related discovery requests. However, this position was not the basis for any motion to compel discovery.

CDSO and Henricks cite the lack of Phase 3 testimony and hearings as fatal to the Commission's ability to evaluate the proposed settlement as reasonable in light of the whole record. The Commission has previously held that termination of an investigation prior to completion of all hearings, in and of itself, does not prevent adoption of a settlement which otherwise complies with Rule 12. Here, parties have been able to engage in discovery since November 2012 and the developed record is broad and voluminous.

In addition, the public actions by NRC and SCE's public web-posting of numerous design review–related documents, have given parties a reasonable opportunity to initiate discovery regarding SCE's SGRP conduct. Yet, Opposing Parties offered nothing----only speculation and unsupported allegations--- to brace claims that egregious acts by the Utilities, and specific executives, would be uncovered by a Phase 3 record. They did not contend a Phase 3 record would establish different recorded expenses or revenues collected from ratepayers.

Therefore, the Commission concludes we have sufficient information based on the record developed, to reasonably consider settlement of these proceedings, including the OII, prior to completion of Phase 3. We discuss the specific terms and the Agreement as a whole below.

7.2.1. Recovery of 2012-2013 Operations and Maintenance (O&M) and Non-O&M Costs

The proposed treatment of 2012-2013 O&M and non-O&M costs is reasonable in light of the whole record.

In Phase 1 Testimony, SCE provided a summary of O&M costs, totaling $488.7 million (100%, 2012$), which is approximately $100 million more than the

$389 million preliminarily authorized in D.12-11-051.[229] For 2012, SDG&E's reported total O&M is as follows: $106.122 million for Base-Routine (plus overheads paid to SCE) and $27.043 million for SGIR-related.[230] These values are approximately consistent with those described in the Agreement.

The 2012 and 2013 Year-End (YE) SONGSOMA reports, show that the Utilities recorded the following in non-capital expenses for those years:

	2012		2013	
Subaccount	SCE	SDG&E	SCE	SDG&E
Base -Routine O&M	$300,489	$72,685	$241,176	$43,075
Seismic Safety	$3,261	$832	$6,843	$1,847
Investigation	$67,059	$17,155	$4,089	$737
Repairs – After Outage	$27,302	$6,004	$-	$-
Regulatory – After Outage	$3,421	$903	$7,678	$1,606
Defueling	$932	$167	$-	$-
Litigation	$6,145	$-	$21,953	$-
Payroll Taxes	$13,442	$3,744	$7,995	$2,242
Other (Pensions, PBOP, Insurance)	$23,059	$31,624	$23,059	$19,931
Total	$443,536	$133,294	$312,793	$69,438

The Agreement treats recorded O&M expenses as if the plant were operational, even though offline, based on SCE's testimony that it still had a

[229] SCE-35 at 6.

[230] SDG&E-11 at 2 (reallocates $2.11 million in "Base-SGIR"); SDG&E Motion to Supplement Opening Brief at A-2.

substantial amount of routine maintenance and regulatory compliance activities prior to June 2013. Furthermore, SCE's explanation that some personnel were re-directed to activities related to the restart effort was corroborated by evidence showing the vast majority of SGIR expenses were for engineering activities. A reasonable plant operator would take steps after a leak such as the one in U3, to try to figure out what went wrong and try to fix it and restore generation. At some point this becomes unreasonable or cost-inefficient. Thus, the Agreement's disallowance and refund of about 2/3 of the SGIR costs is reasonable.

WBA finds the Agreement "generally consistent" with its recommendation that the Utilities recover their labor costs until June 7, 2013 and a 90 day "gradual lay-off" period.[231] WBA also supports rate recovery for costs associated with storing spent fuel, but does not quantify this amount.[232]

On the other hand, several parties oppose the proposed treatment of O&M. WEM suggests that ratepayers should not pay for O&M after the beginning of the outage.[233] A4NR agrees and expresses two rationales for this opposition. First, it is unreasonable for the Utilities to recover O&M after SONGS is no longer a rate base asset generating electricity (February 1, 2012). Second, full rate recovery contrasts with the Phase 1 PD, which reduced O&M recoveries to one third of preliminarily authorized levels beginning in November 2012.[234]

We are not persuaded that it would have been reasonable to do nothing when the leak was discovered. In fact, the NRC found that SCE responded

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[231] WBA OC at 7.

[232] *Id.* at 4.

[233] WEM OC at 5.

[234] A4NR OC at 23-25.

properly to the unexpected shutdown. The allocation of these costs somewhat favor the Utilities but it was reasonable, for some part of 2012, to attempt to save the assets. Furthermore, until the decision to close SONGS permanently was accepted by the NRC, SCE was obligated to follow regulatory requirements for inspections, maintenance, repair, etc.

CDSO would restrict recovery to its own definition of "NWO-related costs" and estimates this value at $92 million.[235] However, there is little record basis for this number or to adopt it as a cap on recovery.[236]

Therefore, the settlement provisions related to O&M and other non-O&M operating expenses are reasonable and within the range of possible outcomes based on the record.

7.2.2. Recovery of CWIP

Our evaluation of the proposed treatment of CWIP is hindered by costs measured in combination with other factors, or in a snapshot at different dates than used in the agreement. Nonetheless, we find with proper supporting documentation, CWIP costs can be quantified and sufficiently verified in the subsequent tariff letters. We find that due to the extra steps necessary, the provision is reasonable when considered in context of the whole agreement, and in light of the whole record.

The agreement allows the Utilities to recover all CWIP, although the recovery details depend on whether the specific item is considered "cancelled" or "completed" CWIP. Notably, Completed CWIP potentially includes projects

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[235] CDSO OC at 39 and CDSO RC at 22.

[236] CDSO first introduced the "Nuclear Waste Operations" or "NWO" concept in its Opening Brief on Phase 2; it is not discussed in evidence.

that will enter service after the effective date of this decision.[237] In addition, the Agreement directs the Utilities to seek recovery of CWIP completed after June 7, 2013 from the Nuclear Decommissioning Trusts.[238]

The actual amount of CWIP to be recovered cannot be readily validated using information in the record of this proceeding. CWIP balances fluctuate each month based on projects completed and moving into rate base, offset by addition of new projects accruing expenses. The Utilities argue that CWIP projects are scheduled based on operational factors, and are often started well in advance of completion. Importantly many CWIP projects had been started prior to the beginning of the outage.[239]

According to the Agreement, SCE had $153 million of Cancelled CWIP and $302 million of Completed CWIP as of December 31, 2013; no values are provided for SDG&E.[240] However, these figures differ from CWIP recorded in the SONGSMA. SDG&E identifies YE2012 and YE2013 aggregate CWIP balances as $110.854 million and $129.031 million, respectively.[241] No SGRP-related CWIP remained in CWIP at the end of 2013. Therefore, SDG&E CWIP only increased $30.218 million (31%) post-outage. In Phase 2 testimony, SCE detailed CWIP work orders separated into several categories, consistent with its Phase 2 ratemaking proposal. Although that proposal is not directly incorporated into the Agreement, the sums of the CWIP categories (as of May 31, 2013) provide a

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[237] Agreement ¶2.13(b).

[238] Agreement ¶4.8.

[239] SCE-40 at 9-10.

[240] Agreement ¶¶3.40-3.41

[241] SDG&E-22.

useful comparison, and are summarized in the following table. Note that "Net Investment" represents the depreciated value of the asset; "Net Investment Required" represents the portion of the depreciated value that the Utilities proposed was still needed to operate the plant after the shutdown (*i.e.* Net Investment Required is the product of the "% Used & Useful" and "Net Investment").

	% Used & Useful	**Net Investment**	**Net Investment Required**
Not Needed	0%	$145,710,179.85	$-
Staffing Level	39%	$ (140,090.58)	$ (54,827.85)
Plant Condition	40%	$21,121,716.11	$8,464,687.76
Needed	100%	$62,810,809.38	$62,810,809.38
Total	n/a	$ 229,502,614.76	$71,220,669.29

SCE's year-end 2013 SONGSMA monthly report shows a CWIP balance of $236 million. SDG&E's year-end 2013 SONGSMA quarterly report shows a CWIP balance of $129 million.[242]

A4NR leads the criticism of this provision of the Agreement, suggesting that CWIP should be treated as "abandoned plant."[243] A4NR states SCE's figures represent "an increase of 60% since SONGS stopped generating electricity."[244] A4NR estimates that $584 million of CWIP has never entered service, without citing record support.[245]

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[242] SDGE-22.

[243] SDG&E Quarterly Report (April 1, 2014) in Compliance with I. 12-10-013 at 1.

[244] A4NR OC at 26.

[245] A4NR RC at 6.

CDSO proposes that CWIP related to nuclear waste should be recovered through its proposed "transfer to the Decommissioning operation." CDSO estimates this portion of CWIP at $69 million, with the remainder to be salvaged and retained by the Utilities.[246]

Settling Parties respond to these criticisms by differentiating SONGS CWIP from other instances (Helms, Geysers 21) where the Commission has disallowed CWIP as abandoned plant.[247] Further, Settling Parties argue that Phase 1 evidence contains reasons for growth in CWIP after the beginning of the outage, including "emergent regulatory- and safety-driven projects necessary irrespective of whether the units return to service."[248]

Since the CWIP values recited in the Agreement cannot be readily validated based on the record of this proceeding, our review is limited to the policy question of whether the structure of the CWIP recoveries proposed in the Agreement is reasonable in light of the record. It is reasonable that the Utilities continued to make CWIP investments after the outage began to meet safety and regulatory requirements, and at least some of these projects are necessary for the plant in a shutdown condition. We find the proposed outcome is in the range of possible outcomes based on the record. Pursuant to the Agreement, the Utilities must, in the Advice Letters implementing this decision, identify and support the CWIP values to be recovered in rates, and ORA, and TURN have committed to review and validate these figures.

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246 CDSO OC at 37.

247 JSP RC at 30.

248 *Ibid*. and SCE-4 at 87.

7.2.3. Reduction of Current Inventories

The proposed treatment of Nuclear Fuel Investment (NFI) proposed in the Agreement is reasonable in light of the whole record.

Nuclear fuel procurement requires significant lead times and SONGS had an inventory of nuclear fuel and contract commitments when the SONGS outage began.[249] The Agreement states that SCE's share of the NFI was $477 million as of December 31, 2013 and SDG&E's share was $116 million. This is approximately consistent with Phase 2 testimony, and these numbers were not disputed.

The Agreement allows the Utilities to recover the entire NFI, including Fuel Cancellation Costs, over the same amortization period as Base Plant, but at a rate of return based on commercial paper. As an incentive, the Utilities will keep five percent (5%) of the proceeds from selling nuclear fuel, net of costs for storing and preparing the fuel for sale. The ninety-five percent (95%) ratepayer share of net proceeds will reduce the NFI recovered in rates. Further, the Utilities will also keep 5% of the difference between fuel purchase obligations and recorded Fuel Cancellation Costs as an incentive to minimize cancellation costs. The 5% incentive portion of this difference will be *added* to NFI.

Some parties (*e.g.*, A4NR, WEM, CDSO) criticize the proposed NFI treatment. For example, WEM and CDSO argue SCE should not have replaced fuel in U2 in February 2012 during the scheduled RFO because the recent U3 outage was notice that U2 was not likely to return to service. CDSO estimates the value of this fuel as $121 million and argues that there should be zero return

[249] Exhibit SCE-40 at 12.

on any post-outage NFI.[250] However, the Phase 1 evidence established that refueling occurred during the scheduled outage, after initial U2 inspections and repairs, and before SCE had sufficient evidence to delay placing fuel in the reactor of U2.[251]

Both A4NR and WBA raised concerns about the 5% incentive. WBA also expressed doubts about whether ratepayers should have to pay for unused fuel which cannot be sold. A4NR also questions the reasonableness of applying the incentive to cancellation costs due to insufficient review. A4NR dismisses the Agreement's "feeble enforcement clause (section 6.1)" providing "resource- strapped" ORA and TURN with review rights. However, the modest incentives are a reasonable approach to prod SCE to maximize revenue which favors ratepayers. Furthermore, A4NR's oversight concern is mitigated by the changes adopted by the Settling Parties in the Amended Agreement and discussed below in Section 9.5. These policy questions are presented in a unique set of circumstances, and the proposed resolution is within the range of possible outcomes based on the record.

Therefore, the provisions related to NFI are reasonable and within the range of possible outcomes based on the record.

7.2.4. Materials and Supplies

The treatment of Materials and Supplies (M&S) proposed in the Agreement is reasonable in light of the whole record.

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[250] WEM OC at 4; CDSO OC at 38.

[251] SCE-10, Question 4 at 1 and RT: 852.

Operating power plants generally maintain an M&S inventory and are allowed to a full rate of return on that inventory. SONGS had such an inventory when the outage began.[252] The Agreement allows the Utilities to liquidate the M&S inventory, and retain 5% of the salvage proceeds as an incentive to maximize the salvage recovery. Similar to NFI, CDSO and A4NR oppose this 5% incentive for M&S; CDSO also notes that refunds should not be delayed due to the salvage process.[253] We again find these modest incentives are a reasonable approach to maximize ratepayer value and that the enforcement concerns are mitigated by the changes adopted by the Settling Parties in the Amended Agreement.

The Agreement states that the Utilities' recorded M&S inventory at December 31, 2013 was $99 million for SCE and $10.4 million for SDG&E. This is approximately consistent with Phase 2 testimony that the Utilities' recorded M&S values at May 31, 2013 were $100 million for SCE and $10.1 million for SDG&E.[254] However, more recent testimony shows SCE's average 2013 M&S balance was somewhat lower, at $89 million.[255] This is not particularly troubling because SCE testified in Phase 1 that it continued to undertake required and scheduled maintenance after the units went offline. Thus, it is reasonable that existing M&S inventory was used for various required repairs up until the time NRC accepted notice of closure in2013 and adjusted the maintenance schedules in SCE's Technical Specifications for SONGS.

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[252] SCE-40 at 10-11.

[253] CDSO OC at 37; A4NR OC at 52.

[254] SCE-44 at 14; SDGE-16-B at 6.

[255] SCE-54 at Question 6.

Therefore, the provisions related to M&S are reasonable and within the range of possible outcomes based on the record. The Utilities shall provide detailed validation and support the M&S balances to be recovered in rates in the Advice Letters implementing this decision.

7.2.5. Recovery of Net Investment and Reduced Return on Base Plant

The proposed recovery of Base Plant over a ten year period (2012-2022) at a reduced rate of return is reasonable in light of the whole record.

Henricks argues that the Utilities should recover nothing for Base Plant after the outage began due to imprudence or unreasonable actions.[256] CDSO also assumes imprudence, and recommends that all assets, except for a portion ($342 million by original cost; $83 million depreciated) in NWO-related assets, should be "transferred to the decommissioning activity" along with a full return ($8 million).[257] On the other hand, WBA finds the proposed recovery to be "not at odds with" its settlement principles and A4NR supports the depreciation period and rate of return.[258]

As discussed previously, there is no record basis for an assumption of broad imprudence by Edison, accordingly, Henricks' and CDSO's arguments premised upon such a finding have no merit. In addition, CDSO's recommendation that the SONGS assets be "transferred to the decommissioning activity" is incomprehensible and reflects a misunderstanding of California's compliance with federal funding assurance laws for nuclear decommissioning.

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256 Henricks RC at 19.

257 CDSO OC at 36.

258 WBA OC at 5 and A4NR OC at 58.

In Phase 2, both the amount of assets that would be depreciated and the appropriate rate of return were disputed issues. SCE and SDG&E proposed that 23% of SONGS assets would remain in rate base at full rates of return, while the other 77% would be recovered over five years at a reduced rate of return that is higher than that allowed in the Agreement.[259] In contrast, both DRA and TURN suggested zero rate of return for assets removed from rate base, and DRA advocated that only 75% of assets should be recovered at all.[260] The Agreement clearly represents a compromise between these positions and is within the range of possible outcomes.

This compromise is clearly demonstrated in the PVRR calculations, which show that SCE's Base Plant PVRR under the Agreement is $360 million less than SCE's litigation position and $348 million more than ORA's position.[261] According to the Agreement, as of February 1, 2012 SCE's share of Base Plant was $622 million and SDG&E's share was $165.6 million, including CWIP.[262] SCE's Year End 2012 SONGSMA report shows a February 1, 2012 rate base balance of $546 million, and SDG&E's shows a balance $104 million.[263] For SDG&E, adding $66 million in CWIP to the rate base balance yields $170 million, approximately consistent with the Agreement.

Therefore, the provisions related to recovery of Base Plant are reasonable and within the range of possible outcomes based on the record. The Utilities shall

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[259] *See*, SCE-36, SCE-40, and SDG&E-18-B for the complete proposal.

[260] *See*, DRA-3, DRA Phase 2 OB, and TURN Phase 2 OB.

[261] Calculated from SCE-56.

[262] Agreement ¶3.37.

[263] SCE's report is dated April 1, 2013, and SDG&E's is April 2013.

provide detailed validation of the actual Base Plant amounts to be recovered in their tariff filings implementing this decision. Such validation shall clearly demonstrate that the Base Plant recovery does not double count other values such as CWIP and M&S.

7.2.6. No Recovery for Post-Outage SGRP costs

The disallowance of SGRP costs beginning February 1, 2012, and allowance of SGRP costs before that date, are reasonable in light of the whole record.

The Agreement states that SCE's share of the Net Book Value of the SGRP, including CWIP, was $597 million as of February 1, 2012 and SDG&E's share was $160.4 as of the same date. These values are consistent with testimony in this proceeding as summarized below.

	SCE[264]	**SDG&E**[265]
Plant in Service	$ 590	$ 149
Accumulated Depreciation	$ (84)	$ (16)
CWIP	$ 91	$ 27
Total	$ 597	$ 160

Parties offered a variety of attacks on the proposed treatment of SGRP costs. Henricks opposes the disallowance because it would result in no comprehensive reasonableness review of the SGRP.[266] A4NR argues pre-2012 SGRP costs should be disallowed due to SCE's imprudence.[267] Further, A4NR suggests the inflation-adjusted costs of the SGRP were under the authorized

[264] SCE-54 at Question 3.

[265] SDGE-22 at 2.

[266] Henricks OC at 23-24.

[267] A4NR OC at 17-21.

amount only because SCE applied the Handy-Whitman Index to de-escalate costs to $2004, and estimates that SCE exceeded the cap by $7.8 million if the Consumer Price Index were used.[268] WEM and CDSO also oppose Utility recovery of pre-outage SGRP costs, although WBA supports it.[269] WEM disputes TURN's view that SGRP refunds are a proxy for an imprudence finding.[270]

In general terms, we find the approach to SGRP recovery is fair and conforms with cost-of-service ratemaking principles. The Utilities will only recover costs for the time period that the RSGs were actually used to produce power, and ratepayers will not pay for a non-operating generation source when they are paying for purchased power. No finding on prudence or imprudence has been made, or needs to be made to reach this conclusion.

We are unpersuaded by the other arguments from Opposing Parties. The Handy-Whitman Index is an appropriate measure of inflation for utility construction projects, is commonly used for utility projects, and is consistent with our intent in D.05-12-040.[271] We also understand TURN's view that disallowance of SGRP from rate base is functionally a simulated result of finding some SCE contribution to the failures. In contrast, WEM is stuck on its speculative premise that SCE intentionally or knowingly approved a flawed design destined to break down on ratepayers. This prevents WEM from

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[268] *Id.* at 44-48.

[269] WBA OC at 6.

[270] WEM OC at 6; WEM RC at 2; CDSO OC at 39.

[271] In D.12-10-051 (SCE's 2012 GRC), we rejected use of the Consumer Price Index as an escalator because it is comprised of retail consumer goods, instead of utility construction materials.

considering the symmetry of this provision and the relevance of cost-of-service principles.

Therefore, the provisions related to SGRP recovery are reasonable and within the range of possible outcomes based on the record.

7.2.7. Recovery of Replacement Power

The recovery of 100% of replacement power costs is reasonable in light of the whole record.

Phase 1A was devoted to establishing a method to calculate replacement power costs, but Phase 1A has not yet been decided. However, Phase 1A does not necessarily need to be decided if the Commission accepts ¶4.10 of the Settlement. Specifically ¶4.10 allows the Utilities to recover all "replacement power costs" associated with the non-operation of SONGS and amortize these costs in rates by December 31, 2015.

Nevertheless, in the interest of understanding the impacts of the Agreement, we briefly review the quantity of "replacement power costs".

In order to estimate this quantity, three primary questions must be answered:

1. What time frame (e.g. February 1, 2012 to June 6, 2013) is relevant to the calculation of replacement power costs? For instance, at what past date did the Utilities' purchased power begin "replacement power" and when did (or will) that end? This question was ruled out of scope of Phase 1A, on the expectation that it would be addressed in Phase 3.
2. What sub-categories of costs make up the category of replacement power? Generally, the Utilities argued for a narrower definition of replacement power, while the ratepayer parties argued for broader definitions. For example, SCE suggested that replacement power costs

should be "limited to the costs SCE incurred to replace lost SONGS generation for hours in which SCE had a net-short energy position."[272] TURN instead argued that the definition include "all the economic harm – in the form of higher revenue requirements and rates – that the SONGS outages would otherwise impose on bundled customers."[273]

3. Within the categories of costs included in the definition of replacement power costs, how is each specific cost calculated? For example, in calculating the cost of generation purchased to fill a net-short energy position, what is the appropriate hourly price index to use?

The simplest source for high level estimates of replacement power costs are the Utilities' exhibits calculating PVRR under the Settlement and pre-Settlement litigation positions. According to SCE-56, the PVRR (@10%) of SCE's Replacement power costs (under both its litigation position and the Settlement) is $389 million, compared to TURN and DRA's litigation position of $83 million. SDG&E states its replacement power costs (PVRR@ 10%) were $128 million[274] compared to TURN and DRA's litigation position of $62 million. All of these estimates exclude foregone sales. Note that these estimates are of a revenue requirement, and thus implicitly are net of disallowances argued by the ratepayer parties in Phase 1A.

[272] SCE Phase 1A OB at 5.

[273] TURN Phase 1A OB at 1.

[274] SDG&E-23.

In Phase 1A, SCE stated that its total 2012 replacement power costs[275] were $439 million.[276] However, SCE argued that the total value that should be used is $211 million; this figure excludes: foregone energy sales ($131 million), capacity costs ($33 million), a variety of other costs (total of $16 million), and the cost of replacement energy during a scheduled outage.[277] If replacement energy, foregone energy sales, capacity related costs, and Real Time Imbalance Energy charges were added for the period of 2012 excluding the scheduled outage, the total would be: $358 million.

In post-settlement testimony, SCE indicates that the Settlement intends Foregone Energy Sales and Capacity Payments to be allowed by the Settlement as components of replacement power.[278] For SDG&E, this total (including foregone sales and capacity) would be $92 million. Note that all of these numbers are based on assumptions chosen by the Utilities. However, adding the foregone sales and capacity figures (which the Utilities did not propose to include) move the total estimates closer to what would have been calculated based on TURN and DRA's preferred methods.

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[275] Note that the cost figures discussed here are not directly comparable to the revenue requirements in the previous paragraph.

[276] This is the sum of the items listed on SCE Phase 1A OB at 2, without deducting the proposed exclusions.

[277] SCE Phase 1A OB, Exhibit A.

[278] SCE-54 at Question 19.

2012 Replacement Power Costs		
	SCE	SDGE[279]
Replacement Energy	$ 211,010,759	$ 65,857,226
Foregone Energy Sales	$ 113,733,236	$ 23,138,270
Capacity	$ 33,141,178	$ 3,502,701
Real Time Imbalance Energy	$ 39,208	*included in replacement energy
Total	$ 357,924,381	$ 92,498,197

In adopting ¶4.10 of the Amended Agreement, we note that we approve neither a specific method for calculating replacement power costs nor any specific costs to be recovered from ratepayers. Instead, our adoption of ¶4.10 is merely an agreement that we will not disallow any costs *on the basis that they are SONGS replacement power costs*. The Utilities still must show (in ERRA or other relevant proceedings) that procurement costs complied with Commission rules and other applicable requirements; TURN, DRA, and other parties to those proceedings may still contest the recovery of those costs *on grounds not related to SONGS replacement power*. The Settling Parties agreed to this interpretation in their comments on the September 5 Ruling.[280]

Therefore, the provisions related to replacement power expenses are reasonable and within the range of possible outcomes based on the record.

7.2.8. Sharing of Third Party Recoveries

The provisions for sharing recoveries from third parties between ratepayers and Utility investors, as revised by the Settling Parties, are reasonable in light of the whole record. CDSO and WEM argue that ratepayer refunds

[279] SDG&E Phase 1A OB at Tables 1, 2, and 3.

[280] Joint Settling Parties Comments on Modification Ruling.

should not be dependent on uncertain recoveries from third parties.[281] A4NR and Joint Parties initially suggested changes to the sharing formulas to increase Utility incentives for recoveries for ratepayers.[282] While the changes in the Amended Agreement are consistent with these suggestions, A4NR does not believe the changes are adequate.[283] A4NR also argues that, in the absence of DRA and TURN independently reviewing the likelihood of recoveries, there is no basis for expecting specific levels of recoveries or setting specific formulas. [284] WBA supports the sharing formula, but expresses concern over the level of oversight of third party recoveries in the original Agreement.[285]

The modification in the Amended Agreement from a three tiered lop-sided formula favoring investors for recoveries from Mitsubishi is a substantial improvement. As initially constructed, the Utilities would be reimbursed for losses long before ratepayers received a similar refund. Unlike some opposing parties, we do not dismiss SCE's position, under its warranty or contract claims against Mitsubishi, to obtain compensation which ratepayers will now share equally with shareholders. Similarly, other amendments to the Agreement corrected the anomaly of ratepayers paying 100% of replacement power, yet only receiving 85% of recovery from the NEIL claims for replacement power.

The sharing formulas are a reasonable policy outcome, allocating possible recoveries under considerable uncertainty about the actual level of recoveries.

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281 WEM RC at 2; CDSO OC at 40.

282 A4NR OC at 34; Joint Parties OC at 3.

283 A4NR Comments on Ruling at 3-4.

284 *Ibid.*

285 WBA OC at 6.

None of the parties opposed to these provisions specifically oppose the formulas, they simply argue that these uncertain ratepayer benefits should be traded for other, more certain ratepayer benefits. This is mere second guessing the compromises made by the Settling Parties, allocating certain benefits and costs to ratepayers and others to investors. The sharing provisions in themselves fairly allocate the large majority of insurance recoveries to ratepayers who paid for the insurance. Recoveries from Mitsubishi will be shared equally, so that the Utilities retain a clear incentive to maximize recoveries for ratepayers as well as for themselves.

We find that with the Commission's general oversight authority and the specific provisions for Commission review adopted in ¶4.11 (g) and the additional oversight discussed in Section 9.5 below, ratepayers' interests in third party recoveries are appropriately protected.

7.2.9. Other Terms

7.2.9.1. Community Education & Outreach

The Agreement does not directly address the topic of community outreach and education, even though this topic was discussed in Phase 1. At that time, SCE argued that its outreach and education were "extensive, transparent, and responsive to the community's concerns and inquiries" and therefore, reasonable.[286] Joint Parties led the argument for expanding outreach in several ways to meet community concerns about the changes at SONGS.

[286] SCE Phase 1 OB at 51.

WEM, A4NR, and Joint Parties all suggest this topic must be addressed here.[287] However, we note that outreach and education are an ongoing O&M activity of SCE, and that this activity is much broader than SONGS. Education and outreach are addressed in SCE's General Rate Cases (GRCs), including the ongoing 2015 GRC (A.13-11-003). Accordingly, it is more efficient to address these issues in the GRC, which will authorize spending for education and outreach, beginning in 2015.

7.2.9.2. General Recitals and Findings of Fact in Joint Motion

The Commission does not need to and will not make any Findings of Fact on the sole basis of the "fact" being included in the General Recitals portion of the Agreement or in the Joint Motion. The Commission's practice is to make specific Findings of Fact based on the record of the proceeding, and in turn the Ordering Paragraphs are supported by those Findings of Fact. There is no reason to deviate from that practice in this case, and we do not deviate here. This is consistent with the changes adopted in ¶3.53 of the Amended Agreement.

7.2.10. Amended Agreement as a Whole is Reasonable in Light of the Whole Record

Above, we have discussed the individual provisions of the Amended agreement and found them to be reasonable in light of the whole record. Taken as a whole, the Amended Agreement also meets the reasonable in light of the whole record standard. The Amended Agreement clearly represents a compromise between the litigation positions of the diverse settling parties

[287] WEM OC at 5, A4NR OC at 36, Joint Parties OC at 2.

and falls within the range of possible outcomes of the consolidated proceedings, if litigated further.

Therefore, the Commission concludes that, even if not every provision of the Agreement is the best possible outcome for ratepayers based on the record, that the Agreement as a whole, and the provisions therein, are within the range of possible outcomes based on the record.

7.3. Agreement in the Public Interest

The amendments to the Agreement submitted by the Settling Parties made few, but significant, changes that are distinctly in the public's interest, in contrast to the original treatment of the cost category. We appreciate the efforts of the Settling Parties to consider and accept the requested changes which significantly improve the public's interest in this settlement.

There are several factors to be weighed in consideration of the public's interest. The proposed settlement is consistent with the Commission's well-established policy of supporting the resolution of disputed matters through settlement, reflects a reasonable compromise between the diverse Settling Parties' positions, and will avoid the time, expense and uncertainty of evidentiary hearings and further litigation. Based on the provisions of the Amended Agreement we find the proposed settlement is in the public interest.

The contrary arguments by non-settling parties, WEM, A4NR, CDSO and Henricks, can be generally divided into three alleged public interest imperatives (1) the Commission should reject the proposed settlement and set hearings for Phase 3; (2) the allocation of costs to ratepayers is too high; and (3) the Commission should address other "external" impacts of the outages/shutdown, particularly increases of greenhouse gases and other emissions. Other public

interest concerns expressed include the Commission deferring any decision until after the arbitration and NRC inquiries are completed, and strengthening the Agreement's language related to Commission oversight and review of the rate adjustments. These issues are discussed below. Any arguments raised by parties but not addressed herein, are considered to be without merit.

7.3.1. Termination of Investigation

The history of the consolidated proceedings makes clear this has been a hard-fought set of proceedings to date, and resolving the issues raised through more litigation would require a great deal more time and effort. Nonetheless, four parties contend that the public's interest in completing Phase 3 of this investigation outweighs the public's interest in the public policy favoring qualified settlements which avoid the risks and costs of litigation, delayed refunds, and interim rate shock.[288]

A4NR, WEM, CDSO, and Henricks, urge the Commission to reject the proposed settlement and continue Phase 3 on the grounds it is vital to the public interest to perform a reasonableness review of SGRP expenses, including answering questions about SCE's management of the SGRP.

In essence, these questions are: How did SCE react to knowledge of design issues that arose during the years between Commission approval of the project and full operation; which SCE employees made decisions about the RSG design; why did SCE decide not seek a license amendment for the RSGs; and were these decisions imprudent management of the SGRP?[289]

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[288] *See, e.g.*, CDSO OC at 24, CDSO RC at 5.

[289] *See, e.g.*, CDSO RC at 10-14.

WEM argues the benefits of pursuing this course of action include: (1) if imprudence is found in Phase 3, the Commission would allocate all-post outage costs to Utility shareholders; (2) the Commission's own reasonableness in approving the SGRP could be reviewed; and (3) the Commission and the public could learn lessons for the future.[290] The first claim is the most significant to ratepayers in the short-term. The latter may be beyond the scope of these proceedings given that (1) no Petition For Modification of the Commission's decision approving the SGRP was filed; and (2) SCE is not likely to find itself to be an operator of another nuclear plant in the near future.

Some arguments to hold Phase 3 hearings are again based on parties' mistaken premise of SCE's imprudence (*e.g.,* the NRC has found SCE improperly failed to seek a license amendment for design changes to the RSGs,[291] SCE adopted a defective design in order to avoid seeking a license amendment for the RSGs, etc.) The opposing parties not only assume "imprudence," but also assume the Commission would find it reasonable to allocate no SONGS-related costs to ratepayers. This is an unduly limited analysis and begs the question of the range of possible outcomes for the ratepayers.

If we were to continue with Phase 3, ratepayers might fare better or worse than proposed, but a delay of any refunds is certain. The hearings would likely be long and complex. As discussed in Section 7.1.6, the Notice of Violation as a singular document is insufficient to establish overall imprudence for the SGRP.

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[290] WEM RC at 2.

[291] CDSO RC at 14.

Therefore, the Commission would examine a broader spectrum of evidence through extensive testimony and evidentiary hearings.

For example, one aspect is the reasonableness review of the recorded SGRP costs of nearly $700 million ($2004), and SCE's SGRP decision-making processes prior to full operation. (Absent the shutdown, SCE arguably might have obtained a presumption of reasonableness for the total costs of the SGRP.[292]) The Commission would also likely take evidence on SCE's post-outage decision-making and expenses, including efforts at restart. This phase would be a substantial undertaking potentially covering activity from 2005 through 2013. It is not possible to foresee what the evidence might show, but the expectation that whatever is established would result in full disallowance of all SONGS-related costs is highly speculative.

On the other hand, pursuant to the Agreement, all collection of SGRP-costs would stop and SGRP costs collected in rates after the shutdown would largely be refunded to ratepayers, including the vast majority of post-outage RSG inspection and repair costs. It is disputed whether SCE acted reasonably by pursuing the restart for more than a year. Based on the Phase 1 record, these expenses are likely to be contested in a Phase 3.

Opposing parties' expectations of a quick Phase 3 conclusion of imprudence based on violation(s) of NRC rules, are misplaced. SCE's compliance with NRC requirements related to the SGRP is determined by the NRC, not reports authored by Mitsubishi, parties' beliefs, or by this Commission. The NRC has not made any finding that SCE failed to obtain a required license

[292] D.05-12-040 at 109, OP 4-5.

amendment for the RSG design, even with many opportunities to do so as part of its on-going, and on-site, inspections and oversight of SONGS operations, and the SGRP specifically. Although we would certainly give the NOV weight, it remains to be seen how much.

In fact, we observe the NRC performs annual inspections of every nuclear facility, including overlap with the SGRP during 2005-2011.[293] In 2009, the NRC reviewed and acted on SCE's request for a License Amendment to change certain Technical Specifications for the RSGs.[294] The NRC also recently closed an investigation, after concluding it could not substantiate a charge that SCE did not cooperate with the NRC's inspections of the damaged RSGs.[295]

In this decision, the Commission is not concluding that SCE is without fault, or that NRC has no further interest in these issues. Nonetheless, we consider these actions of the federal agency of primary and, (in most matters) exclusive jurisdiction for the safety of nuclear operations. Absent an NRC finding of seminal or pervasive unreasonable acts, it is highly speculative to assume SCE misconduct would be easily confirmed in Phase 3. Instead, the known facts suggest that SCE intends to establish a prima facie case of prudence; establishing the requisite evidence of imprudence at hearing is not ensured and, the effort itself, would likely be quite consuming of time and resources.

CDSO also argues for a Phase 3 because the public wants to know which employees made design decisions and the basis therefor. However, it is unclear

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[293] *See*, http://pbadupws.nrc.gov/docs/ML1126/ML112660460.pdf. (including a 2011 inspection of the RSGs).

[294] *See*, http://pbadupws.nrc.gov/docs/ML0916/ML091670298.pdf.

[295] *See*, http://pbadupws.nrc.gov/docs/ML1423/ML14237A162.pdf.

what CDSO thinks the public would do with this information. The actual primary purpose of the Phase 3 findings would be to establish appropriate recovery or disallowance of SGRP costs. We do not rule out the possibility that if there were sufficient evidence, we could consider whether SCE's conduct was so unreasonable, and caused such damage, that the Commission should go farther and disallow recovery of indirect post-outage expenses, such as Base Plant. Nonetheless, it is one of many possible outcomes and the cost to the public is also a factor to consider.

Pursuant to § 455.5, the consequences of an extended outage may lead to removal of the value of any portion of the generation facility and related expenses. In other words, the Commission has discretion to weigh all the facts and remove from rate base some or all of an out-of-service plant, and to disallow related costs. The scenario advanced by CDSO and WEM is that the Commission would determine SCE misconduct was so early and so substantial that all SGRP costs from 2005 forward, most or all 2012-2013 operational expenses, all capital projects at the facility, and the value of most or all of the entire SONGS facility would be tainted and refundable to ratepayers.

Although it is possible we could take such extreme action given the right set of circumstances, there is little indication yet that such a conclusion is probable here. The proposed settlement provides for disallowance of all SGRP costs, including CWIP, as of February 1, 2012, along with removal of Base Plant from rate base with reduced return. TURN's witness on the settlement stated he viewed these disallowances as a "proxy" for a finding of unreasonable actions by SCE in Phase 3. We tend to agree.

Potential allocations of the multiple cost categories abound. Pursuant to our 2005 decision authorizing SCE to undertake the SGRP, we provided a

conditional presumption of reasonableness for the costs if beneath the approved cost cap. Although disputed, SCE's litigation position was that all SGRP costs were reasonable at the time incurred, thus raising the possibility that, absent a finding of unreasonable management, some SGRP costs might be recoverable.

On the other hand, facts may emerge in the pending arbitration which tend to exculpate either SCE or Mitsubishi. All this is speculation of the sort included in the risks of litigation weighed when evaluating whether a settlement outcome is in the public interest. We find there is a wide range of possible outcomes to a future Phase 3, but no particular probability that ratepayers would fare better.

Based on the foregoing, we are not persuaded that the public's interest in holding Phase 3 hearings outweighs the public's interest in achieving a near-term just and reasonable settlement of all issues, while avoiding the risk and expense of a multi-year SGRP review. Ratepayers foot the bill for regulatory litigation, so the resources applied can be seen as another burden on the public, without a significant likelihood of early or more favorable results.

7.3.2. Settlement Does Not Need to Be Perfect

In varying ways, the opposing parties express disappointment with some or all of the proposed settlement provisions because they think ratepayers should get more and shareholders less. These parties seem convinced that SCE acted intentionally or recklessly by accepting the newly designed RSGs and, on that basis, seek to place the full, or nearly full cost burden on shareholders. Because they are convinced that Phase 3 would vindicate this belief, anything less is argued to be not in the public interest.

However, our review of a proposed settlement looks at the settlement as a whole, even if some parts may somewhat favor shareholders, based on what is in

the record and known at the time. It is not fatal if other outcomes were possible in a settlement, only that the results of the proposed settlement are consistent with the law, reasonable in light of the whole record, and in the public interest.

Therefore, we find that even though not all provisions favor ratepayers, the proposed settlement reasonably allocates the various cost categories between shareholders and ratepayers and is in the public interest.

7.3.3. Delayed refunds & remedies

The proposed settlement would, in effect, retrieve ratepayers' funds already applied to inoperative SONGS plant after January 31, 2012, and instead credit the funds to reduce the pending rate increases from each utility's ERRA account due to unplanned purchases of replacement power. [296] Settling Parties assert the refund mechanism is reasonable and in the public interest because it will bring relief to ratepayers soon after the Commission adopts the proposed settlement.

A4NR, WEM, and Henricks each criticized the refund mechanism provided in the Agreement for different reasons.

Henricks claims the Settling Parties intentionally misled the public by claiming ratepayers would receive refunds.[297] Henricks flatly declares claims of $1.4 billion in proposed refunds to be "false," instead calling it a $3.3 billion "transfer of wealth from the ratepayers to the [Utilities]."[298] Henricks also

[296] Agreement ¶4.12.

[297] Henricks Comments at 4; Henricks RC at 14, 16-18.

[298] Henricks OC at 4.

dismisses the refund mechanism, which she describes as "paper refunds in the form of bookkeeping entries," while the utilities collect "real money" in rates.[299]

These criticisms are puzzling. The Agreement provides for several categories of costs collected from ratepayers after January 31, 2012 to be "refunded" to ratepayers.[300] In utility ratemaking, the Commission has authorized various ratemaking mechanisms for regulated companies to make adjustments to rates. SCE's ERRA balancing account has ongoing material under-collections, due in large part to the SONGS outages.[301] The use of the ERRA to accept refund credits follows cost-of-service ratemaking principles and serves to reduce the pending ERRA-based rate increases. Thus, the mechanism conforms to existing policy and is in the public interest.

Henricks' characterization of the refund mechanism is misleading. This is not an ephemeral "bookkeeping entry" with no actual relief for ratepayers; it is basic accounting with the tangible result of lowering the net costs to ratepayers for the power purchased for their use.

WEM disputes Settling Parties' claim that adoption of the proposed settlement will result in earlier refunds to ratepayers, and argues the Commission could have ordered refunds at any time.[302] However, WEM offered no legal basis for the Commission to do so without hearings and/or a Commission order, nor did any party file a Petition for Modification of

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[299] *Id.* at 7.

[300] *See, e.g.*, Agreement at ¶4.2(b), ¶4.3(b)(ii), ¶4.9(b), and ¶4.9(f).

[301] SCE Motion for Order Authorizing Change re ERRA (ERRA Motion)at 2;.

[302] WEM OC at 6.

D.05-12-040 to reverse the Utilities' authority to collect SGRP costs in rates.[303] Moreover, § 728 clearly requires a hearing before the Commission reduces rates we determine to be unreasonable.

Lastly, A4NR disputes claims by ORA and TURN that an adopted settlement is in the public interest due to avoidance of a litigation time lag in removing the inoperable SONGS from rates.[304] A4NR's position seems to be that the time lag for ratepayers is mitigated because SONGS expenses are recorded in a memorandum account and the Commission has authority to order refunds of recorded costs from January 1, 2012 forward. However, A4NR's view does not account for the customer impacts of excessive interim rates and deferred refunds.

We acknowledge that the public benefit of hundreds of millions of dollars in imminent refunds to ratepayers comes balanced with the risk/possibility that newly emerging facts (*e.g.,* from pending Mitsubishi arbitration, any open NRC investigation,) could prompt a different outcome in a hypothetical continuation of these proceedings. This is part of litigation risk.

The Commission places greater weight than A4NR on the matter of promptly restoring reasonable rates to ratepayers for safe and reliable service. The Agreement provides substantial relief to ratepayers upon adoption by the Commission and eliminates the need for a year or more of intense litigation with uncertain outcomes. Therefore, we find the timing of refunds and credits to ratepayers set forth in the Amended Agreement are in the public interest.

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[303] D.05-12-040 at 109, Ordering Paragraph (OP) 9 (SCE may recover SGRP costs in rates after beginning commercial operations).

[304] A4NR RC at7.

7.3.4. Increased Greenhouse Gas Emissions and Other Unrecognized Effects

A4NR criticizes the proposed settlement for failing to recognize and quantify what it calls one of the largest negative consequences arising from the SONGS shutdown: increased electricity prices and carbon dioxide (CO_2) emissions.[305] Because much of the lost production from SONGS was replaced by natural gas generation, A4NR argues it is against the public interest to ignore consequential harmful emissions that impose social and economic cost on ratepayers. A4NR relies on a public report, published through the University of California (UC), which states the SONGS closure increased CO_2 emissions by 9 million metric tons during the first twelve months.[306]

We do not here rely on any assertions or conclusions reached by the researchers who authored the UC Report, which is not in the record. However, we acknowledge the UC Report exists, emission data was collected by the authors, and the general principle that replacement of nuclear power by natural gas-fired power plants will result in more GHG emissions affecting the service territories. Furthermore, we share the concern about this adverse, albeit unquantified, consequence, particularly given that ratepayers would pay for all replacement power but receive less than 100% of power cost payouts from SONGS insurance.

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[305] A4NR OC at 8.

[306] *Id.* at fn 24 (citation to "*The Value of Transmission in Electricity Markets: Evidence from a Nuclear Power Plant Closure*," (Revised May 2014) by Lucas Davis and Catherine Hausman, produced by the Energy Institute at Haas, a joint venture of the Haas School of Business and the University of California Energy Institute (UC Report) at 27).

Therefore, we find the public interest would be met by shareholders directing funds to offset this significant consequence to SONGS ratepayers, including increased prices of electricity. The Commission may order meaningful remediation to address the public safety concerns raised by the broad social impact of unexpected increases to GHGs. Such an allocation may also further incentivize the Utilities to maximize recovery on the policy claims.

The Settling Parties have amended the Agreement to add a provision which will result in a multi-year project, undertaken by the University of California (or a UC-affiliated entity), funded by shareholder dollars, to spur immediate practical, technical development of devices and methodologies to reduce emissions at existing and future California power plants tasked to replace the lost SONGS generation. Customers in the service territories for SCE and SDG&E paid the unexpected higher costs of purchased power, so it seems reasonable to deploy resulting technologies, practices, or other results to electric facilities in the impacted SCE and SDG&E service territories. We do not intend this to be simply a request for more data or another report, but for actual remedies that can be applied during the original expected life of SONGS--through 2022.

The Amended Agreement includes proposed criteria for a GHG program which are set forth below. The amendments include the following basic criteria:

- As part of their philanthropic programs, each of SCE and SDG&E Company agree to work with the University of California Energy Institute (or other existing UC entity, on one or more campuses, engaged in energy technology development) to create a Research, Development, and Demonstration (RD&D) program, whose goal would be to deploy new technologies, methodologies, and/or design modifications to reduce GHG emissions, particularly at current and future generating plants in California.;

- The defined program would operate for up to five years;
- The defined program would be funded by $5 million annually (*i.e.,* $4 million from SCE, $1 million from SDG&E) from shareholder funds;
- The Utilities shall host a meeting, within 60 days of an adopted decision with this provision, which includes UC representatives and other interested parties with the goal of crafting a Program Implementation Plan (PIP). The Commission's Energy Division shall provide support in coordinating the meeting;
- The Utilities jointly file, and serve, a PIP via a Tier 2 Advice Letter no later than thirty (30) days after the meeting which describes the process for implementation, a proposed schedule and budget, and expected results, applications, and demonstrations. To the extent possible, UC shall make available to the program relevant data assembled through UC-affiliated institutions and entities.; and
- At a minimum, the Utilities shall file, and serve, an annual report to the Energy Division to apprise the Commission of the program's progress towards beta testing of developed technologies, methodologies, and/or design changes.

The use of alternative sources of energy, including gas-fired generation, to replace lost nuclear power from SONGS, has had an adverse impact on air quality in the service territories of the Utilities in addition to global climate impacts. The impact is difficult to quantify. However, we find the proposed multi-year project to create near-term development of devices and methodologies to reduce emissions at existing and future California power plants, particularly those providing electric service in the service territories of SCE and SDG&E, is in the public interest.

7.3.5. Commission Oversight of Litigation and Refunds

We consider the Commission's oversight of the implementation of the Agreement to be integral to our regulatory role and the public interest. The Settling Parties originally proposed an Agreement which had the effect of diminishing or eliminating the Commission's oversight and review for some actions and calculations necessary for implementation. Parties, including WEM, A4NR, and CDSO, rightly criticized the restrictions as contrary to the public interest, particularly related to sharing of litigation recoveries.[307]

The September 5, 2014 Ruling re Modifications requested the Settling Parties clarify or modify the following provisions in the Agreement which limited Commission oversight of its implementation. The identified provisions and the amendments made are as follows:

- ¶4.11(f) SONGS Litigation Recoveries from Third Parties - provides the Utilities "complete discretion to settle, compromise, or otherwise resolve claims against NEIL and/or or Mitsubishi in any manner" according to their own business judgment, and the Commission would have no prior or subsequent review of the recoveries, costs, or net balance subject to shared allocation.
- ¶4.11(g)(ii) prohibits Commission review of the Utilities' settlement, or other resolution of Mitsubishi and NEIL litigation, for reasonableness or prudence;
- **Amendments**: Adds new § 4.11 (i) to clarify the supporting documentation expected by the Commission to review and ensure that ratepayer credits from Third Party recoveries are accurately calculated; adds discretionary

[307] *See, e.g.*, A4NR OC at 52 (the "loose, open-ended provisions" which do not subject all calculations to a strict requirement, are not in the public interest).

Commission review of SONGS Litigation Costs to ensure not excessive in relation to recovery;

- ¶4.9 Non-Operations and Maintenance (non-O&M) expenses: the formula for allocating company-wide expenses is currently based on a "formula agreeable to all Settling Parties" and not subject to any form of Commission review or disallowance;
- **Amendment**: Adds that the agreed-upon formula for allocating company- wide expenses to SONGS will be described in the utilities' Tier 2 Advice Letters filed pursuant to ¶6.1.
- ¶4.8 Construction Work In Progress (CWIP): There is currently no requirement the Utilities document revised calculations of the impact on rate recovery after new capital cost rates are authorized, either as to Base Plant or CWIP;
- **Amendment:** Adds ¶6.3 which states that Utilities shall file revised tariff sheets and Tier 2 Advice Letters that include documentation of any revised calculations of the revenue requirement for CWIP based on changes in the Authorized Cost of Debt and Authorized Cost of Preferred Stock.
- ¶ 6.1-¶ 6.2 Post-adoption Filing of Revised Tariff Sheets - TURN and ORA, but not the Commission, are authorized to review the Utilities post-adoption filing of revised tariff sheets "to implement the revenue requirement, accounting procedures, and charges authorized in this Agreement." The Utilities are not required to identify and support the detailed numbers and calculations used.

Amendment: none.

This issue is discussed in more detail in §9.5.2.

7.3.6. Third Party Litigation Recovery

Several issues were raised about the treatment of recovery by the Utilities from insurance claims and the arbitration against Mitsubishi. Settling Parties'

assert the original tiered sharing mechanism is in the public interest and provides the Utilities with the incentives to maximize the amount of settlement to resolve their claims against NEIL and Mitsubishi. As discussed in the preceding section, the original Agreement gave Utilities complete discretion to settle, compromise, or otherwise resolve claims against NEIL and/or Mitsubishi without prior or subsequent review or approval, disapproval, or disallowance by the CPUC.[308]

Settling Parties concluded the incentive structure was enough to ensure good faith such that Commission review is unnecessary.

We disagree. The Commission stands in the public's shoes to ensure the ratepayer credits are properly calculated and that charged costs are not exorbitant in relation to the recovery obtained. Without an opportunity to review the utility's documentation of the net litigation recovery, the Commission cannot adequately perform that duty. Therefore, the Commission must, at a minimum, review the documentation in order to protect the integrity of the refund calculations and the resulting decreased rates.

In the Amended Agreement, Settling Parties added ¶4.11 (i) to expressly describe the Utility's obligation to provide documentation to the Commission of any final resolution of third-party litigation and documentation of SONGS Litigation Costs. This is sufficient to confirm our authority to obtain and review supporting documentation of the resolution of the pending litigation and the impact on revenue requirement.

[308] Agreement ¶¶4.11(e) and (f).

WEM specifically criticizes the identified provisions as speculative because WEM views SCE as negligent or imprudent and unlikely to prevail in the litigation.[309] Both CDSO and A4NR disapprove of any provision that allows ratepayers to share in potential litigation recoveries. They would gladly trade ratepayers' share of such recoveries for zero recovery of net investment and no return to shareholders for Base Plant.

Additionally, CDSO disfavors settlements that need constant oversight and review. They consider the litigation recovery provisions here "poor policy," stating, "Once the settlement is done, there should be no need to review anything ongoingly (sic).[310] A4NR argues that ratepayers should not be put in the position of waiting for the results of the arbitration and litigation between the two utilities and Mitsubishi.

We do not agree ratepayers would never have a claim to a utility's litigation proceeds. The subject of litigation may be interwoven with rate recovery of certain costs. An obvious example is the insurance claim for replacement power and the proposal that ratepayers pay for all purchased power. The original Agreement allocated 15% of the replacement power insurance recovery to the utility. This outcome would have unreasonably benefited shareholders as to this one particular category of expenses for which liability had passed to ratepayers. Furthermore, as discussed above, we do not share the conclusions of parties who assume SCE's imprudence and failure in the

[309] WEM OC at 5; *See, e.g.*, Agreement at ¶4.11(f) and ¶4.11(g)(ii).

[310] CDSO OC at 40.

arbitration. Based on the Commission's own review of facts, we do not assume the outcome is clear or will be wholly adverse to SCE.[311]

Furthermore, several parties objected to the tiered approach to sharing Mitsubishi litigation recoveries as arbitrary and unfairly weighted to first reimburse the Utilities for SGRP losses.

The Settling Parties addressed these provisions in the Amended Agreement, as follows:

> Amendment: to¶ 4.11 (c) Utilities shall retain 5%, and the ratepayers shall receive 95%, of the net recoveries from the NEIL Outage Policy; and the Utilities shall retain 50%, and the ratepayers shall receive 50%, of the net recoveries from Mitsubishi. This and other referenced modifications are reasonable and clearly ensure the Commission, through its Energy Division, will have the ability to review documentation of any resolution of third party litigation and the litigation expenses netted from the recoveries.

Based on the foregoing, the Commission finds the amended third party recovery provisions altering the shareholder-ratepayer allocations and affirming Commission review of supporting documentation, are in the public interest.

7.3.7. Filing of Revised Tariff Sheets

The original Agreement directs the utilities to file revised tariff sheets "to implement the revenue requirement, accounting procedures, and charges authorized in this Agreement."[312]

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[311] Energy Division first served a Commission subpoena on Mitsubishi and affiliates in April 2014, but Mitsubishi has so far resisted efforts to enforce the subpoena, relying on numerous arguments including an alleged lack of jurisdiction. No documents have been received in compliance with the subpoena.

[312] Agreement ¶6.1.

For unknown reasons, Settling Parties did not add the corresponding change to ¶6.3 to expressly direct the Utilities to provide documentation of revised calculations of the revenue requirement when submitting the Revised Tariff Sheets described in ¶6.1. In order to safeguard the integrity of a settlement adopted by the Commission, our practice is to engage in careful oversight to ensure that all allocated costs to ratepayers are accurate, and the calculations resulting in changes to a utility's revenue requirement are correct

Pursuant to § 451, we have authority to review any utility submission, and request additional documentation as needed, to corroborate the utility's claims therein and ensure safe and reliable service at just and reasonable rates. Clarification of the revised tariff Advice Letter (AL) process was requested because the Agreement excluded it. The objective is to guard against a party later arguing the language could be interpreted to deny our regulatory obligation to apply due diligence in review of Advice Letters.

Regardless of the SONGS-related expense numbers used by Settling Parties in the Agreement, the actual recorded numbers used to establish the revised tariffs, and ratepayer refunds, may differ. This is because costs for various categories were identified at different dates in the record and must be updated, and some costs will be aggregated as of the Effective Date of the Decision. Other provisions (*e.g.*, M&S, nuclear fuel inventory) require calculations of costs and offsets based on the Utilities' salvage efforts. Thus, recorded costs, recovered value, and other expenses may figure in the Utilities' calculations.

The original Agreement granted TURN and ORA "the prerogative to review and validate any amounts used…..to meet and confer with the Utilities….

and to "protest the advice letters if such concerns are not resolved to their satisfaction."[313]

A4NR contends "the feeble enforcement clause of Section 6.1" is a "profoundly inadequate substitute for Commission oversight," particularly for resource-strapped TURN and ORA.[314] We agree the original language gave the appearance of diminishing the Commission's duty and capability of oversight to confirm the Utilities' compliance with our decision. Such a result does not serve the public interest.

Settling Parties did not make any changes to this provision of the Agreement. Therefore, we explicitly affirm our authority to seek additional documentation of calculations in the Revised Tariff Sheets described in ¶6.1, and expressly include it in Ordering Paragraph number 3.

7.3.8. Clarifications and Other Modifications to the Agreement

The Commission is presented with a complicated set of facts and issues for its evaluation of whether the Agreement, as amended, serves the public interest. We carefully weighed the various settlement provisions, and the consequences of adoption versus rejection. It is a challenging assessment, however, the amendments provide better transparency, address unexpected GHG emissions, and provide tools for sufficient Commission oversight of final rate changes help tip the balance towards the public.

Therefore, the Commission concludes that, with the modifications to the Agreement, including closer scrutiny of the Utilities' post-decision final revenue

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313 *Ibid*.

314 A4NR OC at 52-53.

calculations, and establishment of a mechanism to prompt decrease in GHG during expected life of SONGS and more, the proposed settlement agreement is in the public interest.

8. Rate Adjustments for Direct Access Customers

As discussed above AReM and DACC support the Agreement, but express certain implementation concerns relative to how the ratemaking changes in this decision impact direct access (DA) customers. The Settling Parties agree with AReM/DACC's recommendation that the "Consensus Protocol" adopted in D.14-05-003 should be used in calculating changes to the PCIA so that there is no delay to DA customers' rate adjustments.[315] Settling Parties disagree, however, with AReM and DACC's second recommendation that replacement power costs should be excluded from the PCIA calculation.[316] There are many different types of costs included within the category of replacement power costs. Fairness suggests that only those costs that were incurred on behalf of system customers should be charged to DA customers through the PCIA; costs that were incurred on behalf of bundled customers should be paid entirely by bundled customers.

9. Oral Argument

Pursuant to Rule 13.13, in a ratesetting proceeding, a party may request a final oral argument before the Commission. A party may request oral argument on this Proposed Decision by filing and serving a request no later than October 17, 2014.

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[315] JSP RC at 36.

[316] *Ibid* at 36-37.

10. Comments on Proposed Decision

The proposed decision of the ALJs in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____ by _____.

11. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Melanie M. Darling and Kevin Dudney are the co-assigned ALJs in this proceeding.

Findings of Fact

1. On April 3, 2014, six parties filed a joint motion requesting the Commission to adopt a settlement agreement entitled "SONGS OII Settlement Agreement (Agreement)." The "Settling Parties" parties are SCE, SDG&E, ORA, TURN, FOE, and CCUE.

2. Parties opposed to the proposed settlement raised due process claims related to the process by which the Settling Parties developed the Agreement, and the Commission considered it.

3. The Agreement was modified by the Settling Parties on September 23, 2014 and re-submitted as "Amended and Restated Settlement Agreement" (Amended Agreement). A true and correct copy of the Amended Agreement is attached hereto as Appendix B.

4. The amendments to the Agreement favored ratepayers but did not alter the underlying resolution of key competing interests in the original proposed settlement.

5. Two parties, CLECA and Joint Parties, filed comments that stated support for the original and Amended Agreement, but neither joined the settlement as signatories.

6. This is not an all-party settlement.

7. The parties to the Agreement, original and modified, reflect the diverse affected interests in this proceeding: utilities, ratepayers, environmental, and labor; other support is drawn from a large customer group and representatives of community-based organizations.

8. The Amended Agreement did not address the Phase 1 issues related to expanded community education and outreach.

9. The consolidated proceedings did not specifically address the reasonableness review of the Utilities 2014 SONGS-related expenses, which under ordinary conditions would be resolved through the 2012 GRC escalation formulas; the Agreement invites the Commission to identify the proper forum for this review.

10. It is reasonable to provide a mechanism for review of the Utilities' 2014 SONGS-related expenses.

11. This decision resolves the issues of community education and outreach and review of 2014 SONGS-related expenses by directing these issues to other proceedings.

12. Total cost of SGRP was $612.1 million in 2004 dollars (100% share) as calculated by SCE, using an appropriate inflation index to deflate these costs to 2004 dollars.

13. All issues in this proceeding are encompassed by, and resolved in, the Amended Agreement and decision.

14. No term of the Amended Agreement contravenes statutory provisions or prior Commission decisions.

15. The Amended Agreement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

16. If the Commission held hearings on Phase 3 issues, there is a wide range of possible evidentiary outcomes.

17. The record for these consolidated proceedings includes all of the exhibits, including testimony, from the Phases 1, 1A, and 2 in addition to those exhibits and testimony specifically related to the Agreement, all of which are listed in Appendix A, attached hereto.

18. The Amended Agreement resolves the issues related to costs of the shutdown at SONGS in a way that protects public safety.

19. It is reasonable to address the increase to greenhouse gas emissions resulting from reliance on fossil-fueled generation sources to replace the lost SONGS generation, and to apply the results in the service territories of SCE and SDG&E.

20. The Amended Agreement ensures reasonable Commission oversight and review of documentary support for utility changes to revenue requirement, including for ratepayer share of third party recoveries.

21. Although not all provisions favor ratepayers, the Amended Agreement reasonably allocates the various cost categories between shareholders and ratepayers.

22. No party has made a showing of "collusion" by the Commission (Commissioners, staff, ALJs), utilities, and ratepayer organizations to avoid

hearings on allocation of SGRP-related costs and the reasonableness of SCE's conduct leading to the expenses at issue.

23. If the Utilities were to prevail on their claims that their actions in relation to incurring SGRP-related costs were reasonable, and rate recovery did not constitute a violation of § 451, then one conceivable outcome is that the Commission would order rate recovery of all SGRP investment.

24. If the parties opposed to the Agreement were to prevail on their claims that SCE was at fault, or shared fault with Mitsubishi, for the failure of the RSGs, then a conceivable outcome is the disallowance of some or all SGRP investment, and as well as disallowance of some post-outage costs.

25. The provisions of the Amended Agreement are within the range of possible outcomes if the consolidated proceedings were to complete Phase 3 addressing the reasonableness of the SGRP expenses.

26. Adoption of the Amended Agreement renders the Proposed Decision in Phase 1 and 1A moot.

Conclusions of Law

1. The Commission has jurisdiction to adjudicate this investigation and consolidated proceedings under § 701 and the standard of proof is the preponderance of the evidence.

2. The OII and scoping memos clearly define the focus of this multi-part investigation within the context of the Commission's jurisdiction to enforce § 451, which applies broadly to public utility charges, service and safety, and § 455.5 which applies to rate adjustments when a generation plant is unexpectedly out of service for an extended period.

3. The Agreement and decision resolve and settle all disputed issues among the parties concerning the issues in the consolidated proceedings.

4. The decision reasonably requires the utilities to each file an application with the Commission to obtain a reasonableness review of SONGS-related 2014 expenses.

5. It is reasonable and in the public interest for the Utilities' shareholders to fund development of a program with the University of California, or a UC-affiliated entity, to identify and apply new technology, methods, and/or processes to current and future generation plants that now or in the future will serve customers in Southern California previously served by SONGS.

6. The processes by which the Settling Parties developed the Agreement, submitted it to the Commission, and the Commission considered it, are consistent with Article 12 of our Rules, as well as principles of due process.

7. The Agreement, as modified, meets the requirements of Rule 12.1(d); it is reasonable in light of the whole record, consistent with law, and in the public interest and should be approved.

8. The Commission has made no findings about whether SCE was unreasonable or imprudent during the period of time between submitting its application for approval of the SGRP and the Effective Date of the decision.

9. The Notice of Violation issued to SCE is not, in and of itself, determinative of the company's overall prudence when managing the project to replace the steam generators (SGRP).

10. No further reasonableness review of SGRP costs is required, and each Utility may retain all revenues for the SGRP prior to February 1, 2012.

11. No further reasonableness review of the 2012 costs recorded in SCE's SONGSMA and SDG&E's SONGSBA is required.

12. SCE shall maintain the SONGSMA through the end of 2014 in order to support its application for reasonableness review of 2014 SONGs-related expenses.

13. SDG&E shall maintain the SONGSBA through the end of 2014 in order to support its application for reasonableness review of 2014 SONGs-related expenses.

14. It is in the public interest to reduce emissions at existing and future California power plants, particularly those which provide electric service to the customers in Southern California previously served by SONGS.

15. Modifications to the Agreement that provide closer Commission scrutiny of the Utilities' post-decision final revenue requirement calculations are in the public interest.

16. Modifications to the Agreement which increased the portion of third party recoveries to be allocated to ratepayers is in the public interest.

17. It is reasonable to withdraw the proposed decision for Phases 1 and 1A.

18. This decision does not constitute approval of, or precedent regarding, any principle or issue in the consolidated proceedings or other proceedings pursuant to Rule 12.5 of the Commission's Rules of Practice and Procedure.

19. This decision should be effective immediately to provide certainty to the parties, permit the utilities to effectuate the terms of the Amended Agreement promptly and to ensure the timely resolution of this investigation and consolidated proceedings.

20. Investigation 10-02-003 and consolidated proceedings should remain open so the Commission may undertake consideration of Rule 1.1 violations which appear to have occurred during the course of these proceedings.

O R D E R

IT IS ORDERED that:

1. The Amended and Restated Settlement Agreement, dated September 23, 2014, which resolves all but one of the issues in this consolidated proceeding is adopted. The Amended and Restated Settlement Agreement is attached to this decision as Attachment B.

2. The remaining issue, unresolved by the Amended and Restated Settlement Agreement, is community outreach and education, which may be addressed in Southern California Edison Company's ongoing general rate case, Application 13-11-003 and in San Diego Gas & Electric Company's next general rate case.

3. Southern California Edison Company and San Diego Gas & Electric Company (collectively, the Utilities) are authorized to recover, through rates and through authorized ratemaking accounting mechanisms, the revenue requirements described in Attachment B. This revenue requirement is net of certain refunds described in Attachment B, such as the termination of the capital related revenue requirement for the San Onofre Nuclear Generating Station steam generator replacement program as of February 1, 2012.

   a. Within 30 days from the effective date of this decision, each of the Utilities shall file a Tier 1 advice letter with revised tariff sheets to: implement the revenue requirement, accounting procedures, and charges authorized by this decision. The revised tariff sheets shall (a) become effective on filing, subject to a finding of compliance by the Commission's Energy Division, (b) comply with General Order 96-B, and (c) apply to service rendered on or after their effective date.

b. The Utilities shall each file Tier 2 Advice Letters to implement the changes to their respective revenue requirements. The Utilities shall each provide detailed validation and support for the actual amounts used to calculate the revenue requirements in the Advice Letters.

c. The Utilities shall use the Consensus Protocol adopted in Decision 14-05-003 to calculate the Power Charge Indifference Amount for Direct Access customers. Direct Access customers shall be charged for replacement power costs, only to the extent that the particular replacement power charge was procured on behalf of system (as opposed to bundled) customers.

d. The Office of Ratepayer Advocates and The Utility Reform Network may, notwithstanding the figures set forth in ¶3.36 – 3.48, of the Amended and Restated Settlement Agreement to review and validate any amounts used by the Utilities to implement the revenue requirement, accounting procedures, and charges authorized by the Amended and Restated Settlement Agreement. The Office of Ratepayer Advocates and The Utility Reform Network may meet and confer with the Utilities to resolve any concerns and have the prerogative to protest the advice letters in sub-paragraphs a) and b) of this ordering paragraph if such concerns are not resolved.

e. The Commission always retains authority to review the Utilities' submissions, such as the revenue requirement changes discussed in this ordering paragraph. To ensure that the revised rates conform with the terms and provisions of the Amended and Restated Settlement Agreement, the Energy Division shall carefully review and validate the calculations in the advice letter filings in sub-paragraphs a) and b) of this ordering paragraph. The Utilities shall provide any and all data or information requested by the Energy Division to facilitate this review. At its discretion, the Energy Division may order and direct third-party audits of any of the amounts, accounting procedures, or charges used by the Utilities to implement the revenue requirement. The Utility or Utilities shall pay

the cost of such an audit. In the event that any of the amounts used differs from the figures set forth in ¶3.36 – 3.48 by more than five percent and the difference is not explained to its satisfaction, the Energy Division shall order such an audit. The preceding sentence does not limit Energy Division's discretion to order an audit of any amount, accounting procedure or charge, even if the difference is less than five percent. The cost of such audits shall not exceed $200,000 in aggregate.

4. Within sixty (60) days of the effective date of the decision, Southern California Edison Company and San Diego Gas & Electric Company shall each file an application to recover costs for 2014 operations and maintenance and non-operations and maintenance expenses at the San Onofre Nuclear Generating Station, whether requesting recovery in general rates or the decommissioning trusts.

5. The Commission's Energy Division shall oversee the development by the Utilities of a Greenhouse Gas Research and Reduction program and an associated Program Implementation Plan. The program and Program Implementation Plan shall meet the following criteria:

a. As part of their philanthropic programs, each of Southern California Edison Company and San Diego Gas & Electric Company agree to work with the University of California Energy Institute (or other existing UC entity, on one or more campuses, engaged in energy technology development) to create a Research, Development, and Demonstration program, whose goal would be to deploy new technologies, methodologies, and/or design modifications to reduce greenhouse gas emissions, particularly at current and future generating plants in California.

b. The Greenhouse Gas Research and Reduction program will operate for up to five years following the Commission's

approval of the Tier 2 Advice Letter described in ¶4.16(e) of the Amended and Restated Settlement Agreement.

c. Southern California Edison Company shall donate $4 million annually for five years, and San Diego Gas & Electric Company shall donate $1 million annually for five years, so that the total amounts donated will be $5 million annually for five years for the program described in Ordering Paragraph 5.a. All such donations will be from shareholder funds.

d. Within 60 days of the effective date of this decision, the Utilities shall host a meeting with University of California representatives and other interested parties with the goal of crafting a Program Implementation Plan. The Commission's Energy Division shall provide support in coordinating the meeting.

e. Within 30 days thereafter, the Utilities shall jointly file, and serve, a Program Implementation Plan via a Tier 2 Advice Letter that describes the process for implementation, a proposed schedule and budget, and expected results, applications, and demonstrations. To the extent possible, University of California shall make available to the program relevant data assembled through University of California -affiliated institutions and entities.

f. The Utilities will file, and serve, an annual report to the Energy Division to apprise the Commission of the program's progress towards beta testing of developed technologies, methodologies, and/or design changes.

6. The Proposed Decision for Phases 1 and 1A is hereby withdrawn.

7. A party seeking oral argument before the Commission on the Proposed Decision may, pursuant to Rule 13.13, file and serve the request no later than October 17, 2014.

8. Investigation 12-10-013 Application (A.) 13-01-016, A.13-03-005, A.13-03-013, A.13-03-014 remain open for consideration and potential

prosecution of possible Rule 1.1 violations based on conduct of parties and/or their representatives during the course of these proceedings.

This order is effective today.

Dated _____, at San Francisco, California.

Appendix A - Exhibit List

Appendix A – Exhibit List

PHASE	EXHIBIT NUMBER	DESCRIPTION	DATE IDENT'D	DATE REC'D
P1	A4NR-01	SCE Response to A4NR-SCE-003 DR Q.27	5/16/2013	5/14/2013
P1	A4NR-02	SCE Response to A4NR-SCE-003 DR Q.25	5/16/2013	5/14/2013
P1	A4NR-03	Pressurized Water Reactor Generic Tube Degradation Predictions Report, dated July 2003	5/16/2013	5/14/2013
P1	A4NR-04	Board of Directors Joint Special Meeting Minutes dated March 1, 2012	5/16/2013	5/14/2013
P1	A4NR-05	SONGS Update Board of Directors Meeting April 26 2012	5/16/2013	5/14/2013
P1	A4NR-06	SONGS Update Board of Directors Meeting October 25, 2012	5/16/2013	5/14/2013
P1	A4NR-07	Excerpt Re Steam Generator Management Program	5/16/2013	5/14/2013
P1	A4NR-08	Excerpt Re SG Exam. Guidelines Rev.6	5/16/2013	5/14/2013
P1	A4NR-09	Excerpt Re SG Exam. Guidelines Rev.6 Terminology	5/16/2013	5/14/2013
P1	A4NR-10	SCE Data Request Response to Energy Division-SCE-001 Q.01	5/16/2013	5/14/2013
P1	A4NR-11	Unit 2 NEIL Proof of Loss	5/16/2013	5/14/2013
P1	A4NR-12	SCE Data Request Response to Energy Division-SCE-001 Q.03	5/16/2013	5/14/2013
P1	A4NR-13	SCE Data Request Response to Energy Division-SCE-001 Q.04	5/16/2013	5/14/2013
P1	A4NR-14	SCE Data Request Response to WEM-SCE-001 Quest. III Q.04	5/16/2013	5/14/2013
P1	A4NR-15	Unit 3 NEIL Proof of Loss	5/16/2013	5/14/2013
P1	A4NR-16	SCE Data Request Response to A4NR-SCE-002 Supplemental Q.12	5/16/2013	5/14/2013
P1	A4NR-17	SONGS Update Board of Directors Meeting September 6 2012	5/16/2013	5/14/2013
P1	A4NR-18	Edison Internation Management Discusses Q2 2012 Results - Earnings Call Transcript, Dated July 31, 2012	5/16/2013	5/17/2013
P1	A4NR-19	Sempra Energy Management Discusses Q1 2013 Results - Earnings Call Transcript, Dated May 2, 2013	5/17/2013	5/17/2013
P1	CDSO-01	SONGS High Pressure Turbine Retrofit Project Cost Effectiveness Summary Pages	5/17/2013	5/17/2013
P1	CDSO-02	Review committee for nuclear fuel power plants (State Water Resources Control Board).	5/17/2013	5/17/2013
P1	CDSO-03	NRC CAL RAIs (Pages related to RAI 32)	5/17/2013	5/17/2013
P1	CDSO-04	Article from Orange County Register detailing the latest NRC inspection report for San Onofre	5/17/2013	5/17/2013
P1	CDSO-09	Excerpt Re CA Nuclear Emergency Response Program http://www.calema.ca.gov	5/17/2013	5/17/2013

P1	DRA-02	SCE Data Response DRA-SCE-002 Q.06	5/16/2013	5/13/2013
P1	DRA-03	SCE Data Response DRA-SCE-002 Q.06	5/16/2013	5/13/2013
P1	DRA-06	SCE Data Request Response to DRA-SCE-004 Q.07	5/16/2013	5/13/2013
P1	JP-01	Testimony of Joint Parties' Expert Faith Bautista	5/17/2013	5/17/2013
P1	JP-02	Excerpts of SCE-04 Filed in A.13-01-016	5/17/2013	5/17/2013
P1	JP-03	SCE Data Response, Joint Parties Request 1 Q.02	5/17/2013	5/17/2013
P1	JP-04	SONGS Evacuation Zone	5/17/2013	5/17/2013
P1	SCE-01	SCE Testimony Re Proposed Rate Adjustments for SONGS 2 and 3	5/13/2013	5/17/2013
P1	SCE-02	SCE Testimony Providing Info for Q.1-11 and 13-25 and Appendices	5/13/2013	5/17/2013
P1	SCE-03	SCE-03 SCE Testimony Providing Info for Q.12 and Appendix 1	5/13/2013	5/17/2013
P1	SCE-04	Testimony of Southern California Edison Company In Support of Application For Review of the 2012 Expenses Recorded in the San Onofre Generating Station Memorandum Account (SONGSMA)	5/13/2013	5/17/2013
P1	SCE-05	SCE's Testimony In Response to February 21, 2013 Ruling	5/13/2013	5/17/2013
P1	SCE-06	Expenditures for Installation - San Onofre Nuclear Generating Station Units 2 & 3 Replacement Steam Generators and Disposal of Original Steam Generators	5/13/2013	5/17/2013
P1	SCE-07	SCE's Rebuttal to DRA Testimony	5/13/2013	5/17/2013
P1	SCE-08	SCE's Rebuttal to TURN Testimony	5/13/2013	5/17/2013
P1	SCE-09	SCE's Rebuttal to Other Intervenor Testimony	5/13/2013	5/17/2013
P1	SCE-10	SCE Comparison Exhibit	5/13/2013	5/17/2013
P1	SCE-11	SCE's Phase 1 Errata	5/13/2013	5/17/2013
P1	SCE-12	Witness Qualifications for Gabriel S. Ahn	5/13/2013	5/17/2013
P1	SCE-13	Addendum to SCE's Comparison Exhibit SCE-10	5/13/2013	5/17/2013
P1	SCE-14	Errata to SCE's Comparison Exhibit SCE-10	5/13/2013	5/17/2013
P1	SCE-15	December 20, 2012, Letter From Mitsubishi Heavy Industries Regarding Repair Options	5/14/2013	5/17/2013
P1	SCE-16	December 14, 2012, Letter From Mitsubishi Heavy Industries to Edward Avella Regarding Repair Options	5/14/2013	5/17/2013
P1	SCE-17	December 14, 2012, Letter From Mitsubishi Heavy Industries to Industries to Peter Dietrich Regarding Repair Options	5/14/2013	5/17/2013
P1	SCE-20	November 13, 2012, SCE Letter to Mitsubishi	5/15/2013	5/17/2013
P1	SCE-21	November 28, 2012, Letter from Peter Dietrich to Kiyoshi Yamuchi Regarding Repairs of the SONGS Units 2 and 3 Steam Generators	5/15/2013	5/17/2013

P1	SCE-22	December 19, 2012, Letter from Edward Avella to Hitoshi Kaguchi Regarding Repairs Long Term Repair and Replacement Final Option Selection	5/15/2013	5/17/2013
P1	SCE-23	November 28, 2012, Letter from Peter Dietrich to Kiyoshi Yamuchi Regarding Repairs of the SONGS Units 2 and 3 Steam Generators	5/15/2013	5/17/2013
P1	SCE-24	November 8, 2012, Letter from Edward Avella to Hitoshi Kaguchi Regarding Minimum Warranty Conditions for Repair	5/15/2013	5/17/2013
P1	SCE-25	January 30, 2013, Unit 3 Long Term Preservation Plan Rev.8	5/15/2013	5/17/2013
P1	SCE-27	Errata to Witness Qualifications of Mr. Rick Fisher	5/16/2013	5/17/2013
P1	SCE-29	Appendix 1 to Testimony of SCE Exhibits SCE-2 and SCE-3		5/17/2013
P1	SCE-31	Appendix 4 Incremental O & M for Steam Generator Inspection and Repair Activities		5/17/2013
P1	SCE-33	Rescheduled U3 Preventive Maintenance	5/17/2013	5/17/2013
P1	SCE-34	Appendix 3 O & M for Unit 2 Cycle 17-Refueling Outage		5/17/2013
P1 - late	SCE-35	Base routine vs Base SGIR O&M		
P1	SDGE-1-E	Errata To Exhibit SDGE-1 Prepared Testimony Of San Diego Gas & Electric Company Regarding Proposed Rate Adjustments For SONGS Units 2 and 3	5/17/2013	5/17/2013
P1	SDGE-1-Supp	Supplemental to SDGE-1-E	5/17/2013	5/17/2013
P1	SDGE-2	San Diego Gas & Electric Company's Testimony Providing Information Requested In Administrative Law Judge's December 10, 2012 Ruling Requesting Additional Testimony Pertaining to Twenty Five Questions	5/17/2013	5/17/2013
P1	SDGE-3	Prepared Direct Testimony of Michael L. De Marco on Behalf of San Diego Gas & Electric Company	5/17/2013	5/17/2013
P1	SDGE-3-WP	Workpapers of M. DeMarco - A.13-03-013 – 03/19/13	5/17/2013	5/17/2013
P1	SDGE-4	Prepared Direct Testimony of Michael L. De Marco & Gregory D. Shimansky on Behalf of San Diego Gas & Electric Company	Not Admitted	Not Entered
P1	SDGE-4-W	Workpapers of M. DeMarco - A.13-03-014 (SGRP)-3/19/2013	Not Admitted	Not Entered
P1	SDGE-5	Prepared Rebuttal Testimony of Robert Schlax on Behalf of San Diego Gas & Electric	5/17/2013	5/17/2013
P1	SDGE-6	Prepared Rebuttal Testimony of Gregory D. Shimansky on Behalf of	5/17/2013	5/17/2013

		San Diego Gas & Electric Company		
P1	SDGE-7	Prepared Rebuttal Testimony of Michael L. De Marco on Behalf of San Diego Gas & Electric Company	5/17/2013	5/17/2013
P1	SDGE-8	Prepared Rebuttal Tesimony of Andrew Scates on Behalf of San Diego Gas & Electric Company	5/17/2013	5/17/2013
P1	SDGE-9	Prepared Supplemental Direct Testimony of Andrew Scates on Behalf of San Diego Gas & Electric Company	5/17/2013	5/17/2013
P1 - late	SDGE - 11	Base routine vs Base SGIR O&M		
P1	TURN-1	Testimony of Bill Marcus (JBS Energy)	5/16/2013	5/17/2013
P1	TURN-2	TURN Cross Exhibit: SCE-008, Q2a & TURN DR-08, follow-up to TURN DR-05, Q4 – March 29, 2013	5/16/2013	5/16/2013
P1	TURN-3	TURN Cross – Prepared Remarks of Ted Carver, Chairman and CEO, Edison International 1st QTR 2013 Financial Teleconference	5/17/2013	5/17/2013
P1	WEM-01	SCE Root Cause Evaluation Redacted Version - Steam Generator Tube Wear	5/15/2013	5/17/2013
P1	WEM-02	Errata Testimony of Barbara George, April 4, 2013 – (Portions Struck)	5/17/2013	5/17/2013
P1	WEM-03	SONGS Current Status from Website Russ Worden	5/17/2013	5/17/2013
P1	WEM-04	WEM-SCE DR-001, Q9 – Russ Worden	5/17/2013	5/17/2013
P1	WEM-05	WEM-SCE DR-01, QII.1 – Russ Worden	5/17/2013	5/17/2013
P1	WEM-06	WEM-SCE-01, QXIII – Russ Worden	5/17/2013	5/17/2013
P1	WEM-07	WEM Cross – GAO-Excerpts of March 2013 Emergency Preparedness – NRC Needs to Better Understand Likely public response to Radiological Incidents at Nuclear Power Plants	5/17/2013	5/17/2013
P1	WEM-08	WEM Reply Testimony Phase 1, April 22, 2013 (Portions Struck)	5/17/2013	5/17/2013
P1	WEM-09	WEM Exhibit – Interjurisdictional Planning Committee Fall 2011 Ever-Ready – Your Guide to Emergency Preparedness	5/17/2013	5/17/2013
P1	WEM-10	WEM Exhibit – Emergency Preparedness Information for SONGS 2012-2013	5/17/2013	5/17/2013
P1	WEM-11	WEM Exhibit – 2012 SONGS Philanthropy Summary	5/17/2013	5/17/2013
P1a	DRA-02	Reply Testimony of Yakov Lasko on San Onofre Nuclear Generating Station (SONGS) 2012 Replacement Power Cost Calculation Method (July 10, 2013)	8/6/2013	8/6/2013
P1a	SCE-02	SCE'S Testimony Providing Information for Question Nos. 1-11 and 13-25 As Requested in Administrative Law Judge's Ruling Requesting Additional Testimony, Questions 16-20 (January 9, 2013)	8/6/2013	8/6/2013

P1a	SCE-08	SCE'S Rebuttal to TURN's Testimony, pp. 12-24 (April 22, 2013)	8/6/2013	8/6/2013
P1a	SCE-37	Rebuttal Testimony in Phase 1a (July 24, 2013)	8/6/2013	8/6/2013
P1a	SCE-38	SCE-03 Updated in A.13-04-001 Energy Resource Recovery Account (ERRA) Review of Operations, 2012 Chapter XVII (Updated) (July 24, 2013)	8/6/2013	8/6/2013
P1a	SCE-39	Reconstruction of Table 2 of Kevin Woodruffs July 10-2013 Testimony	8/6/2013	8/6/2013
P1a	SDGE-02	SDG&E's Testimony Providing Information Requested in Administrative Law Judge's December 10, 2012 Ruling Requesting Additional Testimony Pertaining to Twenty Five Questions (Questions 16-20) January 9, 2013	8/6/2013	8/6/2013
P1a	SDGE-08	Prepared Rebuttal Testimony of Andrew Scates on Behalf of San Diego Gas & Electric Company (April 22, 2013)	8/6/2013	8/6/2013
P1a	SDGE-09-B	Errata to Exhibit SDGE-09-A Prepared Supplemental Direct Testimony of Andrew Scates of San Diego Gas & Electric Company (July 29, 2013)	8/6/2013	8/6/2013
P1a	SDGE-13	Prepared Rebuttal Testimony of Andrew Scates on Behalf of San Diego Gas & Electric Company (July 24, 2013)	8/6/2013	8/6/2013
P1a	SDGE-14	Prepared Rebuttal Testimony of Anthen Besa on Behalf of San Diego Gas & Electric Company (July 24, 2013)	8/6/2013	8/6/2013
P1a	TURN-4	Reply testimony of Kevin Woodruff (July 10, 2013), Updated on August 1, 2013 (Public Version)	8/6/2013	8/6/2013
P1a	TURN-5C	Reply Testimony of Kevin Woodruff (July 10, 2013) Confidential SDG&E Summary of SCE's 2012 Replacement Power Costs	8/6/2013	8/6/2013
P1a	TURN-6C	Reply Testimony of Kevin Woodruff (July 10, 2013) Confidential SDG&E Summary of SDG&E's 2012 Replacement Power Costs	8/6/2013	8/6/2013
P1a	TURN-7	CAISO 2012 Annual Report on Market Issues & Performance	8/5/2013	8/6/2013
P1a	TURN-8C	SCE Reponse to Q.01 TURN-SCE-009	8/5/2013	8/6/2013
P1a	TURN-9	SCE Responses to Q.13a, 13b, 19a TURN-SCE-002	8/5/2013	8/6/2013
P1a	TURN-10	SCE Responses to Q.06a, 06c, 03 TURN-SCE-003 and Q.17d of TURN-SCE-002	8/5/2013	8/6/2013
P1a	TURN-11C	Confidential SCE Responses to Q.05 of TURN-SCE-003	8/5/2013	8/6/2013
P1a	TURN-12	SDG&E Response to Q.02 of TURN-SDGE-09	8/6/2013	8/6/2013
P1a	TURN-13	Rebuttal testimony of Kevin Woodruff (May 3, 2013) Confidential Version	8/6/2013	8/6/2013
P1a	TURN-14	Reply Testimony of Kevin Woodruff On Behalf of The Utility Reform	8/6/2013	8/6/2013

		Network Addressing Replacement Power Costs Incurred in 2012 Due To Outages At SONGS, Public Version		
P1a	TURN-14C	Prepared Direct Testimony of Mr. Woodruff, Confidential Version *Note that this confidential version contains materials that are confidential to both SDG&E and SCE	8/6/2013	8/6/2013
P1a	WEM-13	Women's Energy Matters Rebuttal Testimony to SCE ERRA Testimony, filed May 3, 2013	8/6/2013	8/6/2013
P1a	WEM-14	Women's Energy Matters Supplemental Testimony on Replacement Resources, filed July 10, 2013	8/6/2013	8/6/2013
P1a	WEM-15	Fact Sheet Re Excess of Power in CA With or Without Nuclear Power 2011-2020 Source: Feb 10, 2011 ALJ Ruling Attachment A, Pp. 17-19 in R.10-05-006 (*As reference only not admitted into evidence)	8/6/2013	8/6/2013
P1a	WEM-18	Excerpts from Southern California Edison & SDG&E's Monthly Energy Efficiency Program Reports for January 2012	8/6/2013	8/6/2013
P1a	WEM-24	Excerpts from the Transcript of Hearings in R1203014, current LTTP Proceeding.	8/6/2013	8/6/2013
P2	A4NR-22	NRC Waste Confidence Draft GEIS	10/11/2013	10/11/2013
P2	A4NR-23	May 2, 2011 BOR minutes	10/11/2013	10/11/2013
P2	AReM-1	Testimony of M. Fulmer on Behalf of AReM and DACC Regarding the Rate Treatment of the SONGS	10/8/2013	10/8/2013
P2	AReM-2	Rebuttal Testimony of M. Fulmer on Behalf of AReM and DACC Regarding the Rate Treatment of the SONGS	10/8/2013	10/8/2013
P2	CDSO-10	Unit 3 Operating License (Extractions re CCW & SWC)	10/11/2013	10/11/2013
P2	CDSO-11	Once through Cooling (SCE Presentation to CEC)	10/11/2013	10/11/2013
P2	CDSO-13	Reply Testimony of CDSO Phase 2	10/11/2013	10/11/2013
P2	CDSO-17	Data Request: CDSO-SCE-01 Q.3g	10/8/2013	10/11/2013
P2	CDSO-18	Data Request: CDSO-SCE-01 Q.4	10/8/2013	10/11/2013
P2	CDSO-19	SAP Solution Brief	10/11/2013	10/11/2013
P2	CDSO-20	FERC USoA - Selected Pages	10/11/2013	10/11/2013
P2	CDSO-21	DATA REQUEST SET CDSO-SCE-01 Q.09	10/10/2013	10/11/2013
P2	CDSO-23	SAN ONOFRE NUCLEAR GENERATING STATION – NRC CONFIRMATORY ACTION LETTER RESPONSE INSPECTION 05000361/2012009 AND 05000362/2012009	10/10/2013	Not Admitted
P2	CDSO-24	A.10-01-009: DECISION ON THE RATEMAKING TREATMENT FOR THE ABANDONED HILL STREET WATER TREATMENT FACILITY	10/10/2013	10/11/2013

		AND THE AGREEMENT WITH THE CONTRA COSTA WATER DISTRICT TO ACQUIRE REPLACEMENT WATER TO SERVE THE BAY POINT SERVICE AREA		
P2	DRA-3	DRA Phase 2 Direct Testimony Ratemaking Recommendations	10/11/2013	10/11/2013
P2	DRA-4	Errata to Exhibit DRA-3	10/11/2013	10/11/2013
P2	DRA-5	Data Request: DRA-SCE-011 Q.08	10/11/2013	10/11/2013
P2	DRA-6	Prepared Direct Testimony of Kenneth J. Deremer	10/10/2013	10/11/2013
P2	SCE-36	Testimony of Southern California Edison Company Responding to Certain Issues Identified in July 1, 2013 ALJ Ruling	10/7/2013	10/10/2013
P2	SCE-39	Errata to SCE-36: Testimony of Southern California Edison Company Responding to Certain Issues Identified in July 1, 2013 ALJ Ruling	10/10/2013	10/10/2013
P2	SCE-40	SONGS OII Phase II Testimony Providing Ratemaking Proposal	10/10/2013	10/10/2013
P2	SCE-41	Errata to SCE-40: SONGS OII Phase II Testimony Providing Ratemaking Proposal	10/10/2013	10/10/2013
P2	SCE-42	SONGS OII - Phase II Rebuttal Testimony	10/7/2013	10/10/2013
P2	SCE-43	SCE Errata to SCE-36 and SCE-42	10/7/2013	10/10/2013
P2	SCE-44	SCE Errata to SCE-36	10/7/2013	10/10/2013
P2	SCE-45	SCE Presentation Materials Re Physical Systems and Assets of SONGS	10/7/2013	10/10/2013
P2	SCE-46	Phase 2: Statement of Southern California Edison Company Regarding Certain Retirement Unit Account Categorizations Identified in Exhibit SCE-36 (Exhibit SCE-46)	10/7/2013	10/10/2013
P2	SCE-50	SCE Data Request Response to TURN-SCE-012, Question 01	10/8/2013	10/10/2013
P2	SCE-51	Further Errata to Exhibit SCE-40	10/10/2013	10/10/2013
P2	SCE-52	Supplemental Net Investment Summary	10/11/2013	10/11/2013
P2	SCE-53	Supplemental Errata to SCE-36 Appendix E	10/11/2013	10/11/2013
P2	SDGE-16-B	Errata to Prepared Direct Testimony of Erik M. Daley	10/10/2013	10/10/2013
P2	SDGE-18-B	Errata to Prepared Direct Testimony of Kenneth Deremer on Behalf of SDG&E	10/10/2013	10/10/2013
P2	SDGE-19-B	Errata to Prepared Direct Testimony of Deborah Hiramoto on Behalf of SDG&E	10/10/2013	10/10/2013
P2	SDGE-20	Prepared Rebuttal Testimony of Kenneth Deremer on Behalf of SDG&E	10/10/2013	10/10/2013
P2	SDGE-21	Prepared Rebuttal Testimony of Cynthia S. Fang on Behalf of SDG&E	10/10/2013	10/10/2013

P2	TURN-15	Ratemaking for Costs of the Out-of-Service San Onofre Nuclear Generating Station: Phase II	10/10/2013	10/10/2013
P2	TURN-20	AReM/DACC reply to TURN Data Request #1	10/8/2013	10/8/2013
P2	WBA-04	Data Request: WBA-SCE-001 to -028 Q.01-07	10/11/2013	10/11/2013
P2	WBA-05	Data Request: WBA-SCE-032 Q.01	10/11/2013	10/11/2013
P2	WBA-06	Data Request: WBA-SCE-036 Q.02	10/11/2013	10/11/2013
P2	WBA-07	Excerpts from NRC Report October 6, 2013	10/11/2013	10/11/2013
P2	WBA-08	Testimony of Rinaldo S. Brutoco President of the World Business Academy	10/11/2013	10/11/2013
P2	WEM-30	Women's Energy Matters Phase 2 Reply Testimony	10/11/2013	10/11/2013
P2	WEM-31	Women's Energy Matters Phase 2 Rebuttal Testimony	10/11/2013	10/11/2013
P2	WEM-32	Steve Pickett Power Point 08-13-13 Cal Senate Hearing	10/11/2013	10/11/2013
P2	WEM-33	Excerpts from Audio Transcript of SONGS Virtual Tour	10/11/2013	10/11/2013
P2	WEM-34	Excerpt SCE Early Decommissioning Scenario	10/11/2013	10/11/2013
P2	WEM-35	NRC's 5/20/11 SONGS ISFSI Inspection Report (p.7-11)	10/11/2013	10/11/2013
Settle	Joint Settling Parties - 1	Joint Testimony Providing Information for Questions 5, 8-11, 13, and 18 as Directed in ALJ Ruling of April 24, 2014	5/14/2014	5/14/2014
Settle	SCE-54	SCE's Testimony Providing Information for Questions 1-4, 6-7, 12, 14, and 19-20 as Directed in ALJ Ruling of April 24, 2014	5/14/2014	5/14/2014
Settle	SCE-55	Errata to Questions 4, 7, and 20 as Directed in ALJ Ruling of April 24, 2014	5/14/2014	5/14/2014
Settle	SCE-56	Updated PVRR	5/14/2014	5/14/2014
Settle	SCE-57	Errata to Question 7 as Directed in ALJ Ruling of April 24, 2014	5/14/2014	5/14/2014
Settle	SDGE-22	SDG&E's Testimony Providing Information Requested in ALJ Ruling of April 24, 2014	5/14/2014	5/14/2014
Settle	SDGE-23	SDG&E's PVRR Associated with the Settlement and Litigation Positions	5/14/2014	5/14/2014
Settle	ANR-50	TURN Discovery Response	5/14/2014	5/14/2014
Settle	DRA-10	Qualifications and Prepared Testimony of Robert Mark Pocta	5/14/2014	5/14/2014

(End of Appendix A)

Appendix B

(Amended and Restated Settlement Agreement)

SONGS OII AMENDED AND RESTATED SETTLEMENT AGREEMENT BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY, THE OFFICE OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, FRIENDS OF THE EARTH, AND THE COALITION OF CALIFORNIA UTILITY EMPLOYEES

Southern California Edison Company ("SCE"), San Diego Gas & Electric Company ("SDG&E"), the Office of Ratepayer Advocates ("ORA"), The Utility Reform Network ("TURN"), Friends of the Earth ("FOE"), and the Coalition of California Utility Employees ("CUE") (hereinafter collectively referred to as the "Settling Parties") agree to settle all claims, allegations, and liabilities in the *Order Instituting Investigation Regarding San Onofre Nuclear Generating Station Units 2 and 3*, I.12-10-013, and all proceedings that have been consolidated therewith (including A. 13-01-016, A. 13-03-005, A. 13-03-013, and A. 13-03-014) (the "OII"), on the following terms and conditions, which shall only become effective on the Effective Date (as defined below).

This amended and restated settlement agreement ("Agreement") is entered into as a compromise of disputed claims in order to minimize the time, expense, and uncertainty of further regulatory proceedings. ORA, TURN, FOE, and CUE agree to the following terms and conditions as a complete and final resolution of all claims against SCE and SDG&E in the OII, and SCE and SDG&E agree to these terms and conditions as a complete and final resolution of the OII. This Agreement constitutes the sole agreement between the Settling Parties concerning the subject matter of this Agreement.

As explained herein, the Settling Parties shall jointly submit this Agreement to the California Public Utilities Commission ("Commission" or "CPUC") for approval. If the Effective Date does not occur within 90 days following the date of submission to the Commission, the Agreement shall be subject to termination by any of the Settling Parties upon written notice to the other Settling Parties. This document amends and restates the original settlement agreement submitted to the Commission on April 3, 2014.

I.
THE PARTIES

1.1. The parties to this Agreement are SCE, SDG&E, TURN, ORA, FOE and CUE.

1.2. SCE is an investor owned public utility in the State of California and is subject to the jurisdiction of the Commission with respect to providing electric service to its customers.

1.3. SDG&E is an investor owned public utility in the State of California and is subject to the jurisdiction of the Commission with respect to providing electric service to its customers.

1.4. ORA is an independent division of the Commission whose statutory mission is to obtain the lowest possible rate for service consistent with reliable and safe service levels. In fulfilling this goal, ORA also advocates for customer and environmental protections.

1.5. TURN is an independent, non-profit consumer advocacy organization that represents the interests of residential and small commercial utility customers.

1.6. FOE is an advocacy organization whose mission is to protect the environment and promote the sustainable use of the planet's resources.

1.7. CUE is a coalition of unions whose members are employed at California electric utilities.

1.8. The following entities have filed motions seeking party status in the OII, but are not parties to this Agreement: Women's Energy Matters, the Alliance for Nuclear Responsibility, the Coalition to Decommission San Onofre, Ruth Henricks, the World Business Academy, the National Asian American Coalition, the Latino Business Chamber of Greater Los Angeles, the Ecumenical Center for Black Church Studies, the Chinese American Institute for Empowerment, the Nevada Hydro Company, Inc., City of Riverside, the Clean Coalition, the Western Power Trading Forum, the Direct Access Customer Coalition, the Alliance for Retail Energy Markets, Southern California Gas Company, Distributed Energy Consumer Advocates, the Utility Consumers' Action Network, the Independent Energy Producers Association, the California Cogeneration Council, Noble Americas Energy Solutions LLC, Amerinet, Inc., Public Agency Coalition, and the State of California.

II.
DEFINITIONS

2.1. **AFUDC:** Allowance for Funds Used During Construction.

2.2. **Agreement:** This document and any appendices.

2.3. **ALJ:** Administrative Law Judge.

2.4. **Authorized Cost of Debt:** The rate of return on debt authorized by the CPUC for a given utility from time to time. This rate of return may change during any of the amortization periods set forth in this Agreement.

2.5. **Authorized Cost of Preferred Stock:** The rate of return on preferred stock authorized by the CPUC for a given utility from time to time. This rate may change during any of the amortization periods set forth in this Agreement.

2.6. **Base Plant:** The Net Book Value of all SONGS-related capital investments, except the SGRP, in the Utilities' rate bases.

(a) Base Plant includes the Net Book Value for all SONGS-related marine mitigation investments that the Utilities made in response to the California Coastal Commission's directives to mitigate environmental impacts of SONGS, except the $22 million disallowed by the Commission in Decision No. 06-05-016.

(b) Base Plant includes the Net Book Value for all SONGS-related NDBD&DD investments.

(c) Base Plant does not include an adjustment for cash working capital.

(d) Base Plant does not include the M&S Investment.

(e) Base Plant does not include the Nuclear Fuel Investment.

2.7. **BRRBA:** The generation sub-account of the Base Revenue Requirement Balancing Account, or its successor account.

2.8. **Original Cost:** The initial outlay for an investment, equal to the gross sum of all recorded direct and indirect expenditures associated with the capital investment.

2.9. **Capital-Related Revenue Requirement:** The total amount of revenue required by a utility to recover its capital investments and associated income and property taxes (including the effect of deferred taxes), including a return on those investments calculated in accordance with the utility's authorized cost of capital and associated depreciation expenses computed in accordance with depreciation schedules authorized by the Commission.

2.10. **Commission or CPUC:** The California Public Utilities Commission.

2.11. **Commission Approval:** A decision of the Commission approving the Agreement in the form submitted without modification that has become final and is no longer subject to appeal.

2.12. **Consolidated Proceedings**: All proceedings that have been consolidated with the OII, including A. 13-01-016, A. 13-03-005, A. 13-03-013, and A. 13-03-014.

2.13. **CWIP:** CWIP means Construction Work In Progress or replacement projects (retirement work in progress or net salvage) recorded directly in accumulated depreciation.

(a) **Cancelled CWIP:** The total Original Cost of CWIP associated with SONGS-related projects that began prior to the Effective Date but that will not enter service at any time after February 1, 2012.

(b) **Completed CWIP:** The total Original Cost of CWIP associated with SONGS-related projects that began prior to the Effective Date and will enter service at any point after February 1, 2012, including all CWIP that will enter service after the Effective Date.

2.14. **Effective Date:** The day of the Commission's decision adopting the ratemaking proposal set forth in this Agreement.

2.15. **ERRA:** Energy Resource Recovery Account, or its successor account.

2.16. **FERC:** Federal Energy Regulatory Commission.

2.17. **Fuel Cancellation Costs:** The total recorded costs (other than those costs that the Utilities are able to recover from the Nuclear Decommissioning Trusts) associated with cancelling SCE's contracts entered into by SCE as the SONGS Operating Agent on behalf of itself and SDG&E to purchase nuclear fuel, including but not limited to the following costs:

(a) Termination fees and other amounts paid to obtain a release of any obligations under fuel procurement contracts.

(b) Amounts paid by SCE as Operating Agent for itself and on behalf of SDG&E to fuel procurement vendors pursuant to settlements, judgments, or arbitration awards related to disputes arising from SCE's termination of alleged contractual obligations to purchase nuclear fuel.

(c) Attorney's fees and other litigation costs incurred on and after January 1, 2013 by SCE as Operating Agent for itself and on behalf of SDG&E in seeking to minimize its obligations under fuel procurement contracts through arbitrations, negotiations, and/or judicial or administrative proceedings.

2.18. **Fuel Net Proceeds:** The total proceeds of all sales of nuclear fuel, net of costs incurred by SCE as Operating Agent for itself and on behalf of SDG&E in order to sell such nuclear fuel, including but not limited to:

(a) Costs incurred in order to store the nuclear fuel inventory pending the sale; *and*

(b) Costs incurred in order to render the nuclear fuel saleable.

2.19. **Incremental Inspection and Repair Costs:** Those costs recorded by the Utilities as incremental expenses associated with SCE's efforts to inspect and repair the damage at SONGS. This amount also includes the $11 million (100% share) in costs for inspection and repair of SONGS that SCE originally recorded as base O&M and subsequently re-classified as incremental O&M.

2.20. **Mitsubishi:** Mitsubishi Heavy Industries, Ltd., related entities such as Mitsubishi Nuclear Energy Systems and Mitsubishi Heavy Industries America Inc., and any third party who has insured or indemnified any of these entities for any amounts owed to the Utilities in respect of the replacement steam generators.

2.21. **M&S Investment:** The total Original Cost of materials and supplies investments associated with SONGS.

2.22. **M&S Net Proceeds:** The total proceeds of all sales of materials and supplies, net of costs incurred by SCE in order to sell such materials and supplies.

2.23. **NDBD&DD:** Nuclear Design Basis Documentation and Deferred Debits. NDBD costs are associated with SCE's efforts to comply with the NRC's mandate that SCE establish a nuclear design documentation system. DD costs are plant-related regulatory assets that

resolve accounting differences in capitalization policies between CPUC and FERC jurisdictions regarding the commercial operation of SONGS.

2.24. **Net Book Value:** Original Cost less the accumulated amortization and depreciation expenses, if any, associated with an investment.

2.25. **NEIL:** Nuclear Energy Insurance Limited.

2.26. **NGBA:** Non-fuel Generation Balancing Account, or its successor account.

2.27. **Non-O&M Balancing Account Expenses:** All SONGS-related expenses for pensions, post-retirement benefits other than pensions, and short-term incentive compensation that are not recorded in FERC accounts 517-532.

2.28. **Non-O&M Expenses:** All SONGS-related expenses recorded in FERC accounts 408, 924, 925, and 926 that are *not*:

(a) Non-O&M Balancing Account Expenses;

(b) Capitalized overhead; *or*

(c) Recorded in FERC accounts 517-532.

2.29. **Nuclear Decommissioning Trusts:** The trusts established by the Utilities and approved by the CPUC pursuant to the Nuclear Facilities Decommissioning Act of 1985, Cal. Pub. Util. Code Sec. 8321 et seq., for the purpose of covering costs associated with decommissioning SONGS.

2.30. **Nuclear Fuel Investment:** The Net Book Value of all nuclear fuel (including in-core fuel and pre-core fuel), *plus* all Fuel Cancellation Costs. To the extent that SCE, as Operating Agent on behalf of itself and on behalf of SDG&E, incurs additional Fuel Cancellation Costs after the date of execution of this Agreement, those costs will be added to the Nuclear Fuel Investment at the time they are incurred.

2.31. **NRC:** Nuclear Regulatory Commission.

2.32. **O&M:** Operations and Maintenance.

2.33. **OII:** Order Instituting Investigation. As used in this Agreement, the term "OII" shall refer to the proceeding initiated by the Commission in I. 12-10-013, and all Consolidated Proceedings.

2.34. **Operating Agent:** SCE is the Operating Agent responsible for the performance of the operation and maintenance of SONGS.

2.35. **ORA:** The Office of Ratepayer Advocates or its successor division.

2.36. **SCE:** Southern California Edison Company.

2.37. **SDG&E:** San Diego Gas & Electric Company.

2.38. **Settling Parties/Settling Party:** SCE, SDG&E, ORA, TURN, FOE, and CUE, or any of them.

2.39. **SGRP:** Steam Generator Replacement Project.

2.40. **SONGS:** San Onofre Nuclear Generating Station.

2.41. **SONGSBA:** SDG&E's San Onofre Nuclear Generating Station O&M Balancing Account.

2.42. **SONGS Litigation Balance:** The total SONGS Litigation Recoveries, net of SONGS Litigation Costs.

2.43. **SONGS Litigation Costs:** All litigation costs recorded since January 31, 2012, including but not limited to fees paid to outside attorneys and experts, associated with pursuing and preparing to pursue SONGS Litigation Recoveries.

2.44. **SONGS Litigation Recoveries:** Any amounts received (whether by settlement, judicial order, arbitration award, or any other recovery) by the Utilities from NEIL and/or Mitsubishi or their respective affiliates in connection with the Utilities' efforts to pursue recovery of amounts in respect of the failure of the steam generators and subsequent permanent shut down of SONGS. Any amounts obtained by the City of Riverside are not subject to this Agreement.

2.45. **SONGSMA:** SCE's San Onofre Nuclear Generating Station Memorandum Account.

2.46. **SONGSOMA:** Either Utility's San Onofre Nuclear Generating Station Outage Memorandum Account, including SDG&E's SONGS OMA.

2.47. **TURN:** The Utility Reform Network.

2.48. **U2C17 RFO:** The refueling and maintenance outage for SONGS Unit 2 that was intended to last from January 10, 2012, until March 5, 2012.

2.49. **Utility/Utilities:** SCE and SDG&E, or either of them.

III.
GENERAL RECITALS

3.1. SCE owns a 78.21% share of SONGS. SDG&E owns a 20% share of SONGS. The City of Riverside owns a 1.79% share of SONGS.

3.2. In Decision No. 05-12-040, the Commission approved SCE's application to replace the steam generators in SONGS Units 2 and 3.

3.3. In Decision No. 06-11-026, the Commission found that SDG&E's participation in the SGRP was reasonable and approved an unopposed settlement agreement, including

SDG&E's ownership share of the maximum allowable 100%, 2004$, level of the SGRP cost plus SDG&E's internal costs.

3.4. In January 2010, SCE replaced the steam generators in SONGS Unit 2. In January 2011, SCE replaced the steam generators in SONGS Unit 3.

3.5. The replacement steam generators in Units 2 and 3 were designed and manufactured by Mitsubishi.

3.6. On January 10, 2012, SONGS Unit 2 was removed from service for a scheduled refueling and maintenance outage that was expected to end on March 5, 2012.

3.7. On January 31, 2012, SONGS Unit 3 was taken offline because station operators at SONGS detected a leak in a steam generator tube.

3.8. In early February, 2012, inspections of Unit 2 steam generators showed accelerated tube wear. This tube wear caused unexpected and extensive property damage to Unit 2's steam generators

3.9. In February and March, 2012, inspections in Unit 3 revealed extensive wear on the Unit's steam generator tubes. Some of this wear was caused by the steam generator tubes rubbing against each other ("tube-to-tube wear"). This tube-to-tube wear caused unexpected and extensive property damage to Unit 3's steam generators.

3.10. On March 27, 2012, the NRC issued a Confirmatory Action Letter confirming SCE's commitment not to restart either Unit 2 or Unit 3 until the source of the tube wear was understood and SCE had confidence that the units could be safely restarted.

3.11. Further inspections of the Unit 2 steam generators revealed more property damage in the form of early indications of tube-to-tube wear. SCE formally notified the NRC of SCE's finding of tube-to-tube wear in Unit 2 on April 20, 2012.

3.12. On November 1, 2012, the Commission issued an Order Instituting Investigation Regarding San Onofre Nuclear Generating Station Units 2 and 3. (I. 12-10-013.) The Order stated that the Commission intended to examine "the causes of the outages, the utilities' responses, the future of the SONGS units, and the resulting effects on the provision of safe and reliable electric service at just and reasonable rates." The Order also set SONGS-related rates subject to refund as of January 1, 2012, and directed that the Utilities establish a memorandum account (the SONGSOMA) for the purpose of tracking those costs.

3.13. On December 10, 2012, the Commission issued Decision No. 12-11-051, which resolved SCE's 2012 General Rate Case. Decision No. 12-11-051 directed SCE to establish a memorandum account (the "SONGSMA"), effective January 1, 2012, to track certain SONGS-related costs. The Commission further ordered SCE to file a reasonableness review application for post-2011 expenses recorded in the SONGSMA by January 31, 2013. In accordance with this directive, SCE filed A. 13-01-016 on January 31, 2013. A. 13-01-016 has been consolidated with this OII.

3.14. In D.12-11-051, the Commission also made SDG&E subject to the same conditional refund of SDG&E's share of the SONGS-related O&M and capital costs. (See D.12-11-051 at 40-41, Finding of Fact 36, Conclusions of Law 21 and 22, Ordering Paragraphs 10 and 11.) On March 19, 2013, SDG&E filed A.13-03-005 requesting a reasonableness determination of SDG&E's internal SONGS costs incurred during 2012 and capital expenses (excluding the SGRP) that were invoiced by SCE to SDG&E, including SCE's overheads, and tracked in SDG&E's SONGSOMA. A.13-03-014 has been consolidated with this OII.

3.15. On January 28, 2013, the Assigned Commissioner and ALJ issued a Scoping Memo and Ruling. The Scoping Memo divided the OII into phases and provided that the OII would examine the following issues:

(a) In Phase 1, the Commission would examine:

(i) "Nature and effects of the steam generator failures in order to assess the reasonableness of SCE's consequential actions and expenditures (e.g., was it reasonable to remove fuel from unit #3)."

(ii) "Whether 2012 SONGS-related expenses recorded in the SONGSMA are reasonable and necessary, including,

(A) 100% of O&M, including segregated safety-related costs;

(B) 100% of cost-savings from personnel reductions and other avoided costs;

(C) 100% of maintenance and refueling outage expenses; and

(D) 100% of capital expenditures."

(iii) "A review of the reasonableness and effectiveness of SCE's actions and expenditures for community outreach and emergency preparedness related to the SONGS outages."

(iv) "Other issues as necessary to determine whether SCE should refund any rates preliminarily authorized in the 2012 GRC, in light of the changed facts and circumstances of the unit outages; and if so, when the refunds should occur."

(b) In Phase 2, the Commission would examine "whether any reductions to SCE's rate base and SCE's 2012 revenue requirement are warranted or required due to the extended SONGS outages."

(c) In Phase 3, the Commission would examine "causes of the [steam generator] damage and allocation of responsibility, whether claimed SGRP expenses are reasonable, including review of utility-proposed repair and/or replacement cost proposals using cost-effectiveness analysis and other factors."

(d) In Phase 4, if necessary, the Commission would examine "whether SCE's 2013 revenue requirement should be adjusted to reflect lower-than forecast O&M, Capex, replacement power costs, and other SONGS expenses."

3.16. From December, 2012, through April, 2013, the Settling Parties exchanged testimony regarding Phase 1 issues.

3.17. On March 15, 2013, SCE filed A. 13-03-005, seeking Commission approval to include the recorded capital costs of the SGRP permanently in rates. SCE's testimony in support of this application established that the total recorded cost of the SGRP was $768.5 million in nominal dollars (100% share). SCE's testimony in support of this application also established that the total recorded cost of the SGRP, adjusted for inflation using the Handy-Whitman index for fabrication and construction costs and the Commission-approved nuclear decommissioning burial escalation rates for burial costs, was $612.1 million in 2004 dollars (100% share). A. 13-03-005 has been consolidated with this OII.

3.18. On March 18, 2013, SDG&E filed A. 13-03-014, seeking Commission approval to include SGD&E's share of recorded capital costs of the SGRP permanently in rates. A. 13-03-014 has been consolidated with this OII.

3.19. On April 2, 2013, SCE served testimony addressing the energy-market related impact of the SONGS outages in its ERRA compliance review proceeding (A. 13-04-001). On May 1, 2003, SDG&E served testimony addressing the energy-market related impact of the SONGS outages in I. 12-10-013.

3.20. On April 19, 2013, ALJs Darling and Dudney issued an Order clarifying that the topics identified in the January 28, 2013, Scoping Memo applied equally to SCE and SDG&E.

3.21. On May 6, 2013, by e-mail ruling, ALJ Dudney ruled that the OII would consider the issue of "what replacement power was purchased by the utilities in 2012 as a consequence of the SONGS outages." ALJ Dudney scheduled separate evidentiary hearings to address this "replacement power" issue. The phase of the OII addressing this issue came to be known as Phase 1A.

3.22. ALJ Darling held an evidentiary hearing on Phase 1 issues from May 13, 2013, until May 17, 2013. The Settling Parties each submitted Opening and Reply Briefs on Phase 1 issues.

3.23. On June 7, 2013, SCE permanently retired SONGS Units 2 and 3. SCE had determined that Mitsubishi made errors in designing and manufacturing the replacement steam generators for Units 2 and 3. SCE determined that these errors caused deficiencies in design, manufacturing, and workmanship that prevented SCE from safely operating Units 2 or 3 as intended and contracted for. SCE determined that, because Mitsubishi had not proposed a viable plan to repair or replace the replacement steam generators in a timely manner, and because of the significant uncertainty as to whether or when Unit 2 would be permitted to restart even at partial power for a reduced operating period, it was no longer prudent to continue to pursue restart or repair.

3.24. On July 1, 2013, ALJs Darling and Dudney issued a Ruling on Miscellaneous Scheduling and Procedural Issues and Notice of Phase 2 Prehearing Conference. The ruling provided the following "statement" of the scope of Phase 2:

(a) What are the values of SONGS assets in rate base, and which of these assets should be removed from rate base pursuant to Public Utilities Code § 455.5, as of November 1, 2012, or a later date if any such asset became not "used and useful" after November 1, 2012?

(b) What are the related Operations and Maintenance costs associated with the assets removed from rate base according to [the issue] above?

(c) Any other issues relevant to the application of § 455.5 to the SONGS outage.

3.25. In July, 2013, the Settling Parties exchanged testimony on Phase 1A issues.

3.26. On July 22, 2013, ALJs Darling and Dudney further specified that Phase 1A would address "the method for calculating the cost of replacement power during 2012 due to the SONGS outage. This scope includes developing a formula/method for the calculation of costs (capacity, energy, foregone sales, and congestion) and establishing what values should be entered in to that formula."

3.27. From July, 2013, until September, 2013, the Settling Parties exchanged testimony on Phase 2 issues.

3.28. ALJ Dudney held an evidentiary hearing on Phase 1A from August 5, 2013, until August 6, 2013. The Settling Parties each filed Opening and Reply Briefs on Phase 1A issues.

3.29. ALJs Dudney and Darling held an evidentiary hearing on Phase 2 issues from October 7, 2013, until October 11, 2013. The Settling Parties each filed Opening and Reply Briefs on Phase 2 issues.

3.30. Throughout the proceeding, SCE responded to 928 data request questions propounded by the parties to the OII. SDG&E similarly responded to data request questions propounded to it by the parties to the OII.

3.31. On October 16, 2013, SCE as the Operating Agent and Edison Material Supply LLC ("EMS") filed a Request for Arbitration against Mitsubishi pursuant to the arbitration clause in the contract between EMS and Mitsubishi. Through this arbitration, which is ongoing as of the date of this Agreement, SCE and EMS are seeking recovery from Mitsubishi based on the non-operation of SONGS Units 2 and 3.

3.32. On July 18, 2013, SDG&E filed a complaint in California Superior Court against Mitsubishi seeking to recover damages SDG&E has incurred and will incur related to the defects in the steam generators. This action was later removed to Federal District Court. On August 8, 2013, Mitsubishi filed a motion to stay the action pending arbitration and on March 14, 2014, the Court issued an order granting Mitsubishi's motion on the

condition that SDG&E must be able to fully assert its own claims in an arbitration proceeding.

3.33. The Utilities have also submitted claims to NEIL based on their assessments that both SONGS units sustained accidental property damage. SCE has submitted proofs of loss under insurance policies covering SONGS and is continuing to pursue recovery as of the date of this Agreement.

3.34. On November 19, 2013, ALJs Darling and Dudney issued a Proposed Decision on Phase 1 and Phase 1A issues. Each of the Settling Parties submitted Opening Comments on the Proposed Decision on December 9, 2013. Each of the Settling Parties submitted Reply Comments on the Proposed Decision on December 16, 2013.

3.35. On January 15, 2014, the Commission held an all-party meeting to discuss the Proposed Decision on Phase 1 and Phase 1A issues.

3.36. SCE's share of the Net Book Value of the SGRP was $597 million as of February 1, 2012, including CWIP. SDG&E's share of the Net Book Value of the SGRP was $160.4 million as of February 1, 2012, including CWIP.

3.37. SCE's share of Base Plant was $622 million as of February 1, 2012, excluding CWIP. SDG&E's share of Base Plant was $165.6 million as of February 1, 2012, excluding CWIP.

3.38. SCE's share of the Nuclear Fuel Investment was $477 million as of December 31, 2013, exclusive of any paid or accrued Fuel Cancellation Costs. SDG&E's share of the Nuclear Fuel Investment was $115.8 million as of December 31, 2013, exclusive of any paid or accrued Fuel Cancellation Costs.

3.39. SCE's share of the M&S Investment was $99 million as of December 31, 2013. SDG&E's share of the M&S Investment was $10.4 million as of December 31, 2013.

3.40. SCE's share of Cancelled CWIP is estimated at $153 million as of December 31, 2013. Subject to an additional reconciliation with SCE, SDG&E's Cancelled CWIP amounts will be provided pursuant to section 6.1 hereof, subject to ORA's and TURN's prerogative stated in the last sentence thereof.

3.41. SCE's share of Completed CWIP is estimated at $302 million as of December 31, 2013. Subject to an additional reconciliation with SCE, SDG&E's Completed CWIP amounts will be provided pursuant to section 6.1 hereof, subject to ORA's and TURN's prerogative stated in the last sentence thereof.

3.42. SCE's share of O&M costs recorded in connection with the U2C17 RFO is $41.1 million, which consists of $4.9 million recorded in 2011, $35.3 million recorded in 2012, and $0.9 million recorded in 2013. SDG&E's share of O&M costs recorded in connection with the U2C17 RFO as calculated by SCE is $9.3 million.

3.43. Decision No. 12-11-051 provisionally authorized $387.4 million (100% share) in base O&M costs for the year 2012 and $397.6 million (100% share) in base O&M costs for the year 2013.

3.44. In 2012, SCE recorded $99 million (SCE share) in Incremental Inspection and Repair Costs in excess of the amount of base O&M provisionally authorized in Decision No. 12-11-051. In 2012, SCE estimated that SDG&E paid $27.0 million in total Incremental Inspection and Repair Costs, including SCE overheads and portions allocated to Base and Incremental O&M. SDG&E's base O&M provisionally authorized in Decision No. 12-11-051 and D.13-05-010 was greater than the total amount of recorded costs including overheads, as applicable to SDG&E.

3.45. SDG&E recorded $141.6 million, including overheads paid to SCE, to its SONGSBA in 2012; $27.0 million, including overheads paid to SCE, was defined by SCE as Incremental Inspection and Repair Costs in Base and Incremental O&M.

3.46. In 2013, SCE's share of recorded base O&M costs was $241 million and SCE's share of recorded Incremental Inspection and Repair Costs was $12 million.

3.47. SDG&E recorded $105.0 million, including overheads paid to SCE, to its SONGSBA in 2013.

3.48. SCE's total amount of deferred taxes on SONGS investment (excluding investment in the SGRP) as of Feb 1, 2012, was $152 million. SDG&E's total amount of deferred taxes on SONGS investment (excluding investment in the SGRP) as of February 1, 2012 is estimated at $4.5 million.

3.49. On March 27, 2014, the Settling Parties held a settlement conference in accordance with Rule 12.1(b) of the Commission's Rules of Practice and Procedure.

3.50. On April 3, 2014, the Settling Parties filed and served a Joint Motion for Adoption of Settlement Agreement.

3.51. In a ruling issued on September 5, 2014, Commissioner Florio and ALJs Darling and Dudney proposed several modifications to the settlement agreement filed on April 3, 2014.

3.52. The Settling Parties have voluntarily agreed to adopt the proposed modifications, and those modifications are reflected in this Agreement.

3.53. The General Recitals described in Sections 3.1 through 3.52 provide factual background for this Agreement, and the Commission is not asked to confirm the General Recitals as true.

IV.
AMENDED AND RESTATED SETTLEMENT AGREEMENT TERMS AND CONDITIONS

4.1. In consideration of the mutual obligations, promises, covenants and conditions contained herein, the Settling Parties agree to support approval by the Commission of this Agreement, as further described herein, and to support this Agreement in its entirety before any regulatory agency or court of law where this Agreement, its meaning or effect is an issue, and no Settling Party shall take or advocate for, either directly, or indirectly through another entity, any action that would have the effect of modifying or abrogating the terms of this Agreement.

4.2. Capital-Related Revenue Requirement for the SGRP

(a) The Capital-Related Revenue Requirement for the SGRP will be terminated as of February 1, 2012.

(b) The Utilities shall refund to ratepayers all amounts collected in rates as the Capital-Related Revenue Requirement for the SGRP for all periods on and after February 1, 2012. These amounts shall be refunded per the refund mechanism set forth in Section 4.12 of this Agreement.

(c) The Utilities will retain all amounts collected in rates as the Capital-Related Revenue Requirements for the SGRP for periods prior to February 1, 2012.

(d) The Utilities shall not recover in rates the Net Book Value of the SGRP as of February 1, 2012.

4.3. Base Plant

(a) The Utilities' respective shares of Base Plant will be removed from each Utility's respective rate base as of February 1, 2012. The Utilities will retain all amounts collected in rates in respect of Capital-Related Revenue Requirements for Base Plant for periods prior to February 1, 2012.

(b) As of February 1, 2012, the Utilities will amortize Base Plant in rates as a regulatory asset ratably over 10 years.

(i) This amortization period will begin on February 1, 2012, and will end on February 1, 2022.

(ii) The Utilities have already collected amounts in rates in respect of Capital-Related Revenue Requirements for Base Plant for periods on and after February 1, 2012. To the extent that these amounts collected exceed the amounts permitted by this Agreement for periods on and after February 1, 2012, the Utilities shall refund the excess to ratepayers. These excess amounts shall be refunded per the refund mechanism set forth in Section 4.12 of this Agreement.

(c) During the amortization period set forth in Section 4.3(b)(i) of this Agreement, each Utility shall earn a return on its respective share of unrecovered Base Plant, adjusted for deferred taxes. Each Utility's rate of return on unrecovered Base Plant shall be calculated as the Utility's Authorized Cost of Debt plus 50% of the Utility's Authorized Cost of Preferred Stock, weighted by the amount of debt and preferred stock in the Utility's authorized ratemaking capital structure. For the avoidance of doubt, the rate of return on common equity shall not be considered.

(i) The methodology for computing Base Plant to adjust for deferred taxes is illustrated in Appendix A to this Agreement.

(d) The Settling Parties agree that the Authorized Cost of Debt and the Authorized Cost of Preferred Stock described in Section 4.3(c) of this Agreement are floating rates that shall vary based on the rates authorized by the Commission at any given time.

(e) Pursuant to the method of calculating the return on Base Plant set forth in Section 4.3(c) of this Agreement, SCE will earn a rate of return of 2.95% on unrecovered Base Plant for the period February 1, 2012, through December 31, 2012. This rate of return is equal to:

(i) 6.22% weighted by the amount of debt in SCE's authorized ratemaking capital structure; *plus*

(ii) 50% of 6.01% weighted by the amount of preferred stock in SCE's authorized ratemaking capital structure.

(f) Pursuant to the method of calculating the return on Base Plant set forth in Section 4.3(c) of this Agreement, SCE will earn a rate of return of 2.62% on unrecovered Base Plant for the years 2013 and 2014. This rate of return is equal to:

(i) 5.49% weighted by the amount of debt in SCE's authorized ratemaking capital structure; *plus*

(ii) 50% of 5.79% weighted by the amount of preferred stock in SCE's authorized ratemaking capital structure.

(g) Pursuant to the method of calculating the return on Base Plant set forth in Section 4.3(c) of this Agreement, SDG&E will earn a rate of return of 2.75% on unrecovered Base Plant for the period February 1, 2012, through December 31, 2012. This rate of return is equal to:

(i) 5.62% weighted by the amount of debt in SDG&E's authorized ratemaking capital structure; *plus*

(ii) 50% of 7.25% weighted by the amount of preferred stock in SDG&E's authorized ratemaking capital structure.

(h) Pursuant to the method of calculating the return on Base Plant set forth in Section 4.3(c) of this Agreement, SDG&E will earn a rate of return of 2.35% on unrecovered Base Plant for the years 2013 and 2014. This rate of return is equal to:

(i) 5.00% weighted by the amount of debt in SDG&E's authorized ratemaking capital structure; *plus*

(ii) 50% of 6.22% weighted by the amount of preferred stock in SDG&E's authorized ratemaking capital structure.

(i) The Settling Parties agree that the rates of return set forth in Section 4.3(e)-(h) of this Agreement do not reflect income taxes associated with the Utilities' preferred equity return. Notwithstanding that fact, the Utilities will recover all income tax expenses associated with each Utility's preferred equity return. Each Utility will therefore factor in a gross-up for this income tax when calculating its revenue requirement. This gross-up would be calculated in compliance with the Commission's customary practices according to decisions rendered in OII 24, which was closed by Decision No. 84-05-036 (1984). In addition, the revenue requirement shall include franchise fees and uncollectibles.

(j) Notwithstanding Section 4.3(a) of this Agreement, the Utilities shall recover in rates all property taxes paid with respect to Base Plant, including amounts paid after February 1, 2012. To the extent rates include a forecast for these property taxes, the recovery shall be trued up to recorded amounts.

4.4. Financing

(a) At its option, each Utility may select to exclude the regulatory assets to be amortized pursuant to this Agreement when measuring each Utility's ratemaking capital structure for any purpose. In other words, the regulatory assets may be financed solely with debt, and the capital supporting these assets will not be recognized in determining each Utility's ratemaking capital structure, if the Utility so chooses. If a Utility selects this option and elects to finance the regulatory assets with debt:

(i) Except as provided in Section 4.4(a)(ii), the financing of the regulatory assets with debt will not affect the rates of return calculated as set forth in Section 4.3 and will not be used to establish the Utility's cost of capital; and

(ii) The Utility will credit ratepayers 50% of the savings reflected in the difference between the actual cost of financing the regulatory assets and the amount yielded by applying the rate of return calculated pursuant to 4.3(c), as the same may be updated from time to time. The Utility will establish one or more balancing accounts to track this difference. Fifty percent of any balance in the account shall be credited to BRRBA (for SCE) or NGBA (for SDG&E) annually.

(b) In addition, if a Utility selects this option, the Settling Parties will support exclusion, prospectively from the date of financing the regulatory assets, of the capital financing of these regulatory assets in determining the Utility's overall AFUDC rate calculation at both the CPUC and FERC.

4.5. M&S Investment

(a) Each Utility's respective share of the M&S Investment as of the last day of the month prior to the Effective Date shall be amortized as a regulatory asset ratably over the amortization period set forth for Base Plant in Section 4.3(b)(i) of this Agreement, and shall earn a rate of return during that amortization period equal to the rate set forth for Base Plant in Section 4.3(c) of this Agreement.

(b) To the extent that the Utilities are able to sell assets associated with the M&S Investment, and in order to incentivize the Utilities to do so, the following incentive mechanism shall be adopted notwithstanding the terms set forth in Section 4.5(a) of this Agreement:

(i) The Utilities shall retain their respective shares of 5% of all M&S Net Proceeds; *and*

(ii) The Utilities shall credit to their ratepayers their respective shares of the remaining 95% of all M&S Net Proceeds.

(c) On a monthly basis, the Utilities shall distribute the ratepayers' portion of the proceeds of all sales of materials and supplies by providing credits to SCE's BRRBA and SDG&E's NGBA.

(d) The Settling Parties agree that the Utilities will, to the extent permitted by applicable tax laws without penalty and CPUC action, seek reimbursement of the M&S Investment from the Nuclear Decommissioning Trusts rather than recovering this investment through rates. The Utilities will not amortize in rates any portion of the M&S Investment that has been paid for by the Nuclear Decommissioning Trusts. To the extent the Utilities are unable to obtain full reimbursement of the M&S Investment from the trusts, the unreimbursed investments shall be added to the regulatory asset described in Section 4.5(a) of this Agreement (i.e., the M&S Investment) regardless of whether the inventory associated with that asset is used by the Utilities.

4.6. Nuclear Fuel Investment

(a) The Nuclear Fuel Investment as of the last day of the month prior to the Effective Date shall be amortized as a regulatory asset ratably over the amortization period set forth for Base Plant in Section 4.3(b)(i) of this Agreement.

(b) During the amortization period set forth in Section 4.6(a) of this Agreement, the Utilities shall earn a rate of return on their respective shares of the unrecovered balance of the Nuclear Fuel Investment. This rate of return shall be equal to the cost of commercial paper (as defined in Section ZZ, 2. j of the preliminary statement of SCE's CPUC tariffs [or its successor] and in Section I.E.3 of the preliminary statement of SDG&E's CPUC tariffs [or its successor]) throughout the amortization period. The Settling Parties agree that the cost of commercial paper may change during the amortization period. The Settling Parties further agree that the rate that each Utility shall earn on the unrecovered balance of the Nuclear Fuel Investment will float with the commercial paper rate throughout the amortization period, such that each Utility will recover its actual costs of financing the Nuclear Fuel Investment with commercial paper, as those costs are incurred.

(c) The Settling Parties agree that, as of the date of execution of this Agreement, SCE still has outstanding alleged contractual obligations to purchase nuclear fuel. The Settling Parties further agree that Fuel Cancellation Costs incurred after the last day of the month prior to the Effective Date will be added to the regulatory asset described in Section 4.6(a) of this Agreement (i.e., the Nuclear Fuel Investment) as those costs are incurred.

4.7. Incentive Mechanisms For Mitigation Of Nuclear Fuel Costs

(a) To the extent that SCE is able to sell any portion of its current nuclear fuel inventory, and in order to incentivize SCE to do so, the following incentive mechanism shall be adopted notwithstanding the terms set forth in Section 4.6 of this Agreement:

(i) The Utilities shall retain their respective shares of 5% of all Fuel Net Proceeds; and

(ii) The Utilities shall credit to their ratepayers their respective shares of the remaining 95% of all Fuel Net Proceeds.

(b) Upon each sale of nuclear fuel, the Utilities shall distribute the ratepayers' portion of the Fuel Net Proceeds by reducing the amount of the regulatory asset described in Section 4.6(a) of this Agreement (i.e., the Nuclear Fuel Investment). The effect of this reduction to the Nuclear Fuel Investment shall be to decrease the yearly amount of the revenue requirement for Nuclear Fuel Investment. This reduction to the regulatory asset shall not affect the amortization period for Base Plant described in Section 4.3(b)(i) of this Agreement.

(c) To the extent that SCE, as Operating Agent on its own behalf and on behalf of SDG&E, is able to minimize the Fuel Cancellation Costs incurred after the date of execution of this Agreement, and in order to incentivize SCE to do so, the following incentive mechanism applicable to the Utilities shall be adopted notwithstanding the terms set forth in Section 4.6 of this Agreement:

(i) The regulatory asset described in Section 4.6(a) of this Agreement (i.e., the Nuclear Fuel Investment) shall be increased by 5% of the difference between:

(A) The sum of all amounts stated as SCE's purchase obligations (as Operating Agent on its own behalf and on behalf of SDG&E) in outstanding nuclear fuel contracts, on the one hand; and

(B) SCE's total recorded Fuel Cancellation Costs (as Operating Agent on its own behalf and on behalf of SDG&E), on the other hand.

(ii) The Utilities shall each establish a memorandum account to determine the yearly amount of the incentive described in Section 4.7(c)(i). In order to account for all recorded costs and cancelled obligations since January 31, 2012, each Utility shall establish this memorandum account as of January 31, 2012. Every time SCE cancels a nuclear fuel contract (or is otherwise relieved from its obligations thereunder), the Utilities shall record a positive value in this memorandum account equal to the amount stated in the contract as SCE's purchase obligation. The Utilities shall also record all Fuel Cancellation Costs, as they are incurred, as negative values in this account. If there is a negative balance in either Utility's account at the end of a given year, the negative balance will be carried over to the next year. If there is a positive balance in either Utility's account at the end of a given year, the Utility shall increase the regulatory asset described in Section 4.6(a) of this Agreement (i.e., the Nuclear Fuel Investment) by 5% of this balance. The effect of any increase to the regulatory asset pursuant to this incentive mechanism shall be to increase the yearly amount of the revenue requirement for Nuclear Fuel Investment. This increase to the regulatory asset shall not affect the amortization period for Base Plant described in Section 4.3(b)(i) of this Agreement. Positive balances shall not carry over from one year to the next; instead, the account balance shall be reset to zero on the first of the year following any increase to the regulatory asset pursuant to this Section of the Agreement.

4.8. CWIP

(a) The Utilities will recover in rates the full amounts recorded as SONGS-related CWIP, including the full amounts of both Cancelled CWIP and Completed CWIP. The CWIP balance shall be recovered as follows:

(i) For Cancelled CWIP:

(A) An AFUDC amount for the Cancelled CWIP balance will be applied from the date of the first recorded amount of Cancelled CWIP until January 31, 2012. The AFUDC rate shall be equal to the authorized AFUDC rate in effect at the time.

(B) The AFUDC amount, as calculated in Section 4.8(a)(i)(A) of this Agreement, shall be added to the balance for Cancelled CWIP.

(C) The Cancelled CWIP balance (including the AFUDC amount) as of the last day of the month prior to the Effective Date shall be amortized as a regulatory asset ratably over the amortization period set forth for Base Plant in Section 4.3(b)(i) of this Agreement.

(D) During the amortization period set forth in Section 4.8(a)(i)(C) of this Agreement, the Cancelled CWIP balance (plus all accumulated AFUDC), adjusted for deferred taxes if applicable, shall earn a rate of return equal to the rate set forth for Base Plant in Section 4.3(c) of this Agreement.

(ii) For Completed CWIP:

(A) An AFUDC amount for the Completed CWIP balance will be applied from the date of the first recorded amount of Completed CWIP until the last day of the month prior to the Effective Date. The AFUDC rate will be as follows:

(1) For the period from the date of the first recorded amount of Completed CWIP until January 31, 2012, the AFUDC rate shall be equal to the authorized AFUDC rate in effect at the time.

(2) For the period from February 1, 2012, until the date on which the associated asset was placed into service or the Effective Date (whichever is earlier) , the AFUDC rate shall be equal to the rate set forth for Base Plant in Section 4.3(c) of this Agreement.

(B) The AFUDC amount, as calculated in Section 4.8(a)(ii)(A) of this Agreement, shall be added to the balance for Completed CWIP.

(C) The Completed CWIP balance (including all accumulated AFUDC) as of the last day of the month prior to the Effective Date shall be amortized as a regulatory asset ratably starting on the date on which the associated asset was placed into service or the Effective Date (whichever is earlier) and ending on February 1, 2022.

(D) During the amortization period set forth in Section 4.8(a)(ii)(C) of this Agreement, the Completed CWIP balance (plus all accumulated AFUDC), adjusted for deferred taxes if applicable, shall earn a rate of return equal to the rate set forth for Base Plant in Section 4.3(c) of this Agreement

(b) The Settling Parties agree that the Utilities will, to the extent permitted by applicable tax laws without penalty and CPUC action, seek reimbursement of Completed CWIP that enters service after June 7, 2013, as expenses from the Nuclear Decommissioning Trusts rather than recovering this investment through rates. The Utilities will not amortize in rates any portion of the Completed CWIP balance that has been paid for by the Nuclear Decommissioning Trusts.

4.9. O&M and other costs

(a) The Utilities will retain all rate revenue collected for 2012 pursuant to the revenue requirement for SONGS base O&M (100% share) provisionally authorized in Decision No. 12-11-051, which adopted SCE's Test Year 2012 General Rate Case application, and in Decision No. 13-05-010, which adopted SDG&E's Test Year 2012 General Rate Case application.

(i) The Utilities may apply 2012 revenues to defray base O&M costs recorded in their respective SONGSOMA for 2012, as well as costs recorded in their respective SONGSOMA for 2012 associated with severance of employees at SONGS or resulting from the permanent shut down at SONGS.

(ii) The Utilities may also apply 2012 revenues to defray Incremental Inspection and Repair Costs recorded in their respective SONGSOMA for 2012, except that the Utilities shall not be allowed to recover in rates any Incremental Inspection and Repair Costs incurred in 2012 in excess of the revenue requirement for base O&M costs (100% share) provisionally authorized in Decision No. 12-11-051 and Decision No. 13-05-010.

(iii) Provided however, if applicable, SDG&E will refund any amount of provisionally authorized O&M in excess of total recorded O&M costs incurred in 2012 invoiced by SCE.

(b) Subject to the following two sentences, SCE will retain all SONGS-related rate revenue collected pursuant to the revenue requirement for Non-O&M Expenses provisionally authorized in Decision No. 12-11-051 for calendar year 2012. Notwithstanding the foregoing, SCE will refund to ratepayers any such SONGS-related rate revenues collected in 2012 pursuant to Decision No. 12-11-051 that exceed 2012 recorded Non-O&M Expenses by more than $10 million. Any amount to be refunded pursuant to this Section of the Agreement shall be refunded per the refund mechanism set forth in Section 4.12 of this Agreement.

(c) For calendar year 2012, SDG&E will retain rate revenue sufficient to defray all recorded Non-O&M Expenses.

(d) For calendar year 2012, the Utilities will retain rate revenue sufficient to defray all recorded Non-O&M Balancing Account Expenses.

(e) Provided that the sum of the amounts listed in Sections 4.9(e)(i)-(iii) of this Agreement does not exceed the revenue requirement for each Utility's respective share of SONGS base O&M costs provisionally authorized for the year 2013 pursuant to Decision Nos. 12-11-051 and 13-05-010, the Utilities will retain rate revenue sufficient to defray:

(i) All base O&M costs recorded in 2013;

(ii) All costs associated with severance of employees at SONGS or resulting from the permanent shut down at SONGS recorded in 2013; *and*

(iii) All Incremental Inspection and Repair Costs recorded in 2013.

(f) If the revenue requirement for each Utility's respective share of SONGS base O&M costs provisionally authorized for the year 2013 pursuant to Decision Nos. 12-11-051 and 13-05-010 exceeds the sum of the amounts set forth in Sections 4.9(e)(i)-(iii) of this Agreement, the Utilities shall refund to ratepayers the difference between the amounts provisionally authorized and the sum of the recorded amounts in Sections 4.9(e)(i)-(iii). Likewise, if the Utilities recover any portion of the recorded amounts in Sections 4.9(e)(i)-(iii) through the Nuclear Decommissioning Trusts, those portions shall also be refunded to ratepayers. These amounts shall be refunded per the refund mechanism set forth in Section 4.12 of this Agreement.

(g) For calendar year 2013, the Utilities will retain rate revenue sufficient to defray all recorded SONGS-related non-O&M expenses (including both Non-O&M Expenses and Non-O&M Balancing Account Expenses). The Utilities shall also seek recovery of these recorded amounts through the Nuclear Decommissioning Trusts to the extent permitted by applicable tax laws without penalty and CPUC action. If the revenue requirement for each Utility's respective share of SONGS-related non-O&M expenses provisionally authorized for the year 2013 pursuant to Decision Nos. 12-11-051 and 13-05-010 exceeds the amount of each Utility's respective recorded SONGS-related non-O&M expenses in 2013, the Utilities shall refund to ratepayers the difference between the amounts provisionally authorized and the amounts recorded. Likewise, if the Utilities recover any portion of their SONGS-related non-O&M expenses recorded in 2013 through the Nuclear Decommissioning Trusts, those portions shall also be refunded to ratepayers. Any amount to be refunded pursuant to this Section of the Agreement shall be refunded per the refund mechanism set forth in Section 4.12 of this Agreement.

(h) Each Utility shall file one or more applications for the Commission to conduct a reasonableness review of recorded 2014 SONGS-related O&M or non-O&M expenses (including both Non-O&M Expenses and Non-O&M Balancing Account Expenses), whether recovered in general rates or from the Nuclear Decommissioning Trusts.

(i) If the revenue requirement for each Utility's respective share of SONGS-related O&M and non-O&M expenses provisionally authorized for the year 2014 pursuant to Decision Nos. 12-11-051 and 13-05-010 exceeds the amount of each Utility's respective recorded SONGS-related O&M and non-O&M expenses in 2014, the Utilities shall refund to ratepayers the difference between the amounts provisionally authorized and the amounts recorded. Likewise, if the Utilities recover any portion of their SONGS-related O&M or non-O&M expenses recorded in 2014 through the Nuclear Decommissioning Trusts, and/or if the CPUC disallows any such expenses, those portions shall also be refunded to ratepayers. Section 4.9(j) of this Agreement sets forth the procedure that each Utility shall use to determine the amount of any refunds pursuant to this Section of the Agreement.

(j) In order to determine the amount of any refunds based on the difference between recorded and provisionally authorized expenses under Section 4.9(i) of this Agreement, each Utility shall use the following procedure:

(i) On the last day of the month prior to the Effective Date, each Utility shall calculate the difference between recorded and provisionally authorized amounts of SONGS-related O&M and non-O&M expenses during the time period from January 1, 2014, until the last day of available recorded cost data in 2014. If the provisionally authorized revenue requirement for such costs during this time period exceeds the recorded amount of such costs during this time period, the Utilities shall refund to ratepayers the difference between the amounts provisionally authorized and the amounts recorded, with such refund to be effectuated per the refund mechanism set forth in Section 4.12 of this Agreement.

(ii) On the last day of the month prior to the Effective Date, each Utility shall also calculate a forecast of SONGS-related O&M and non-O&M expenses for the time period from the last day of available recorded cost data in 2014 until December 31, 2014. If the provisionally authorized revenue requirement for such costs during this time period exceeds the forecasted amounts of such costs during this time period, the Utilities shall refund to ratepayers the difference between the amounts provisionally authorized and the amounts forecasted as the excess revenue is received, with such refund to be effectuated as a credit to SCE's ERRA account and SDG&E's NGBA.

(iii) In the first quarter of 2015, each Utility shall calculate the difference between recorded and forecasted amounts of SONGS-related O&M and non-O&M expenses during the time period set forth in Section 4.9(j)(ii) of this Agreement. If the forecasted revenue requirement for such costs during this time period exceeds the recorded amounts of such costs during this time period, the Utilities shall refund to ratepayers the difference between the amounts forecasted and the amounts recorded, with such refund to be effectuated as a credit to SCE's ERRA and SDG&E's NGBA.

If, on the other hand, the recorded amounts exceed the forecasted revenue requirement, the Utilities shall recover the difference between the amounts forecasted and the amounts recorded from ratepayers via a debit to SCE's ERRA account and SDG&E's NGBA.

(iv) On the last day of the month following a CPUC decision authorizing the Utilities to recover any portion of their SONGS-related O&M or non-O&M expenses recorded in 2014 through the Nuclear Decommissioning Trusts, and/or of a decision disallowing any such costs, the Utilities shall effectuate a refund of such amounts per the refund mechanism set forth in Section 4.12 of this Agreement.

(k) In determining the provisionally authorized revenue requirement for Non-O&M Expenses pursuant to Sections 4.9(b), 4.9(g), 4.9(i), and 4.9(j) of this Agreement, the Utilities shall utilize a formula agreeable to all Settling Parties for allocating company-wide expenses to SONGS, which will be described in the Utilities' Tier 2 Advice Letters filed pursuant to Section 6.1.

(l) The Utilities will recover all recorded O&M costs incurred in connection with the U2C17 RFO.

(m) Except as expressly provided in this Agreement, the O&M and other costs that the Utilities are entitled to retain pursuant to Section 4.9 of this Agreement shall not be subject to any disallowance, refund, or any form of reasonableness review by the Commission.

4.10. Market Power Purchases

(a) The Utilities will recover in rates the full amount of any costs designated as SONGS "replacement power costs," SONGS "replacement energy costs," or "net SONGS costs" incurred to purchase power in the market from January 1, 2012, until the last day of the month prior to the Effective Date.

(b) The Utilities will recover in rates the entire SONGS-related portion of the under-collected balance in each Utility's respective ERRA account as of the last day of the month prior to the Effective Date, subject to normal CPUC compliance review in the ERRA docket (i.e., review of the Utilities' Quarterly Compliance Reports and compliance with the Least-Cost Dispatch Standard). Subject to such review, the SONGS-related under-collected balances in each Utility's respective ERRA accounts shall be amortized over a period beginning on the first day of the month (or the nearest date practicable) following the Effective Date and ending no later than December 31, 2015. Although nothing in this Agreement shall limit TURN, ORA, FOE, or CUE's ability to challenge the eligibility of the non-SONGS-related portion of either Utility's under-collected ERRA balance for cost recovery, neither TURN, ORA, FOE, or CUE shall oppose either Utility's request to amortize by December 31, 2015 any portion of the under-collected balance found by the CPUC to be eligible for recovery.

(c) The Commission shall not impose any disallowance, on either of the Utilities, of any of the Utilities' costs incurred to purchase power in the market as a result of the non-operation of SONGS. None of the Settling Parties will advocate before the Commission or any other judicial, legislative, or administrative body for any disallowance of past or future costs incurred by the Utilities to purchase power in the market as a result of the non-operation of SONGS.

(d) No future adjustments or disallowances to the Utilities' ERRA accounts shall be made as a result of the non-operation of SONGS. This limitation includes foregone revenues; there will be no future adjustments or disallowances to the Utilities' ERRA accounts as a result of foregone sales of SONGS output. No Settling Party shall object in an ERRA or other Commission proceeding to the Utilities' showing on the grounds that the applied-for purchased power-related expenses were related to the non-operational status of SONGS.

4.11. SONGS Litigation Balance

(a) The SONGS Litigation Balance shall be determined by netting SONGS Litigation Costs from SONGS Litigation Recoveries. The mechanism for netting SONGS Litigation Costs from SONGS Litigation Recoveries shall be to establish memorandum accounts. In order to account for all recorded costs booked since January 31, 2012, each Utility shall establish memorandum accounts as of January 31, 2012. Each Utility shall establish the following memorandum accounts (or sub-accounts):

(i) Each Utility shall establish one memorandum account for netting costs and recoveries related to NEIL (the "NEIL Memorandum Account"). Every year, the Utilities shall record all SONGS Litigation Costs related to pursuing recovery and planning to pursue recovery from NEIL and all SONGS Litigation Recoveries received from NEIL in this memorandum account.

(ii) Each Utility shall establish one memorandum subaccount to record the SONGS Litigation Balance attributable to the NEIL Outage Policy (the "NEIL Outage Memorandum Subaccount").

(iii) Each Utility shall establish one memorandum subaccount to record the SONGS Litigation Balance attributable to all other recoveries from NEIL (the "NEIL Other Recoveries Memorandum Subaccount").

(iv) Each Utility shall establish one memorandum account for netting costs and recoveries related to Mitsubishi (the "Mitsubishi Memorandum Account"). Every year, the Utilities shall record all SONGS Litigation Costs related to pursuing recovery and planning to pursue recovery from Mitsubishi and all SONGS Litigation Recoveries received from Mitsubishi in this memorandum account.

(b) If there is a positive balance (i.e., SONGS Litigation Costs in excess of SONGS Litigation Recoveries) in any memorandum account at the end of a given year, the positive balance will be carried over to the next year. If there is a negative balance (i.e., SONGS Litigation Costs are less than SONGS Litigation Recoveries) in any memorandum account as of December 31, 2014, or at the end of any subsequent year, each Utility shall distribute to ratepayers their portion of the SONGS Litigation Recoveries as determined by the sharing formula in Section 4.11(c) of this Agreement. These amounts shall be distributed to ratepayers pursuant to the distribution method set forth in Section 4.11(d) of this Agreement. The Utilities' portion of the SONGS Litigation Recoveries, as determined by the sharing formula in Section 4.11(c) of this Agreement, shall be retained by the Utilities at the time the ratepayers' portions are distributed. Negative balances shall not carry over from one year to the next; instead, the account balance shall be reset to zero on the first of the year following any distribution of SONGS Litigation Recoveries pursuant to this Section of the Agreement.

(c) The SONGS Litigation Balance shall be shared between the Utilities and the ratepayers according to the following formulas:

(i) The negative balance in the NEIL Memorandum Account will be transferred to the NEIL Outage Memorandum Subaccount and the NEIL Other Recoveries Memorandum Subaccount, reflecting the allocation of SONGS Litigation Recoveries between the NEIL Outage Policy and other recoveries from NEIL.

(ii) The negative balance in the NEIL Outage Memorandum Subaccount shall be shared as follows:

(A) The Utilities shall retain 5% of the balance

(B) The Utilities shall distribute to ratepayers 95% of the balance

(iii) The negative balance in the NEIL Other Recoveries Memorandum Subaccount shall be shared as follows:

(A) The Utilities shall retain 17.5% of the balance

(B) The Utilities shall distribute to ratepayers 82.5% of the balance

(iv) The negative balance in the Mitsubishi Memorandum Account shall be shared as follows:

(A) The Utilities shall retain 50% of the balance

(B) The Utilities shall distribute to ratepayers 50% of the balance

(d) Any amounts to be distributed to ratepayers pursuant to Section 4.11(b) of this Agreement shall be distributed pursuant to the following distribution mechanism:

(i) The ratepayers' portion of the SONGS Litigation Balance recovered from NEIL shall be distributed to ratepayers via a credit to each Utility's respective ERRA account.

(ii) The first $282 million of SONGS Litigation Balance recovered from Mitsubishi that is distributed to SCE ratepayers pursuant to Section 4.11(b) of this Agreement shall be distributed via a credit to SCE's BRRBA.

(iii) The first $71 million of SONGS Litigation Balance recovered from Mitsubishi that is distributed to SDG&E ratepayers pursuant to Section 4.11(b) of this Agreement shall be distributed via a credit to SDG&E's NGBA.

(iv) The ratepayers' portion of any further SONGS Litigation Balance recovered from Mitsubishi shall be distributed to ratepayers as follows:

(A) First, by reducing the regulatory assets described in Sections 4.3(b), 4.8(a), 4.5(a), and 4.6(a) of this Agreement, in the order listed. The effect of the reduction to these regulatory assets shall be to decrease the yearly amount of the revenue requirement for each regulatory asset. This reduction to regulatory assets shall not affect the amortization period for the regulatory assets described in Sections 4.3(b), 4.8(a), 4.5(a), and 4.6(a) of this Agreement.

(B) Second, any remaining amounts shall be distributed via a credit to SCE's BRRBA and SDG&E's NGBA.

(e) In consideration of the Utilities retaining SONGS Litigation Recoveries to the extent of the SONGS Litigation Costs, the Utilities shall remove all SONGS Litigation Costs booked in the memorandum accounts described in Section 4.11(a) of this Agreement from the recorded costs used to develop future general rate case forecasts. Nothing in this Agreement shall preclude the Settling Parties from making any arguments in either Utility's general rate cases regarding costs used to develop general rate case forecasts.

(f) In consideration of the sharing of net SONGS Litigation Recoveries, the Utilities shall have complete discretion to settle, compromise, or otherwise resolve claims against NEIL and/or Mitsubishi in any manner and whenever the Utilities determine, in the exercise of their business judgment, without prior or subsequent review or approval, disapproval, or disallowance by the CPUC or any parties to this OII, except as provided in 4.11(g)(ii)(y).

(g) The Utilities shall promptly notify the CPUC of any such settlement, compromise, or other resolution of their claims against NEIL or MHI, provided, however, that:

(i) The Utilities may provide such notification in a manner that preserves the confidentiality thereof insofar as may be reasonably necessary to further the Utilities' flexibility to settle, compromise, or otherwise resolve such claims; *and*

(ii) The CPUC shall not review the reasonableness or prudence of the Utilities' litigation, settlement, compromise, or other resolution of such claims and shall not impose any ratemaking adjustment in respect of such claims except (x) as expressly provided in this Agreement, and (y) the CPUC may review SONGS Litigation Costs to ensure they are not exorbitant in relation to the recovery obtained.

(h) The Utilities shall each use their best efforts to provide all Settling Parties with advance notice of any such settlement, compromise, or other resolution of their claims against NEIL or MHI, to the extent possible under the circumstances and the terms of any agreement with NEIL or MHI, before the Utilities notify the CPUC or otherwise make public the agreement.

(i) The Utilities shall submit to the CPUC documentation of any final resolution of third-party litigation and documentation of SONGS Litigation Costs. The Utilities may submit such documentation subject to Public Utilities Code §583. Further, the Utilities are not required to submit privileged documents. The CPUC may review such documents to ensure that ratepayer credits are accurately calculated, and to ensure that the SONGS Litigation Costs are not exorbitant in relation to the recovery obtained.

4.12. Any amounts that the Utilities may be required to refund to ratepayers pursuant to Sections 4.2(b), 4.3(b)(ii), 4.9(b), 4.9(f), 4.9(g), 4.9(j)(i), and 4.9(j)(iv) of this Agreement shall be refunded via a reduction to each Utility's respective under-collected ERRA balance as of the last day of the month prior to the Effective Date. This refund mechanism shall not change the amortization period set forth in Section 4.10(b) of this Agreement.

4.13. For the period from the first day of the month of the Effective Date to December 31, 2014, the difference between the Capital-Related Revenue Requirement for SONGS assets provisionally authorized in Decision No. 12-11-051 and the revenue requirement for Base Plant, CWIP, M&S and Nuclear Fuel Investment shall be credited to each Utility's respective ERRA account. To the extent the difference referenced in the prior sentence is calculated based on a forecast, a true-up will be recorded in ERRA in the first quarter of 2015 to reflect the actual difference. For the period from January 1, 2015 to the date of Utility implements new base rates pursuant to its next GRC decision, such difference will be credited to ERRA (for SCE) and NGBA (for SDG&E).

4.14. Except as expressly provided in this Agreement, all costs recorded in SCE's SONGSMA, SDG&E's SONGSBA, and both Utilities' SONGSOMA shall be recovered in rates and shall not be subject to any disallowance, refund, or any form of reasonableness review by the Commission.

4.15. Because this Agreement provides a ratemaking disposition for all costs recorded in SCE's SONGSMA, SDG&E's SONGSBA, and both Utilities' SONGSOMA, these memorandum accounts will not be necessary after the last day of the month prior to the Effective Date and will be terminated by the Utilities as of that day.

4.16. Greenhouse Gas (GHG) Research: Subject to the Commission's approval of the Agreement,

(a) As part of their philanthropic programs, each of SCE and SDG&E agree to work with the University of California Energy Institute (or other existing UC entity, on one or more campuses, engaged in energy technology development) to create a Research, Development, and Demonstration (RD&D) program, whose goal would be to deploy new technologies, methodologies, and/or design modifications to reduce GHG emissions, particularly at current and future generating plants in California.

(b) The RD&D program will operate for up to five years following the Commission's approval of the Tier 2 Advice Letter described in section 4.16(e).

(c) SCE will pledge and donate $4 million annually for five years, and SDG&E will pledge and donate $1 million annually for five years, so that the total amounts donated will be $5 million annually for five years. All such donations will be from shareholder funds.

(d) Within 60 days of the Effective Date, the Utilities commit to host a meeting with UC representatives and other interested parties with the goal of crafting a Program Implementation Plan (PIP). The Commission's Energy Division shall provide support in coordinating the meeting.

(e) Within 30 days thereafter, the Utilities shall jointly file, and serve, a PIP via a Tier 2 Advice Letter that describes the process for implementation, a proposed schedule and budget, and expected results, applications, and demonstrations.

(f) The Utilities will file, and serve, an annual report to the Energy Division to apprise the Commission of the program's progress towards beta testing of developed technologies, methodologies, and/or design changes.

4.17. Resolution of Consolidated Proceedings

(a) The Settling Parties intend for this Agreement to resolve the OII and all Consolidated Proceedings in their entirety. The Settling Parties agree that the Consolidated Proceedings should be resolved as follows in this section of the Agreement

(b) A. 13-03-005

(i) The Settling Parties agree that SCE's testimony in support of A. 13-03-005 conclusively established that the total cost of the SGRP was $612.1

million in 2004 dollars (100% share). The Settling Parties shall not take the position, in any proceeding whatsoever, that SCE spent more than $612.1 million (100% share, 2004$) on the SGRP.

(ii) The Settling Parties agree that SCE's testimony in support of A. 13-03-005 utilized appropriate inflation indexes to deflate the total cost of the SGRP from nominal dollars to 2004 dollars. This includes the use of the Handy-Whitman index for fabrication and construction costs and the Commission-approved nuclear decommissioning burial escalation rates for burial costs. The Settling Parties shall not take the position, in any proceeding whatsoever, that SCE used inappropriate inflation indexes in its testimony in support of A. 13-03-005.

(iii) Because this Agreement provides a ratemaking disposition for all costs described in A. 13-03-005, no further reasonableness review is required. The Settling Parties shall jointly request that the Commission allow SCE to retain all rate revenues collected from customers for the SGRP prior to February 1, 2012, as a resolution of A. 13-03-005.

(c) A. 13-03-014

(i) The provisions set forth in Section 4.16(b)(i)-(ii) are incorporated herein as though set forth in their entirety.

(ii) Because this Agreement provides a ratemaking disposition for all costs described in A. 13-03-014, no further reasonableness review is required. The Settling Parties shall jointly request that the Commission allow SDG&E to retain all rate revenues collected from customers for the SGRP prior to February 1, 2012, as a resolution of A. 13-03-014.

(d) A. 13-01-016

(i) The Settling Parties agree that the costs recorded in SCE's SONGSMA during the year 2012 were reasonable and prudent to the extent this Agreement provides that SCE shall recover such costs.

(ii) None of the Settling Parties will take the position, in any proceeding whatsoever, that any of the costs recorded in SCE's SONGSMA during 2012 were unreasonable, or should be disallowed, except to the extent that this Agreement provides that such costs be refunded to ratepayers.

(iii) Because this Agreement provides a ratemaking disposition for all costs described in A. 13-01-016, no further reasonableness review is required. The Settling Parties shall jointly request that the Commission grant A. 13-01-016 to the extent that this Agreement provides for rate recovery of the costs recorded in SCE's SONGSMA during 2012.

(e) A. 13-03-013

(i) The Settling Parties agree that the costs recorded in SDG&E's SONGSBA during the year 2012 were reasonable and prudent to the extent this Agreement provides that SDG&E shall recover such costs.

(ii) None of the Settling Parties will take the position, in any proceeding whatsoever, that any of the costs recorded in SDG&E's SONGSBA during 2012 were unreasonable, or should be disallowed, except to the extent that this Agreement provides that such costs be refunded to ratepayers.

(iii) Because this Agreement provides a ratemaking disposition for all costs described in A. 13-03-013, no further reasonableness review is required. The Settling Parties shall jointly request that the Commission grant A. 13-03-013 to the extent that this Agreement provides for rate recovery of the costs recorded in SDG&E's SONGSBA during 2012.

4.18. In light of this Agreement, the Settling Parties urge the CPUC to withdraw the November 19, 2013, Proposed Decision on Phase 1 and Phase 1A issues.

V.
GENERAL PROVISIONS AND RESERVATIONS

5.1. The Settling Parties shall use their best efforts to obtain Commission Approval. Following execution of this Agreement, the Settling Parties shall:

(a) Jointly file a motion requesting that the Commission:

(i) Approve the Agreement in its entirety without change;

(ii) Find the Agreement to be reasonable in light of the whole record, consistent with law, and in the public interest; *and*

(iii) Expedite its consideration and approval of the Agreement in order to provide the benefits of the Agreement as soon as possible.

(b) Support and mutually defend this Agreement in its entirety until the Commission has issued final approval of the Agreement.

(c) Oppose any modifications to this Agreement proposed by any non-settling party to the OII, unless all Settling Parties jointly agree to support such modification.

(d) Cooperate reasonably on all submissions, including briefs, necessary to achieve Commission Approval of the Agreement.

(e) Review any Commission orders regarding this Agreement to determine if the Commission has changed or modified this Agreement, deleted a term, or imposed a new term in this Agreement. If any Settling Party is unwilling to accept such change, modification, deletion, or addition of a new term, that Settling Party shall so notify the other Settling Parties within 15 days of issuance of the order by the

Commission. The Settling Parties shall thereafter promptly discuss each change, modification, deletion, or new term to this Agreement found unacceptable and negotiate in good faith to achieve a resolution acceptable to all Settling Parties and promptly seek Commission approval of the resolution so achieved. Failure to resolve such change, modification, deletion, or new term to this Agreement to the satisfaction of all Settling Parties within 15 days of notification, or to obtain Commission approval of such resolution promptly thereafter, shall entitle any Settling Party to terminate this Agreement through prompt notice to all other Settling Parties.

5.2. In accordance with Rule 12.5, the Settling Parties intend that Commission adoption of this Agreement will constitute a complete resolution of this OII and will have the effect set forth in Rule 12.5 of the Commission's Rules of Practice and Procedure.

5.3. Since this Agreement represents a compromise by them, the Settling Parties have entered into each stipulation contained in this Agreement on the basis that the stipulation not be construed as an admission or concession by any Settling Party regarding any fact or matter of law at issue in this proceeding. Should this Agreement not be approved in its entirety by the Commission, the Settling Parties reserve all rights to take any position whatsoever with respect to any fact or matter of law at issue in the OII.

5.4. The Settling Parties agree that no signatory to this Agreement or any employee thereof assumes any personal liability as a result of this Agreement.

5.5. If any Settling Party fails to perform its respective obligations under this Agreement, any other Settling Party may come before the Commission to pursue a remedy including enforcement.

5.6. The provisions of this Agreement are not severable. If the Commission, or any court of competent jurisdiction, overrules or modifies as legally invalid any material provision of this Agreement, the Agreement may be considered rescinded, at the discretion of any of the Settling Parties, as of the date such ruling or modification becomes final.

5.7. The Settling Parties acknowledge and stipulate that they are agreeing to this Agreement freely, voluntarily, and without any fraud, duress, or undue influence by any other party. Each Settling Party hereby states that, through its authorized representatives, it has read and fully understands its rights, privileges, and duties under this Agreement, including each Settling Party's right to discuss this Agreement with its legal counsel and has exercised those rights, privileges, and duties to the extent deemed necessary.

5.8. In executing this Agreement, each Settling Party declares and mutually agrees that the terms and conditions herein are reasonable, consistent with the law, and in the public interest.

5.9. This Agreement constitutes the Settling Parties' entire agreement on the subject matters addressed herein, which cannot be amended or modified without the express written and signed consent of all the Settling Parties hereto.

5.10. None of the provisions of this Agreement shall be considered waived by any Settling Party unless such waiver is given in writing. The failure of a Settling Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of their rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

5.11. No Settling Party has relied, or presently relies, upon any statement promise, or representation by any other Settling Party, whether oral or written, except as specifically set forth in this Agreement. Each Settling Party expressly assumes the risk of any mistake of law or fact made by such Settling Party or its authorized representative in entering into this Agreement.

5.12. This Agreement may be executed in up to four separate counterparts by the different Settling Parties hereto with the same effect as if all Settling Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement.

5.13. This Agreement shall become effective and binding on the Settling Parties as of the Effective Date. However, the provisions of Section 5.1 of this Agreement shall impose obligations on the Settling Parties immediately upon the execution of this Agreement by all of the Settling Parties.

5.14. This Agreement shall be governed by the laws of the State of California as to all matters, including but not limited to, matters of validity, construction, effect, performance, and remedies.

5.15. To the extent this Agreement requires that any Settling Party provide notice to any other Settling Party, such notice shall be in writing and directed to the signatories to this agreement.

VI.
IMPLEMENTATION OF AMENDED AND RESTATED SETTLEMENT AGREEMENT

6.1. Within 30 days of the Effective Date, the Utilities shall file revised tariff sheets to implement the revenue requirement, accounting procedures, and charges authorized in this Agreement and to incorporate the relevant findings and conclusions of the decision adopting this Agreement. The revised tariff sheets shall become effective on filing, subject to a finding of compliance by the Energy Division, and shall comply with General Order 96-B. Notwithstanding any of the figures set forth in Sections 3.36 – 3.48 of this Agreement, ORA and TURN have the prerogative to review and validate any amounts used by the Utilities to implement the revenue requirement, accounting procedures, and charges authorized in this Agreement, to meet and confer with the Utilities to resolve any concerns, and to protest the advice letters if such concerns are not resolved to their satisfaction.

6.2. The Utilities shall file Tier 2 Advice Letters (which may be combined with Tier 2 Advice Letters proposing consolidated rate changes pursuant to the Utilities' respective General

Rate Case decisions) to implement changes to their respective revenue requirements, including implementation of changes pursuant to Sections 4.2, 4.3, 4.5, and 4.6 – 4.13 consistent with the terms of this Agreement.

6.3. The Utilities shall include in the filing of the revised tariff sheets (pursuant to Section 6.1) and the Tier 2 Advice Letters (pursuant to Section 6.2), a description of the agreed-upon formula referred to in Section 4.9(k) for allocating company-wide expenses to SONGS. The Utilities shall also include, in the filing of the revised tariff sheets (pursuant to Section 6.1) and the Tier 2 Advice Letters (pursuant to Section 6.2), documentation of any revised calculations of the revenue requirement for CWIP referred to in Section 4.8 based on changes in the Authorized Cost of Debt and Authorized Cost of Preferred Stock.

VII.
EXECUTION

IN WITNESS WHEREOF, the Settling Parties have duly executed this Agreement. This Agreement is executed in six counterparts, each of which shall be deemed an original. The undersigned represent that they are authorized to sign on behalf of the party represented.

SOUTHERN CALIFORNIA EDISON COMPANY	**SAN DIEGO GAS & ELECTRIC COMPANY**
By: 	By: _____
Title: Senior Vice President	Title: SVP Finance, Regulatory & Legislative Affairs
Date: 9-23-2014	Date: _____

Rate Case decisions) to implement changes to their respective revenue requirements, including implementation of changes pursuant to Sections 4.2, 4.3, 4.5, and 4.6 – 4.13 consistent with the terms of this Agreement.

6.3. The Utilities shall include in the filing of the revised tariff sheets (pursuant to Section 6.1) and the Tier 2 Advice Letters (pursuant to Section 6.2), a description of the agreed-upon formula referred to in Section 4.9(k) for allocating company-wide expenses to SONGS. The Utilities shall also include, in the filing of the revised tariff sheets (pursuant to Section 6.1) and the Tier 2 Advice Letters (pursuant to Section 6.2), documentation of any revised calculations of the revenue requirement for CWIP referred to in Section 4.8 based on changes in the Authorized Cost of Debt and Authorized Cost of Preferred Stock.

VII.
EXECUTION

IN WITNESS WHEREOF, the Settling Parties have duly executed this Agreement. This Agreement is executed in six counterparts, each of which shall be deemed an original. The undersigned represent that they are authorized to sign on behalf of the party represented.

SOUTHERN CALIFORNIA EDISON COMPANY By: _____ Title: Date: _____	**SAN DIEGO GAS & ELECTRIC COMPANY** By: _____ Title: SVP Finance, Regulatory & Legislative Affairs Date: 9/23/14

THE UTILITY REFORM NETWORK By: Matthew Freedman Title: Staff Attorney Date: September 23, 2014	**OFFICE OF RATEPAYER ADVOCATES** By: _____ Title: Acting Director, Office of Ratepayer Advocates Date: _____
FRIENDS OF THE EARTH By: _____ Title: _____ Date: _____	**COALITION OF CALIFORNIA UTILITY EMPLOYEES** By: _____ Title: _____ Date: _____

THE UTILITY REFORM NETWORK By: _____ Title: Staff Attorney Date: _____	**OFFICE OF RATEPAYER ADVOCATES** By: _____ Title: Acting Director, Office of Ratepayer Advocates Date: _____
FRIENDS OF THE EARTH By: Lauren S. Chaset Title: Attorney for Friends of the Earth Date: Sep. 23, 2014	**COALITION OF CALIFORNIA UTILITY EMPLOYEES** By: _____ Title: _____ Date: _____

THE UTILITY REFORM NETWORK By: _____ Title: Staff Attorney Date: _____	**OFFICE OF RATEPAYER ADVOCATES** By: _____ FOR Title: Acting Director, Office of Ratepayer Advocates Date: 9/23/2014
FRIENDS OF THE EARTH By: _____ Title: _____ Date: _____	**COALITION OF CALIFORNIA UTILITY EMPLOYEES** By: _____ Title: _____ Date: _____

THE UTILITY REFORM NETWORK By: _____ Title: Staff Attorney Date: _____	**OFFICE OF RATEPAYER ADVOCATES** By: _____ Title: Acting Director, Office of Ratepayer Advocates Date: _____
FRIENDS OF THE EARTH By: _____ Title: _____ Date: _____	**COALITION OF CALIFORNIA UTILITY EMPLOYEES** By: Jamie Mauldin Title: Attorney Date: 9/23/14

ILLUSTRATIVE EXAMPLE FOR BASE PLANT AND MATERIALS AND SUPPLIES (M&S)

	As of February 1, 2012
Base Plant[1]	$ 622
M&S	99
Regulatory Asset	721
Less: Accumulated Deferred Taxes[2]	(152)
Regulatory Asset, adjusted for deferred taxes	569
Rate of Return	2.95%
Return [3,4]	$ 17

[1] Base Plant excludes nuclear fuel and CWIP

[2] Includes deferred taxes associated with nuclear fuel

[3] Does not include associated income taxes

[4] Calculation of return illustrative for a single point in time; actual calculation will be based on an average

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