

Group asks 9th Circuit to say who pays for San Onofre

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A San Diego environmental group that challenged a settlement over who should bear the cost of shutting down the San Onofre Nuclear Generating Station has asked the 9th U.S. Circuit Court of Appeals to hear its case.

The move comes after attempts to renegotiate the settlement fell apart on Tuesday. Southern California Edison told the California Public Utilities Commission that it should affirm the existing settlement the agency approved in 2014.

Edison operates the plant in coastal San Diego County and owns a majority share. San Diego Gas & Electric owns a 20 percent share.

Attorney Michael J. Aguirre has been fighting a multi-front battle against the settlement, which he said shortchanges ratepayers and was reached through collusion between Edison and the Public Utilities Commission.

"Southern California Edison thinks the CPUC is under its thumb, and we agree," Aguirre said. "The only chance we have is to get into a different forum."

The partner with Aguirre & Severson LLP in San Diego challenged the original settlement on behalf of San Diego environmental group Citizens Oversight Inc. A federal judge in San Diego dismissed that case in 2015, citing a lack of subject matter jurisdiction.

Aguirre then appealed to the 9th

Circuit, which agreed last year to hear the case. However, oral arguments scheduled for February were vacated pending the outcome of attempts to renegotiate the settlement.

On Tuesday, Aguirre filed a request to set oral argument with the 9th Circuit. *Citizens Oversight Inc. v. California Public Utilities Commission*, 15-55672 (9th Cir., filed May 19, 2015).

Edison officials did not negotiate in good faith, Aguirre said. He wants the court to examine evidence of collusion between the utility and regulators, and order a new deal be reached.

A spokesperson for Edison said it was company policy not to comment on pending litigation.

In a Tuesday press release, the utility called the 2014 settlement "appropriate" and touted savings to ratepayers from closing the plant.

"Based on our new economic analysis, customers are paying about \$760 million less in their bills than they would have if San Onofre continued to operate through the end of its license in 2022," Southern California Edison President Ron Nichols said in the release.

Edison installed two new steam generators, which convert the heat from nuclear reactions into electrical power, in a \$680 million project completed in 2011. The goal was to extend the life of the plant another 40 years. But the very next year, one of those generators was found to have leaked radioactive material.

The company announced in 2013

it would decommission that plant, saying it would be safer and less expensive.

The utility negotiated the original settlement with parties including the state's Office of Ratepayer Advocates. It called for ratepayers to bear \$3.3 billion of the \$4.7 billion cost of shutting down the plant.

But that was before Edison was "caught with its hands in the cookie jar," Aguirre said, in the form of improper communications with utilities commission officials. Some of these took place in a hotel in Poland in 2014. The next year, the commission fined Edison \$16.7 million for that illegal contact.

In a separate ongoing case, Aguirre is seeking emails between commission President Michael J. Picker and Gov. Jerry Brown's office. *Aguirre v. Brown*, 16-551867 (S.F. Super. Ct., filed May 9, 2016).

Aguirre said these communications could show the administration and regulators sought to pressure outside parties to settle with Edison.

He also said he believes Edison engaged in design changes that caused the generators to fail. In 2013, Edison sued the company that made the generators, Mitsubishi Heavy Industries of Japan, for more than \$7 billion. In March, an arbitration panel with the International Chamber of Commerce awarded Edison just \$125 million and ordered it to pay Mitsubishi's \$58 million legal bill.

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