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**FILED**

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**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

And Related Matters.

Application 13-01-016

Application 13-03-005

Application 13-03-013

Application 13-03-014

**JOINT RULING OF ASSIGNED COMMISSIONER AND  
ADMINISTRATIVE LAW JUDGE GRANTING LIMITED PARTY STATUS  
TO PUBLIC WATCHDOGS**

This ruling on the Motion for Party Status of Public Watchdogs grants limited party status to the movant pursuant to Rule<sup>1</sup> 1.4(c). Rule 1.4(c) gives the Administrative Law Judge (ALJ) discretion to "where circumstances warrant deny party status or limit the degree to which a party may participate in the proceeding."

On February 28, 2018, Public Watchdogs served and filed a motion requesting party status in this proceeding. The motion states that Public Watchdogs involvement was previously not necessary as "California ratepayers

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<sup>1</sup> All references to Rules in this ruling are to the California Public Utilities Commission (Commission) Rules of Practice and Procedure unless otherwise stated.

and other local interest groups were adequately protected by ...experienced and aggressive counsel...”<sup>2</sup> Public Watchdogs assert this is no longer the case as “all truly active consumer representatives in this proceeding have accepted a revised settlement.” Public Watchdogs stated its “concern is heightened by the fact that at least one particularly active and formally (sic) aggressive opponent of the original settlement appears to have a substantial financial interest in the proposed revised settlement...”<sup>3</sup> Public Watchdogs assert the 2018 Settlement Agreement<sup>4</sup> entered into by the Joint Parties<sup>5</sup> has seven serious flaws that must be addressed, and that no other party will attempt to raise these issues. The seventh flaw identified by Public Watchdogs raises concerns a “\$5.4 million payout directly from SCE”<sup>6</sup> to one of the parties and how this “payout” could adversely impact the Commission’s intervenor compensation program.

The Joint Parties filed a response in opposition to the Motion for Party Status of Public Watchdogs. The Joint Parties in opposition to the motion for

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<sup>2</sup> Motion for Party Status of Public Watchdogs dated February 28, 2018 at 3.

<sup>3</sup> *Id.*

<sup>4</sup> The 2018 Settlement Agreement refers to the Settlement Agreement Among Southern California Edison Company, San Diego Gas & Electric Company, the Alliance for Nuclear Responsibility, the California Large Energy Consumers Association, California State University, Citizens Oversight DBA Coalition to Decommission San Onofre, the Coalition of California Utility Employees, the Direct Access Customer Coalition, Ruth Henricks, the Office of Ratepayer Advocates, the Utility Reform Network, and Women’s Energy Matters found at Attachment 1 to the Joint Motion for Adoption of Settlement Agreement (Joint Motion).

<sup>5</sup> The Joint Parties refers collectively to the Alliance for Nuclear Responsibility (A4NR), the California Large Energy Consumers Association (CLECA), California State University (CSU), Citizens Oversight, the Coalition of California Utility Employees (CCUE), the Direct Access Customer Coalition (DACC), Ruth Henricks, the Office of Ratepayer Advocates (ORA), San Diego Gas & Electric Company (U 902 E) (SDG&E), Southern California Edison Company (U 388-E) (SCE), The Utility Reform Network (TURN), and Women’s Energy Matters (WEM).

<sup>6</sup>

party status argue first that Public Watchdogs motion comes very late in the proceeding (more than five years after it was initiated).<sup>7</sup> Second, the Joint Parties assert the issues raised by Public Watchdogs have been thoroughly addressed by other parties.<sup>8</sup> The Joint Parties urge the ALJ to exercise discretion to deny the Motion for Party Status of Public Watchdogs, and cite to prior rulings in this proceeding denying the University of California and AVP Arora International, Inc. party status.<sup>9</sup>

The Joint Parties correctly point out that the Commission has denied the right to intervene where a party joins very late in the proceeding, raises issues covered by other parties, or raises new issues.<sup>10</sup> Here Public Watchdogs argues that its intervention “is necessary at this stage of the proceeding to ensure that ratepayer interests are represented in evaluation of the proposed settlement.” In making this argument Public Watchdogs asserts that the 2018 Settlement Agreement has “seven serious flaws.”<sup>11</sup> The seven flaws asserted by Public Watchdogs are that the 2018 Settlement Agreement: 1) violates the used and useful standard; 2) ignores the prudent manager standard; 3) violates the Commission’s reasonableness of rates standard; 4) appears to be an unconstitutional regulatory taking; 5) may inadvertently complete an alleged criminal conspiracy; 6) is a denial of due process; and 7) challenges the Commission’s legal authority and process in that a large direct payment, with no

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<sup>7</sup> Response of Joint Parties at 1-2.

<sup>8</sup> *Id* at 2-3.

<sup>9</sup> *Id* at 3.

<sup>10</sup> *See, e.g.*, Decision (D.) 08-11-031 n.166, 2008 Cal. PUC LEXIS 571; D.98-12-004, [1998 Cal. PUC LEXIS 876](#).

<sup>11</sup> Motion for Party Status of Public Watchdogs at 4.

Commission oversight, from utilities to specific intervenors “could threaten the entire purpose of intervenor compensation.”

Public Watchdogs states that it has previously observed the proceeding believing that ratepayer interests were being addressed by “aggressive counsel fighting to overturn the ill-conceived settlement (D.14-11-040), making the direct involvement by Public Watchdogs unnecessary.”<sup>12</sup> Public Watchdogs asserts that now, because “all truly active consumer representatives in this proceeding have accepted a revised settlement” the proceeding lacks an “active party taking an adversarial role...”<sup>13</sup>

Public Watchdogs has clearly been following this proceeding; therefore it has been fully aware that all of the Joint Parties were directed to participate in a meet and confer process since at least December of 2016. Public Watchdogs also acknowledges that many of the issues it asserts to be fatal flaws with the 2018 Settlement Agreement were issues that would be addressed by participating parties once the record in the proceeding was reopened. Public Watchdogs chose not to seek party status until a new settlement was presented, and it also chose to rely on other parties to advocate its position in the proceeding. These other parties have no obligation to Public Watchdogs when making determinations as to whether or not their clients choose to enter into a settlement to be presented to the Commission. Public Watchdogs’ flaws one through six do not present any new or compelling information that justifies its late intervention in this proceeding. Their reliance on the advocacy of other parties to present a case is not a sufficient basis to grant intervenor status at such a late date.

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<sup>12</sup> Motion for Party Status of Public Watchdogs at 3.

<sup>13</sup> *Id.*

However, Public Watchdogs' flaw number seven does raise an issue that could not have been raised prior to submission of the 2018 Settlement Agreement. Public Watchdogs has raised a novel question as to whether the Federal Court Agreement<sup>14</sup> entered into between SCE and two of the Joint Parties that allows for direct payment of alleged attorneys' fees by SCE to intervenors (intervenors that have filed a notice of intent to claim intervenor compensation) undermines the integrity of the 2018 Settlement Agreement and the integrity of the Commission's intervenor compensation program, and therefore puts in question whether the 2018 Settlement Agreement can meet the requirements of Rule 12.1(d), so as to be found to be in the public interest.

The Federal Court Agreement includes provisions (Sections 3.3 and 3.5 specifically) that authorize alleged attorneys' fees in the amount of \$5,427,000.00 to plaintiffs' attorneys for fees and costs. The plaintiffs (Ruth Henricks and CDSO) are also intervenors in this proceeding claiming financial hardship. These intervenors have submitted a notice of intent to claim intervenor compensation through the Commission's intervenor compensation program. The intervenor compensation program has specific requirements that must be met before compensation is provided.<sup>15</sup> These requirements include, but are not limited to, demonstration of financial hardship and showing that the intervenor

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<sup>14</sup> The "Federal Court Agreement" refers to the agreement between Southern California Edison Company, Ruth Henricks, and Citizens Oversight to resolve current federal litigation in the case of Citizens Oversight, Inc. et al. v. CPUC, et al., No. 15-55762 (9<sup>th</sup> Circuit 2015) and Citizens Oversight, et al. v. California Public Utilities Commission, et al. No. 3:14-cv-02703 (S.D. Cal. 2014), also identified and marked as SCE-58 per the Joint Ruling of the Assigned Commissioner and Assigned Administrative Law Judge Requiring Additional Information from the Parties issued on March 22, 2018.

<sup>15</sup> See CA Public Utilities Code §§ 1801 through 1812; and Rules 17.1 through 17.4.

made a significant contribution to the proceeding. Attorneys' fees and costs are also submitted to the Commission for review as to the number of hours an intervenor claims, hourly rate, specific costs (e.g. copying, travel) and expert witness fees.

Here the Federal Court Agreement requires SCE to make a significant payment for alleged attorneys' fees and cost with no explanation of how the sum of the payment was determined and without review by the Commission. The Federal Court Agreement is silent as to whether utility shareholders will make this payment to the intervenors, or whether SCE will seek recovery from ratepayers for this amount. This agreement is contingent upon Commission adoption of the 2018 Settlement Agreement and therefore is material to this proceeding. We accordingly grant Public Watchdogs limited party status to participate in this proceeding only on the following issues:

1. Do the provisions of the Federal Court Agreement, which (sections 3.3 and 3.5) require SCE to pay attorneys' fees in the amount of \$5,427,000.00 if the Commission adopts the 2018 Settlement Agreement,<sup>16</sup> undermine the integrity of the Commission settlement process in this proceeding, and more specifically the Commission's intervenor compensation program generally?
2. If the Commission adopts the 2018 Settlement Agreement, does the Federal Court Agreement create a precedent for intervenors that claim intervenor compensation at the

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<sup>16</sup> The Federal Court Agreement sets forth an agreement between the plaintiffs in the federal litigation and SCE as to the conditions that the plaintiffs will seek a dismissal with prejudice of the federal litigation. The dismissal is contingent upon approval by the Commission of the 2018 Settlement Agreement. See Federal Court Agreement sections 4.1, 4.2, and 4.3.

Commission to instead pursue payments, without justification of costs incurred, from a utility?

3. If the 2018 Settlement Agreement is adopted and the payment under the Federal Court Agreement is paid by SCE shareholders or ratepayers, should the Commission consider reassessing the requirements of proposed settlements at the Commission? Should the Commission consider how intervenor compensation is reviewed and awarded going forward? If so what changes would the parties recommend?
4. If the \$5,427,000.00 million is to be paid, should the amount be paid by SCE shareholders, or ratepayers?

Because novel issues are presented by the 2018 Settlement Agreement, the parties, including Public Watchdogs, are to submit briefs on the above issues no later than 5:00 pm on April 13, 2018, with reply briefs due no later than 5:00 p.m. April 20, 2018.

Nothing in this ruling prevents Public Watchdogs from submitting public comment regarding this proceeding as to the remaining issues raised in its motion for party status. We intend to hold at least one public participation hearing in Southern California, and Public Watchdogs will have an opportunity to state its position at that time. For further information regarding public participation in Commission proceedings Public Watchdogs or any person interested in providing public comment who is unfamiliar with the Commission's procedures or who has questions about how to provide such comment should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

**IT IS RULED** that:

1. The February 28, 2018, motion for party status filed by Public Watchdogs is granted on a limited basis consistent with this ruling.
2. The parties, including Public Watchdogs, are to file briefs on issues identified in this ruling.
3. The opening briefs on the issues identified in this ruling are to be served and filed no later than 5:00 p.m. April 13, 2018. The briefs are to be no more than 20 pages.
4. Reply briefs are to be filed no later than 5:00 p.m. on April 20, 2018. Reply briefs are to be no more than 10 pages.

Dated March 22, 2018, at San Francisco, California.

/s/ MICHAEL PICKER  
Michael Picker  
Assigned Commissioner

/s/ DARCIE L. HOUCK  
Darcie L. Houck  
Administrative Law Judge