

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

**MOTION FOR RULING TO IMPROVE NOTICE OF THE
JULY 18, 2018 PUBLIC PARTICIPATION HEARING (PPH)
TO AFFECTED PUBLIC AND RATEPAYERS; AND
TO STATE IN THE PPH NOTICES AND PPH POWERPOINT PRESENTATION
(1) THAT SONGS FAILED DUE TO A RADIATION LEAK, AND
(2) THAT THE FEDERAL COURT AGREEMENT REQUIRES
SOUTHERN CALIFORNIA EDISON (SCE) TO MAKE A DIRECT PAYMENT OF
ALLEGED ATTORNEYS' FEES AND COSTS TO
ATTORNEYS REPRESENTING TWO OF THE JOINT PARTIES**

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, Public Watchdogs requests a ruling directing Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E):

1. To ensure improved notification of the July 18, 2018 Public Participation Hearing (PPH) in Laguna Niguel to affected public and ratepayers;
2. To include the fact that SCE shut down SONGS due to a "radiation leak" in the PPH notices and PPH presentation;

3. To reveal that the Federal Court Settlement Agreement requires SCE to make a direct payment of \$5,427,000.00 to private attorneys operating outside the Commission's authorized intervenor compensation process; and
4. To include details of the payment in all PPH notices and public presentations.

I. Background

On January 30, 2018, the Joint Parties¹ filed a motion for the Commission to adopt the 2018 Settlement Agreement.² The Joint Parties provided the following background³ in their motion:

Decision (“D.”) 05-12-040 authorized replacement of the four steam generators at the San Onofre Nuclear Generating Station (“SONGS”) Units 2 and 3. The Commission reserved the option to undertake a reasonableness review of costs even if within the accepted cost cap.

Mitsubishi Heavy Industries (“MHI”) designed and manufactured the Replacement Steam Generators (“RSGs”) on behalf of SCE. The Unit 2 RSGs went online in January of 2010 and the Unit 3 RSGs went online in January of 2011. On January 10, 2012, Unit 2 was taken out of service for a scheduled refueling outage. Unit 3 was taken offline on January 31, 2012, after operators detected a radiation leak in a steam generator tube. On June 7, 2013, SCE announced it would not restart either SONGS unit.

The Commission issued this OII on October 25, 2012, pursuant to Public Utilities Code section 455.5.3 After Phases 1, 1a and 2 were litigated, but prior to the commencement of Phase 3, SCE, SDG&E, ORA, CUE, Friends of the Earth (“FOE”) and TURN sought adoption of a settlement agreement to resolve this proceeding. Other parties objected to the proposed agreement. That agreement, incorporating some amendments proposed by the assigned ALJ and

¹ 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).

² 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 January 30, 2018 Joint Motion for Adoption of Settlement Agreement (Joint Motion).

³ Joint Motion at 2-4 (footnotes omitted).

Commissioner, was adopted by the Commission in D.14-11-040 (the “2014 Agreement”). On December 18, 2014, Ruth Henricks and Citizens Oversight filed an Application for Rehearing.

Subsequently, as observed in a recent Ruling:

On February 9, 2015, SCE late-filed a Notice of Ex Parte Communication concerning a meeting that occurred on or about March 26, 2013 between SCE’s then Executive Vice President Stephen Pickett and then Commission President Michael Peevey at an industry conference in Warsaw, Poland regarding ratemaking treatment of SONGS Units 2 & 3 post shutdown costs.

On April 10, 2015, the service list in this proceeding received a copy of the notes associated with the meeting in Poland, which are referred to as the “Bristol Notes.” On April 27, 2015, A4NR filed a Petition for Modification (“PFM”).⁵ On June 24, 2015, TURN filed a response supporting A4NR’s PFM. ORA filed its PFM on August 11, 2017. On December 8, 2015, the Commission issued D.15-12-016, finding that SCE committed eight violations of Rule 8.4 and two violations of Rule 1.1 of the Commission’s Rules. The Commission imposed a \$16,740,000 fine on SCE for those violations. No violations were alleged to have been committed by SDG&E; no penalties were assessed on SDG&E.

On May 9, 2016, Commissioner Sandoval and ALJ Bushey issued a ruling reopening the record in the OII and ordering briefing on whether the 2014 Agreement met the Commission’s standard for approving such agreements under Rule 12.1 of the Commission’s Rules. Parties to this proceeding, including A4NR, CSU, WEM, ORA, CUE, TURN, Ruth Henricks, and FOE, briefed those issues accordingly.

On December 13, 2016, Commissioner Sandoval and ALJ Houck issued a ruling ordering the Utilities and the other parties to the OII to meet and confer to discuss potential future procedural actions and see whether a broad range of parties can reach agreement on proposed modifications to D.14-11-040.⁶ Though the Settling Parties did meet and confer pursuant to that ruling, no settlement was reached at that time.

On October 10, 2017, President Picker and ALJ Houck issued a ruling proposing a process for the Commission to reconsider whether the 2014 Agreement satisfied Rule 12.1 of the Commission’s Rules, as well as a process for additional testimony, evidentiary hearings, and briefing regarding cost allocation between ratepayers and shareholders should the Commission conclude that the 2014 Agreement should not be retained.

On January 8, 2018, President Picker and ALJ Houck issued a ruling setting a schedule for further proceedings pursuant to the October 10, 2017 ruling and describing the scope of remaining issues for written testimony and hearings before the Commission.

On January 10, 2018, SCE, on behalf of the Settling Parties, notified the ALJ, with a copy to the service list, that: “[t]he Parties have continued their mediated settlement discussions and anticipate serving a notice of settlement conference pursuant to Rule 12.1(b) within 15 days.” On January 23, 2018, parties to I.12-10-013 were notified of an upcoming Settlement Conference. On January 30, 2018, a Rule 12.1(b) Settlement Conference was held in San Francisco, with a video simulcast to Los Angeles. Shortly afterwards the Settling Parties signed the [2018 Settlement] Agreement.

Also, on January 30, 2018, defendant SCE and plaintiffs (including intervenors Ruth Henricks and Citizens Oversight) announced the Federal Court Agreement⁴ that requires SCE pay \$5,427,000.00 in alleged and undocumented attorneys’ fees and costs to the plaintiffs’ (including intervenors Ruth Henricks and Citizens Oversight) attorneys. The Federal Court Agreement is contingent on the Commission’s adoption of the 2018 Settlement Agreement.

SONGS OIL Public Participation Hearings

At the May 2, 2018 PPH, Assigned ALJ Houck said, “The Public Participation Hearing is an opportunity for stakeholders and ratepayers to provide the Commission with information useful to reaching conclusions and making decisions.”⁵

Public Watchdogs contends that for the public to make informed comments at the July 18, 2018 PPH, it must be enabled to do so with a formal plain language notice.

We further contend that such a notice be promptly made public in paper billing inserts, plain-language emails and full-page newspaper advertisements.

⁴ 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 *Citizens Oversight, Inc., et al. v. CPUC, et al.*, No 15-55762 (9th Circuit). The dismissal is contingent upon approval by the Commission of the 2018 Settlement Agreement. See Federal Court Agreement sections 1.2, 1.4, 1.6, 1.7, 4.1, 4.2, and 4.3.

⁵ Transcript p. 2960: 23-27.

February 21, 2013 PPH

SCE provided notice of the February 21, 2013 PPH by bill inserts mailed from 1/11 to 2/8/2013, posting for public viewing in its local offices from 1/14/2013, and newspaper publications from 1/24-1/25/2013.⁶

SDG&E provided notice of the February 21, 2013 PPH by bill inserts from 1/11 to 2/8/2013, posting for public viewing in its local offices from 2/6/2013, newspaper publication on 2/1/2013.⁷

Approximately 88 people made public comments at the February 21, 2013 PPH.⁸

October 1, 2013 PPH

SCE provided notice of the October 1, 2013 PPH by bill inserts mailed from 8/15 to 9/13/2013, posting for public viewing in its local offices from 9/3/2013, and newspaper publications from 8/30-9/6/2013.⁹

SDG&E provided notice of the October 1, 2013 PPH by bill inserts from 8/12 to 9/10/2013, posting for public viewing in its local offices from 9/16/2013, newspaper publication from 9/17-9/19/2013.¹⁰

Approximately 80 people made public comments at the October 1, 2013 PPH.¹¹

⁶ Southern California Edison Company's (U 338-E) Proof of Notice to Public of February 21, 2013, Public Participation Hearing (February 14, 2013).

⁷ San Diego Gas & Electric Company (U902m) Proof of Rule 13.1 Noticing of Public Participation Hearings (February 14, 2013).

⁸ February 21, 2013 PPH Transcript.

⁹ Southern California Edison Company's (U 338-E) Amended Proof of Notice to Public of October 1, 2013, Public Participation Hearing (October 18, 2013).

¹⁰ San Diego Gas & Electric Company (U902m) Proof of Rule 13.1 Noticing of Public Participation Hearings (September 27, 2013).

¹¹ October 1, 2013 PPH Transcript.

May 2, 2018 PPH

While SCE provided notice of the May 2, 2013 PPH by posting for public viewing in its local offices from 4/20/2018, newspaper publications from 4/25-4/27/2018, and by posting at <http://www3.sce.com/sscc/law/dis/SongsOIIDocLibrary.nsf/PleadingByDate.xsp> and <http://www.sce.com/notices>¹² nothing in the record shows SCE provided notice of the May 2, 2018 PPH using bill inserts into electric bills as it had done for the February 21, 2013 and October 1, 2013 PPHs.

While SDG&E provided notice of the May 2, 2018 PPH by posting for public viewing in its local offices from 4/24/2018, and newspaper publications on 4/27/2018,¹³ nothing in the record shows SDG&E provided notice of the May 2, 2018 PPH using bill inserts into electric bills as it had done for the February 21, 2013 and October 1, 2013 PPHs.

As a result, a mere 14 people made public comments at the May 2, 2018 PPH versus the resulting public comments at the February 21, 2013 and October 1, 2013 PPHs.¹⁴

II. Rulings Requested

SCE and SDG&E must improve public notice for the July 18, 2018 PPH

Public Watchdogs requests a ruling that SCE and SDG&E provide fair notice to the public and ratepayers of the July 18, 2018 Public Participation Hearing (PPH) in Laguna Niguel by using bill inserts to all ratepayers in addition to posting notices in local offices and newspaper publication, as they did for the February 21, 2013 PPH and October 1, 2013 PPH.

¹² Southern California Edison Company's (U 338-E) Proof of Compliance with Rules 13.1(b) of the Commission's Rules of Practice and Procedure (May 7, 2018).

¹³ San Diego Gas & Electric Company's (U 902-E) Rule 13.1(b) Proof of Compliance (May 7, 2018).

¹⁴ May 2, 2018 PPH Transcript.

Prior to the February 21, 2013 and October 1, 2013 PPHs, SCE and SDG&E provided notice of the hearings through bill inserts to all ratepayers, newspaper publication, and posting in the utilities' local offices. More than 80 people made public comments at each PPH.

Prior to the May 2, 2018 PPH, SCE and SDG&E provided notice of the hearings through newspaper publication and posting in the utilities' local offices. SCE also posted notice of the hearing on its website. Neither utility provided notices of the PPH using bill inserts. Only 14 people made public comments at the May 2, 2018 PPH.

Had notices of the May 2, 2018 PPH through bill inserts to all SCE and SDG&E ratepayers been made, as had been for the February 1, 2013 and October 1, 2013 PPHs, the public participation at the May 2, 2018 most likely would have exceeded 14 participants.

In order to increase participation at the July 18, 2018, PPH, SCE and SDG&E should provide, in addition to other methods, notice of the PPH through bill inserts to all ratepayers.

Therefore, Public Watchdogs requests a ruling that SCE and SDG&E improve their notices to the public and ratepayers for the July 18, 2018 Public Participation Hearing (PPH) in Laguna Niguel by using bill inserts to all ratepayers in addition to posting notices in local offices and newspaper publication.

Public Watchdogs contends that for the public to make informed comments at the July 18, 2018 PPH, it must be empowered to do so with a formal plain language notice.

We further contend that such a notice be promptly made public in paper billing inserts, plain-language emails and full-page newspaper advertisements.

To include that SONGS failed due to a radiation leak in all PPH notices and PPH public presentations

SCE shut down SONGS due to a radiation leak. The Joint Parties (including SCE) in the Joint Motion for Adoption of [the 2018] Settlement Agreement, wrote, “Unit 3 was taken offline on January 31, 2012, after operators detected a radiation leak in a steam generator tube. On June 7, 2013, SCE announced it would not restart either SONGS unit.”¹⁵

In order to properly inform the public and ratepayers, the PPH notices and PPH presentations for the July 18, 2018 PPH, should state that SONGS failed due to a radiation leak, rather than a ‘small leak,’ which disingenuously omits mention of radiation.

To include SCE’s \$5,427,000.00 payment to plaintiffs’ attorneys in the Federal Court Agreement in the PPH notices and PPH presentation

The Federal Court Agreement¹⁶ requires SCE to pay \$5,427,000.00 in alleged attorneys’ fees and costs to the plaintiffs’ (including intervenors Ruth Henricks and Citizens Oversight) attorneys. The Federal Court Agreement is contingent on the Commission’s adoption of the 2018 Settlement Agreement.¹⁷ Specifically, “If Final Commission Approval [of the 2018 Settlement Agreement] does not occur, this [the Federal Court] Agreement is terminated and the Parties reserve all rights to take any position whatsoever regarding any fact or matter of law at issue in the SONGS OII or in the Federal Court Action.”¹⁸

Because the Federal Court Agreement (and SCE’s proposed payment of \$5,427,000.00 in alleged attorneys’ fees and costs to plaintiffs’ attorneys) depends on Commission approval of the

¹⁵ Joint Motion at 2.

¹⁶ Federal Court Agreement section 3.3.

¹⁷ Federal Court Agreement sections 4.1(c), 4.3.

¹⁸ Federal Court Agreement section 4.3.

2018 Settlement Agreement, the Federal Court Agreement should be included in all PPH notices and presentations. Therefore, in order to properly inform the public and ratepayers, all PPH notices and presentations for the July 18, 2018 PPH must include validated documentation substantiating the plaintiffs' claims.

III. Conclusion

For the forgoing reasons, the Commission should grant the relief requested.

Dated: June 12, 2018

Respectfully submitted,

/s/ Charles Langley

Charles Langley

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