**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| Application of Southern California Edison Company (U 338-E) to Recover O&M Costs Associated with the San Onofre Nuclear Generating Station Units Nos. 2 and 3 On-going Seismic Program, and New Seismic Research Projects and Analyses<br>Filed April 15, 2011 | Application 11-04-006 |
| Application of San Diego Gas & Electric Company (U 902-E) to Recover Certain Costs of Seismic And Tsunami Studies for the San Onofre Nuclear Generating Station Unit Nos. 2 and 3<br>Filed May 9, 2011 | Application 11-05-011 |

# REBUTTAL TESTIMONY OF ROCHELLE BECKER REPRESENTING THE ALLIANCE FOR NUCLEAR RESPONSIBILITY

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SUMMARY AND CONCLUSIONS

A4NR's overriding concern is that DRA's approach is its "Report" regarding the Application of SCE/SDGE (hereinafter SCE) is to "question," yet accept without requiring detail, the scope of work and costs proposed for SCE's seismic studies Application. Further, the only oversight they feel necessary is putting a "cap" on the price and sharing 10% of the cost with SCE shareholders.[1] A4NR finds that DRA's position—refusing to investigate and require a more detailed explanation of the rationale and scope behind the work being proposed by SCE—is not in the ratepayer's best interest.

DRA subsequently rationalizes that the studies have benefits to *shareholders*, and therefore find that attributing a 10% share of the costs to SCE's shareholders will provide a measure of either compensation or assurance to safeguard the ratepayer's disproportionately large investment in the process.

The Alliance for Nuclear Responsibility finds little assurance in the recommendations of the DRA, and believes that the DRA is abdicating its responsibilities to ratepayers by not conducting—with due diligence—first, complete scrutiny of the scope of work proposed by SCE; and second, a review of the line-item costs associated with the work proposed. DRA's claims that the requirements for these seismic studies are without mandated basis will be challenged by A4NR. Absent the development of a well-substantiated analysis of

[1] Report on the Application of Southern California Edison Company and San Diego Gas and Electric Company—Songs Seismic and Tsunami Stuides, Division of Ratepayer Advocates, CPUC, September 30, 2011, p. 1

SCE's Application, it will be impossible for the Commission to make a decision on the reasonableness and prudency of SCE's request for ratepayer funds.

A4NR's first concern with DRA's position in their testimony involves DRA's conclusion that there is no directive for SCE to conduct these studies at all:

> … any relevant directive, law, or regulation for conducting these studies is essentially absent. [2]

DRA's statement both misinterprets the rationale for the studies and at the same time elucidates A4NR's most significant problem with the studies (as detailed in the Testimony of A4NR). First, as A4NR will subsequently demonstrate, there is "*relevant directive"* for the studies to be conducted, and second what is lacking—but DRA seems to ignore—is not "directive," for the studies, but technical ***directions*** and regulation of the ***content*** of the studies. In short, A4NR holds that there is valid reason and directive to conduct the studies; A4NR's problem is with the lack of specific instruction given to SCE by any appropriate oversight agency in order to fulfill the studies. As such, SCE has developed a "self determined" course of action, and that is a situation over which ratepayers have cause for concern, as historically, self-regulation by utilities creates public hazards for which oversight agencies such as the CPUC were created. The failure of both the utility and their regulators in the tragedy at San Bruno are very much in the minds of the ratepayers and public as we contemplate the existence of nuclear power plants on and near active earthquake faults.

[2] Ibid, p. 4.

DRA refers to SCE's uncertainty "within the scope and nature of the studies"[3] yet believes the only way to assure value to ratepayers is to cap the price and spread some cost to shareholders[4] while at no time ever questioning whether the *quality* of the seismic studies is itself fully developed and, for the ratepayer money requested, will deliver a product of value to the ratepayers. To wit:

> While DRA reiterates that it is not challenging the costs of the seismic study program, the Commission should provide oversight through cost containment mechanisms. DRA's recommendations all ensure proper cost oversight, without impeding the study's ability to identify safety issues. [5]

DRA claims to be uninterested in impeding the studies and is only concerned with cost containment. And yet, they acknowledge that the studies are without regulatory oversight. How would ratepayers know that the cost DRA were determined to contain were in fact costs for a service that was valid and worthwhile? How does cost containment provide oversight without an itemization and justification for all the items in the proposed budget? Who determines whether SCE's proposal has the "ability to identify safety issues?" Is the DRA unaware that the CPUC's sister state regultory agencies, such as the Coastal Commission and Energy Commission, do have staff seismic experts with the ability to provide technical insights? DRA should be supporting the request of A4NR in its testimony to create an Independent Peer Review Panel (IPRP) for this proceeding much as the CPUC did for the similar application of PG&E for the Diablo Canyon nuclear plant. The creation of such a panel was addressed by SCE in their

[3] Ibid. p. 4.
[4] Ibid. p. 3.
[5] Ibid. p. 7.

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) MOTION FOR LEAVE TO SUBMIT SUPPLEMENTALTESTIMONY (September 30, 2011). A4NR supports the creation of an IPRP in the case of SCE.

A4NR also addresses DRA's claim that the studies themselves are not required by any law or regulation dealing with "safety" issues:

> The risk borne by ratepayers become more important due to the fact that these studies have no mandate by law, regulation, or the body that is responsible for the safety of SONGS, the Nuclear Regulatory Commission (NRC). DRA was unable to obtain responses from SCE to provide any statutory basis for request.[6]

As for DRA's claim that the NRC, "the body that is responsible for the safety of SONGS," did not order these studies, A4NR can only reply that *this is the very motivation which impelled the CEC to recommend these studies*, because the abdication of a federal regulator to safeguard the reactors is in no way a pre-emption of the state to conduct its due diligence in order to protect ratepayers from prolonged outages or other consequences to grid reliability as a result of failure of the reactors due to earthquake or tsunami.

A4NR will subsequently point out that these studies do have, to use DRA's own words, a "relevant directive" and mandate from the CPUC, directly from CPUC President Peevey, where the interest is not safety, but the economic well being of SCE's ratepayers.

[6] Ibid. p. 7.

A4NR believes much of the confusion in DRA's testimony is due to the fact that DRA, like SCE in *its* own testimony, fails to accurately identify the TWO discrete tasks identified for SCE in the CEC's AB 1632 report recommendations.

> The report stated that ""[t]he Energy Commission recommends that SCE should use three-dimensional seismic reflection mapping, other techniques, and a permanent GPS array for resolving seismic uncertainties for SONGS."" The CEC did not provide any funding or cost estimates to go with these recommendations. As such, much of the program detail was self-guided by the applicants. [7]

A4NR, in its testimony, raised some questions about the specifics of the technical requirements in SCE's proposed studies, as stated above. However, those questions were far fewer than the fundamental questions raised by the CEC's second recommendation (which DRA never identifies as a discreet issue in its Report):

> SCE should develop an active seismic hazards research program for SONGS similar to PG&E's LTSP.[8]

With regard to this recommendation, we agree with the DRA's statement, "The CEC did not provide any funding or cost estimates to go with these recommendations. As such, much of the program detail was self-guided by the applicants." However, the DRA's overall assertion that simply putting a "cost

[7] Ibid. p. 8.
[8] An Assessment of California's Nuclear Power Plants, California Energy Commission Report, adopted November 20, 2008, page 9.

cap" in place somehow clarifies and remedies this deficiency is inadequate for ratepayer protection. The DRA is correct in that SCE has developed their intended program entirely of their own accord. As A4NR has provided in great detail in its Testimony, and will summarize here, the missing factor in the analogy is that the LTSP of PG&E (referenced by the CEC) was instigated with the oversight and regulation of the NRC. A4NR does not imply that NRC is necessary to instigate and oversee a program "similar" to the LTSP for SONGS. DRA never addresses this "LTSP" program aspect of SCE's proposed seismic work in their Testimony. SCE never itemized the costs for this "LTSP" program in their Application or Testimony, nor have they provided answers to A4NR's request that they do so.

How will ratepayers know that they are receiving value for their dollars? A simple cost cap or plan by DRA to ask for 10% shareholder funding does not guarantee the content or quality of the work will meet the needs of insuring that ratepayers will have reliable and affordable electricity generated by nuclear power plants located in seismic areas, for which these risks are to be evaluated. The CPUC has made no effort to work with its sister state regulatory agencies regarding defining the scope and meaning of the CEC's directive "similar to PG&E's LTSP."
A4NR has submitted Data Requests to DRA asking if DRA has at any time sought clarification from the CEC on their intent and meaning for that phrase "similar to..." No answer has been received as of the filing date of this rebuttal.

DRA also questions the provenance of the seismic studies, writing:

> …the basis for the request was a report, which did not provide a specific amount or specific instructions. To a certain extent the studies could arguably be voluntary.

> At this point, whether voluntary or not, revealing potential safety hazards are important. Both ratepayers and shareholders benefit from enhanced safety measures that may result from the studies. Ratepayers will benefit by having health and safety protected. Shareholders'' financial benefit is potentially in the billions by avoiding a catastrophe or successfully relicensing SONGS, thereby earning a return for at least two more decades. These benefits are not necessarily quantifiable at this time. But it is very reasonable that shareholders bear a mere 10% of the costs.[9]

A4NR disagrees with DRA's assertion whether "the studies could arguably be voluntary." A4NR submits the letter of June 25, 2009 from CPUC President Peevey to SCE CEO Alan J. Fohrer, in which President Peevey writes:

> It has come to my attention that SCE has not undertaken steps to include a seismic study, nor the other studies recommended in the AB 1632 Report, as part of its SONGS license extension studies for the CPUC. That deficiency prevents the CPUC from properly undertaking its AB 1632 obligations to ensure plant reliability, and in turn to ensure grid reliability, in the event SONGS has a prolonged or permanent outage.

And concludes,

> SCE is obligated to address the above itemized issues in assessing SCE's plant relicensing applications for SONGS. This commission will not be able

[9] Report on the Application of Southern California Edison Company and San Diego Gas and Electric Company—Songs Seismic and Tsunami Stuides, Division of Ratepayer Advocates, CPUC, September 30, 2011, p. 8.

> to adequately and appropriately exercise its authority to fund and oversee the SONGS' license extension without these AB 1632 issues being fully developed and addressed.[10]

Therefore, in order to fulfill, as DRA surmises, the shareholder's benefit to be gained by "…**successfully relicensing** [emphasis added] SONGS, thereby earning a return for at least two more decades," it is arguable, based upon President Peevey's letter, that the studies are NOT voluntary and required in order to achieve "successfully relicensing SONGS."

DRA states, "Ratepayers will benefit by having health and safety protected." While it is possible that ratepayers may benefit by having "health and safety protected," these are not the forms of protection that DRA and CPUC should be concerned with—nor are tasked with—providing to ratepayers. As decided by the U.S. Supreme Court, economic viability of nuclear power generation is an authority ceded to the states, concluding that "whereas the States exercise their traditional authority over economic questions such as the need for additional generating capacity, the type of generating facilities to be licensed, land use, and ratemaking."[11]

Therefore, in this CPUC proceeding, the DRA's placement of ratepayer benefits in a category of "health and safety" is disingenuous, as these are not areas over which the CPUC has any authority. However, the benefits that DRA ascribes to SCE's shareholders, "potentially in the billions by avoiding a catastrophe...," apply

[10] Letter from Michael Peevey to Alan J. Fohrer, June 25, 2009.
[11] PACIFIC GAS & ELEC. v. ENERGY RESOURCES COMM'N, 461 U.S. 190 (1983) 461 U.S. 190

equally if not more so to the ratepayers (to whom DRA would also like to assign 90% of the cost burden). A4NR seeks to remind DRA that it is the Division of ***Ratepayer*** Advocates, not the Division of *Shareholder* Advocates. If one were to substitute "shareholder" for "ratepayer" in the DRA's proposal, would SCE shareholders, conversely, approve a 90% share of these expenses for an undefined program about which DRA has stated, "The risk borne by ratepayers become more important due to the fact that these studies have not mandate by law, regulation, or the body that is responsible for the safety of SONGS, the Nuclear Regulatory Commission (NRC). DRA was unable to obtain responses from SCE to provide any statutory basis for request." Would shareholders wish to know if these studies will meet the mandates and demands of the NRC or such oversight agency as would interpret and utilize the results? Would shareholders be concerned if the money was spent in vain on studies that—with the full extent of the ramifications of the "lessons learned" from Fukushima still unfolding—failed to answer questions that may be just slightly beyond the current regulatory horizon?

To that end, in SCE's Application, the utility writes:

> Given that the earthquake and tsunami in Japan are so recent, lessons will continue to be learned and new regulations are likely to be promulgated.[12]

Once again, in this statement, A4NR points to SCE unilaterally deciding what is "prudent" to evaluate in terms of seismic research. Inasmuch as the cost of implementing rulemaking by the NRC can have economic and ratepayer

[12] Testimony of Southern California Edison Company In Support Of Application to Recover O&M Costs Associated With the San Onofre Nuclear Generating Station Units Nos. 2 and 3 On-Going Seismic Program and New Seismic Research Projects and Analyses, April 15, 2011, p. 2.

implications, A4NR has sought from SCE, via data requests, "…all letters, emails, reports, comments, meeting notes between SCE and the NRC relating to seismic reviews, seismic updates, possible new seismic requirements post March 11, 2011." SCE has not provided any of these documents as of this filing, so it is impossible for ratepayers to know how many of the studies that SCE "believes" would be "prudent" are actually going to be of value in the regulatory sphere.

In light of this, A4NR has asked SCE,

> A) Will SCE revise this application to take into account the body of work being proposed by the Nuclear Regulatory Commission?
> B) Does SCE's existing planned scope of seismic work include studies that would have (in the existing application) satisfied the upcoming NRC demands?[13]

*And SCE responded*:

> A. Based on the information available at this time, the scope proposed in SCE's seismic application A. 11-04-006 should provide sufficient information to respond to the NRC's requirements for seismic hazard and risk analysis and evaluation. SCE is not planning to revise the application.
> B. See response to Q1A.[14]

*The contradiction between SCE's testimony that,* "lessons will continue to be learned and new regulations are likely to be promulgated*" and their response that,*

[13] DATA REQUEST SET SCE SONGS Seismic App A4NR-01, September 14, 2011.
[14] DATA REQUEST SET SCE SONGS Seismic App A4NR-01, September 14, 2011

"Based on the information available at this time, the scope proposed in SCE's seismic application A. 11-04-006 should provide sufficient information to respond to the NRC's requirements for seismic hazard and risk analysis and evaluation" is of concern to ratepayers. How can SCE be certain that all of their bases are covered in an atmosphere that they also admit is likely to change? Perhaps an admission of "uncertainty" as to future requirements (and attendant costs) would be the most honest representation they could present to ratepayers.

When DRA writes that SCE shareholders might be spared, "…potentially in the billions by avoiding a catastrophe," DRA is forgetting a part of its own complicity in the original ratemaking for PG&E's Diablo Canyon reactors, when its own staff reported nearly $4.4 billion in cost overruns on that project[15] due to seismic miscalculations and oversight negligence in which the CPUC was implicated[16] Ratepayers, not shareholders, were held accountable for paying those cost overruns. It is the intent of A4NR to insure that there is adequate and detailed oversight to prevent those costly mistakes from impacting today's ratepayers.

DRA, in the matter of "General Consistency to PG&E's Similar Request" notes:

> There are certain similarities between SCE'sand PG&E's seismic mapping projects.
>
> Pursuant to Ordering Paragraph 8 of D.10-08-003, PG&E recently requested that the Commission re-open A.10-01-014 to approve revised cost estimates

[15] Prehearing Brief of the Public Utilities Commission Division of Ratepayer Advocates, Application 85-08-025, June 20, 1988, p.5.
[16] California Legislature, Senate Committee on Energy and Public Utilities, Joint Hearing Subject: Diablo Canyon Public Utilities Commission Staff Report recommending $4 billion disallowance. June 9, 1987, page 11.

> for the seismic studies approved on D.10-08-003.41 PG&E requests that the approved cost estimate of $16.7 million be increased to $64.2 million, a $47.5 million increase. Based on the cost detail provided with the Motion, $33.2 million of the increase is for Offshore 3-D Studies, and $11.4 million of the increase is for Onshore 2-D Studies. DRA cannot speak to the reasonableness of PG&E's new request. However, DRA can point to the fact that its cost-cap recommendation is reasonable.[17]

As pointed out in the Testimony of A4NR, it should be noted that the increase in scope for PG&E's motion to reopen A.10-01-014 came *after* several reviews by the Independent Peer Review Panel. As also noted in the Testimony of A4NR, SCE has had no input from any external and independent sources to formulate or design their program, a point acknowledged by DRA in their statement, "…much of the program detail was self-guided by the applicants."[18] This is particularly questionable with regard to part of the SONGS AB 1632 requirement that calls for SCE to establish an ongoing seismic program "similar to PG&E's LTSP." Who determines what is "similar?" DRA admits to being unable to determine the "reasonableness of PG&E's new request" and by inference, SCE's ambiguous requests, but is willing to allow that a "cost-cap recommendation is reasonable." The assigned commissioner, however, thinks otherwise, and the Scoping Memo for this case seeks to address both "The costs of the studies; and whether they should

[17] Report on the Application of Southern California Edison Company and San Diego Gas and Electric Company—Songs Seismic and Tsunami Stuides, Division of Ratepayer Advocates, CPUC, September 30, 2011, p. 8.
[18] Report on the Application of Southern California Edison Company and San Diego Gas and Electric Company—Songs Seismic and Tsunami Stuides, Division of Ratepayer Advocates, CPUC, September 30, 2011, p. 8.

be capped," and "Whether outside experts should be retained to review the planned studies and their costs.[19]"

That DRA has no expertise in the area of judging the prudency, scope and cost of these seismic studies should not be allowed to stand at the expense of ratepayer certainty. Administrative Law Judge Barnett seemed to also acknowledge this during the prehearing conference, when he stated:

> ALJ BARNETT: I don't want to be in the position of just pulling numbers out of the air or I certainly don't want the parties in the position of just pulling numbers out of the air because they sound reasonable. There are people who know more about this than other people.
> MR. RASHID: Right.
> ALJ BARNETT: And from what you're saying, the staff has no expertise in this matter of seismic studies.
> MR. RASHID: That's correct.[20]

In summation, A4NR finds DRA's analysis to be insufficiently developed. Capping the costs is not as satisfactory—or, indeed, as vital for ratepayers—a solution as identifying, explaining and justifying the studies and costs;

There is no lack of potential benefit to ratepayers to have the "uncertainties" alluded to in SCE's Application fully developed, as the very rational behind AB 1632 and the CEC's report is to maintain grid reliability of California's energy system; and there is no lack of *directive* regulatory authority to carry out the

[19] Assigned Commissioner's Scoping Memo and Ruling, October 10, 2011, pp. 1-2.
[20] Transcript of prehearing conference, Application of SCE, consolidated (11-04-006), September 30, 2011, pp 39-40.

studies; that the federal NRC does not require them does not mean that they are not required by states agencies for economic and reliability concerns, as CPUC president Peevey has made clear in his referenced letter.

With regard to SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) MOTION FOR LEAVE TO SUBMIT SUPPLEMENTALTESTIMONY, filed on September 30, 2011, the A4NR supports their motion in request that the Commission order the establishment of an Independent Peer Review Panel (IPRP) associated with the proposed seismic studies in SCE's Application. That SCE did not include this request in their application and must file it as supplemental testimony is a surprise to A4NR inasmuch as SCE has been a party to all of PG&E's proceedings and had no reason to be unaware that such an IPRP had been meeting since the publication of their first minutes from an initial September 30, 2010 meeting. Nevertheless, A4NR supports their request and adds that ratepayers would also wish to see the Commission require and create and IPRP for the SCE proceedings.