

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

Application of Southern California Edison Company) (U338E) 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.) _____))	Application 11-04-006 (Filed April 15, 2011)
Application of San Diego Gas & Electric Company) (U902E) to Recover Certain Costs of Seismic and) Tsunami Studies for the San Onofre Nuclear) Generating Station Unit Nos. 2 and 3.) _____))	Application 11-05-011 (Filed May 9, 2011)

**OPENING BRIEF OF APPLICANT
SAN DIEGO GAS & ELECTRIC COMPANY**

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Pursuant to Rule 13.11 of the Commission’s Rules of Practice and Procedure and the direction of presiding Administrative Law Judge Robert Barnett, Applicant San Diego Gas & Electric Company (“SDG&E”) files its Opening Brief in the above-captioned and consolidated matters.

I. Introduction

Applicant SDG&E fully supports the ongoing seismic program and proposed seismic and tsunami studies and risk assessments submitted by Southern California Edison Company (“Edison”) in Application 11-04-006. The program, studies and risk assessments have been designed to address matters raised by various state agencies and officials and are reasonably and directly related to the continuing and future operation of the San Onofre Nuclear Generating Station Units 2 and 3 (“SONGS 2 & 3”). As a minority owner of SONGS 2 & 3, SDG&E expects a twenty-percent (20%) share of the costs of these activities will

be allocated and billed to SDG&E by Edison as ordinary operating and maintenance expenses pursuant to an agreement between, *inter alia*, Edison and SDG&E.¹

SDG&E filed Application 11-05-011 so as to permit the recovery of its share of any expenditures approved by the Commission in Edison's Application 11-04-006. Based upon the evidentiary record developed in these consolidated proceedings, SDG&E respectfully requests the Commission approve the proposed study design and ongoing seismic program as presented by Edison in its application, the \$64.0 million cost estimate for the ongoing seismic program and proposed studies, and SDG&E's ratemaking proposals addressing the recovery of its share of the approved costs. The ratemaking proposals relevant to SDG&E include the authorization of (1) a new balancing account in which SDG&E would record and recover the program and study costs allocated to SDG&E by Edison², and (2) a new memorandum account in which SDG&E would record costs reasonably related to the proposed study and program activities but that are above and/or beyond those included in the cost estimates proposed by Edison in its application.

II. Issues in the Proceeding

1. Reasonableness of the Proposed Study Scope and Cost Estimates

Edison provided the details of its ongoing seismic program and proposed seismic and tsunami studies and risk assessments in its Application 11-04-006. As proposed, Edison's program and studies are responsive to the requirements of the various state and federal agencies with an oversight interest in SONGS 2 & 3. In particular, the scope of the studies was specifically intended to address the recommendations adopted by the California Energy Commission in its Integrated Energy Policy Report

¹ See "Second Amended San Onofre Operating Agreement", various provisions of which appear in the evidentiary record as SDG&E Cross-Examination Exhibit No. SDG&E-X5 and Exhibit No. SCE-05. Generally speaking and as relevant here, the agreement permits Edison to allocate and bill to SDG&E twenty percent (20%) of SONGS 2 & 3 operations and maintenance expenses incurred by Edison as the majority owner and operating agent for those units. Subject to the assertion of certain contractual rights by SDG&E as against Edison with respect to these allocations and billings, SDG&E is responsible for reimbursing Edison for SDG&E's allocable share of SONGS 2 & 3 operations and maintenance expenses. Accord, testimony of Edison witness Nelson, Reporter's Transcript, Vol. 1, page 37, lines 12 to 25. [Hereafter, citations to the Reporter's Transcript will be made using the following convention: "X R.T. Y:Z", where "X" references the volume of the Reporter's Transcript being cited, "Y" references the page number being cited, and "Z" references the line number from the cited page. Using this convention, the testimony of Edison witness Nelson cited here would appear as "1 R.T. 37:12-25".] See also, testimony of SDG&E witness De Marco, 2 R.T. 156:24-158:27.

² See Section 6 of this Opening Brief, *infra*. The need for a new balancing account may be obviated by the Commission's upcoming decision in SDG&E's pending *Test Year 2012 General Rate Case*, Application 10-12-006, where SDG&E has requested that the life of its existing SONGS O&M Balancing Account be extended into the future. In the event the Commission grants that request, SDG&E would record and recover the costs of the proposed seismic and tsunami studies using the existing SONGS O&M Balancing Account. Depending on the timing of the Commission's orders in this proceeding and the general rate case, SDG&E would either merge the proposed SONGS Seismic Research Balancing Account with the existing SONGS O&M Balancing Account (if an order in this proceeding precedes the decision in the general rate case) or forego establishing the SONGS Seismic Research Balancing Account (if a decision in the general rate case precedes the order in this proceeding). See testimony of SDG&E witness Shimansky, Exhibit SDG&E-1 at pp. 5-6.

proceeding.³ (See *California Energy Commission 2008, An Assessment of California's Nuclear Power Plants: AB1632 Report*, Commission Report CEC-100-2008-108-CTF, November 2008; also, California Energy Commission, *2009 Integrated Energy Policy Report: Final Commission Report*, December 2009, CEC-100-2009-003-CMF, December 2009, at pp. 9-10, 111-124, 238-240.⁴) The record further demonstrates there is some degree of confidence the Edison study design will address studies likely to be required by the Nuclear Regulatory Commission.⁵ In fact, notwithstanding the request by the Alliance for Nuclear Responsibility ("A4NR") that additional oversight by certain public agencies be required, no party opposed the Edison studies.⁶ The Commission should approve the study design as proposed in Application 11-04-006.

Edison estimated the costs for the SONGS 2 & 3 ongoing seismic program and the proposed studies in a reasonable manner. The cost estimates were developed by Edison's internal staff responsible for handling seismic and geotechnical issues, augmented by information provided by outside experts retained by Edison to develop the cost estimates and various other stakeholders with subject matter expertise, such as the California universities and the United States Geological Survey. Pacific Gas & Electric Company ("PG&E"), which is conducting comparable studies for that utility's Diablo Canyon Nuclear Generating Station, was also consulted. Based upon these sources of information,⁷ Edison estimated the cost of the ongoing seismic program and the various proposed studies to be \$64.0 million through the year 2015, with most of the activities concluding by the end of 2014.⁸ No party took issue with respect to the reasonableness of the cost estimates presented by Edison. Given the multiple, credible sources upon which Edison relied in developing its cost estimates and the absence of any controversies related to either the sources or substance of Edison's cost estimates, SDG&E submits the Commission

³ See testimony of Edison witness Nelson, at Exhibit No. SCE-1 at pp. 6-7, and rebuttal testimony of Edison witness Nelson, at Exhibit No. SCE-3 at p. 2; also, testimony of Edison witness Nelson, 1 R.T. 56:7-11, and testimony of DRA witness Logan, 2 R.T. 211:4-10, 211:23-212:1, 213:16-215:14.

⁴ These reports were issued by the Energy Commission in response to 2006 Assembly Bill 1632 (Blakeslee), California Statutes, Chapter 722, adding Public Resources Code Section 25303.

⁵ See rebuttal testimony of Edison witness Nelson, Exhibit No. SCE-03 at pp. 3-4, and Edison witness Nelson, 1 R.T. 81:17-82:11; also, see SDG&E Cross-Examination Exhibit No. SDG&E-X3, which is indicative of the requirements the Nuclear Regulatory Commission is likely to adopt.

⁶ See testimony of DRA witness Logan at Exhibit No. DRA-4, pp. 1:13-19, 7:4-7, and at 2 R.T. 213:9-15, 214:22-215:14. Also, Exhibit No. A4NR-14 at p. 2 (but see discussion of the Independent Peer Review Panel proposed by the A4NR as a condition of approving Edison's application in Section 2 of this Opening Brief, *infra*).

⁷ See testimony of Edison witness Nelson, 1 R.T. 31:11-32:7.

⁸ See testimony of Edison witness Nelson, Exhibit No. SCE-1 at pp.2, 22-24; also, SDG&E Cross-Examination Exhibits Nos. SDG&E-X1 and SDG&E-X2.

should adopt them as the reasonable costs that can be expected for the ongoing seismic program and studies related to SONGS 2 & 3 as those programs and studies are proposed by Edison.⁹

a. Use of Outside Consultants

At this time, SDG&E takes no position on this issue. SDG&E reserves the right, however, to address any controversies related to this topic in its Reply Brief.

2. The Independent Peer Review Panel and Costs

Intervenor Alliance for Nuclear Responsibility (“A4NR”) proposes the Commission establish an Independent Peer Review Panel for the SONGS 2 & 3 seismic studies, similar to the panel established to oversee and review the similar studies being performed by PG&E for that utility’s Diablo Canyon Nuclear Generating Station. To a certain extent, A4NR proposed a minor modification to the structure of the SONGS 2 & 3 panel as compared to the Diablo Canyon panel, specifically, that the County of Orange be represented on the panel.¹⁰ The County would be added to the members representing the Commission’s Energy Division, the California Energy Commission, the California Geological Survey, the California Coastal Commission, and the California Seismic Safety Commission to form the Independent Peer Review Panel for the SONGS 2 & 3 studies.¹¹

While SDG&E does not object to establishing an Independent Peer Review Panel to review the scope of the studies proposed by Edison and thereafter review the progress and findings related to those studies, SDG&E requests the Commission impose two conditions related to the operation of this panel if such a panel is established by the Commission for the SONGS 2 & 3 studies.

As to the first condition proposed by SDG&E, SDG&E submits the Independent Peer Review Panel, if established, should be required to perform its tasks diligently. SDG&E proposes this requirement be expressed in the form of an explicit and strict schedule. As SDG&E witness De Marco testified, the

⁹ As discussed below, however, because it is reasonably foreseeable, although not certain, the actual costs incurred by Edison for the studies under consideration may exceed the \$64.0 million cost estimate, SDG&E requests additional ratemaking mechanisms be authorized to address any costs above the current cost estimate.

¹⁰ The Orange County representative would represent, according to A4NR, the interests of the City of San Clemente, the community A4NR believes is closest to the San Onofre site. The participation of the County would be comparable to the participation of the County of San Luis Obispo on the Diablo Canyon panel. (See testimony of A4NR witness Becker, 2 R.T. 242:18-244:22.) SDG&E notes San Luis Obispo County recently filed a petition to modify Decision 10-08-003 (“*Decision Granting the Application*”) so as to permit that county to participate on the Diablo Canyon panel. See *Petition of San Luis Obispo County to Modify Decision 10-08-003*, in Application 10-01-014, *Application of Pacific Gas & Electric Company for Approval of Ratepayer Funding to Perform Additional Seismic Studies Recommended by California Energy Commission*. SDG&E submits that, if permitted, the participation of the County of Orange here be subject to the same rules of participation applicable to the participation of the San Luis Obispo County representative(s) for the Diablo Canyon panel.

¹¹ See *Decision Granting the Application*, Decision 10-08-003 in Application 10-01-014, *id.*, issued August 16, 2010, printed opinion at pp. 9 to 10, 11, 13, 15 (Conclusions of Law 3 and 4), 17 (Orders 6 and 7).

panel should be required to convene and review the study design proposed by Edison on a timely basis, reporting any exceptions it might have to Edison within thirty (30) days of the effective date of the Commission's order in this proceeding. Further, if those exceptions are unresolved after fifteen (15) days after they are provided to Edison, the panel should be required to file the unresolved exceptions with the Commission within sixty (60) days of the Commission's order in this proceeding for resolution by the Commission.¹² Although A4NR witness Becker indicated SDG&E's proposed schedule was "too short", SDG&E witness De Marco's uncontroverted testimony was the participating agencies, after having previously reviewed the scope of the comparable Diablo Canyon studies, should be generally familiar with the study concepts and techniques included in the SONGS 2 & 3 studies. This leads SDG&E to believe the Commission can reasonably expect considerable efficiency gains in the performance of the panel's work in the SONGS 2 & 3 context, making SDG&E's timetable reasonable.¹³ Coupled with the importance of the studies and the agreement of even A4NR that delays should not be introduced to the study process by reason of the Independent Peer Review Panel,¹⁴ SDG&E submits the schedule proposed by SDG&E witness De Marco should be adopted. If the Independent Peer Review Panel cannot meet the terms of SDG&E's recommended schedule, the panel may certainly request additional time,¹⁵ but SDG&E urges the Commission to refrain from incorporating delays into the study schedule from the very outset by leaving schedule issues to the panel's complete, unbounded discretion.

Turning to the second condition recommended by SDG&E related to the Independent Peer Review Panel, SDG&E proposes any and all costs of supporting the panel and its work reimbursed by the utilities be deemed presumptively reasonable and, accordingly, recoverable through rates. Although Edison indicated it would expect the costs of the panel to be around \$250,000 per year and proposed the panel's

¹² See rebuttal testimony of SDG&E witness De Marco, Exhibit SDG&E-MLD-1 at pp. MLD-6 to MLD-7; compare testimony of A4NR witness Becker at 2 R.T. 245:5-21. It should be pointed out that, while the A4NR witness indicated the SDG&E schedule was aggressive, she had no alternative schedule in mind so as to assure the panel's work was performed, consistent with her own view, "expeditiously". (2 R.T. 245:22-246:28.) Indicatively, the sole defense A4NR witness Becker provided in response to Edison's criticisms the Diablo Canyon Independent Peer Review Panel had introduced delays to the PG&E studies was that administrative issues related to funding needed to be resolved by the participating agencies before they could begin their work in the PG&E case. (2 R.T. 247:13-248:27.) As implied by the text, SDG&E submits these agencies should be very familiar with the process for resolving any funding issues that could arise from their participation on the SONGS 2 & 3 panel after having gone through the process once before and should be encouraged to commence the implementation of the funding procedures they observed in the Diablo Canyon case immediately. This can be done in anticipation these same agencies will be called upon to do the same work in the SONGS 2 & 3 context. With these administrative tasks accomplished in advance, the participating agencies should be positioned to perform their work expeditiously as all parties to this proceeding recommend and pursuant to the schedule recommended by SDG&E.

¹³ See rebuttal testimony of SDG&E witness De Marco, Exhibit No. SDG&E-MLD-1 at p. MLD-7.

¹⁴ See testimony of A4NR witness Becker, 2 R.T. 248:6-18.

¹⁵ Given the panel is expected to include a member of the Commission's own Energy Division Staff and perhaps even a member of the Division of Ratepayer Advocates, SDG&E submits the panel will be well-informed and –advised as to the manner in which it may request additional time from the Commission in the event it cannot meet the SDG&E-proposed timelines.

costs, to the extent reimbursed by the utilities, be “reviewed annually”, SDG&E submits the Commission would be fully warranted in finding the costs of the panel, no matter the amount, may be presumed reasonable. As SDG&E witness DeMarco stated, the costs charged by the panel’s participating agencies are not subject to utility controls, but more importantly the participating agencies are subject to State rules and regulations governing the expenditures that would be charged to the utilities.¹⁶ This recommendation is not the subject of any dispute of record and all parties are in agreement the utilities should be authorized to recover their costs of supporting the proposed Independent Peer Review Panel.¹⁷ SDG&E’s ratemaking proposal can be expected to facilitate the work of the Independent Peer Review Panel, if established, better than the ratemaking proposals submitted by Edison and should be adopted.

3. DRA Recommendation to Impose a Cost Cap

Although the Commission’s Division of Ratepayer Advocates (“DRA”) supported both the studies proposed by Edison and the related cost estimates, DRA recommended the Commission adopt a “cost cap” in this proceeding.¹⁸ Under the proposed cost cap, the utilities would be required to file new ratemaking applications in the event they expect the overall costs of the SONGS 2 & 3 ongoing seismic program and proposed seismic and tsunami studies and risk assessments will exceed the \$64.0 million cost estimate developed by Edison in support of Application 11-04-006.¹⁹

The DRA’s cost-cap recommendation is intended to provide notice to ratepayers as to the difference and potential rate changes associated with the difference.²⁰ While SDG&E generally agrees with the spirit of DRA’s recommendation, SDG&E nevertheless opposes it. As discussed in greater detail later in this Opening Brief,²¹ the advice letter process proposed by SDG&E fully guarantees any approvals for above-estimate costs will see considerable regulatory sunshine, first in the advice letter filing itself that must be noticed to various persons and parties, then in the review process conducted by the Commission’s Energy Division Staff, and yet again in the noticing of the Commission resolution resolving the advice letter through the Commission’s agenda process. Importantly, in the case of SONGS 2 & 3, this noticing process will essentially be doubled since two utilities will be making companion filings for their respective share of the same activities and associated costs.

¹⁶ See rebuttal testimony of SDG&E witness De Marco, Exhibit No. SDG&E-MLD-1, at pp. MLD-8 to MLD-9.

¹⁷ See, e.g., testimony of A4NR witness Becker, 2 R.T. 244:23-245:4.

¹⁸ The nature of the proposed “cost cap” is more in the form of a limitation on the authorities the utilities may receive from the Commission in this proceeding rather than an absolute limit on the costs of the study. Thus, the term “cost cap” is somewhat inaccurate but SDG&E uses the term here to conform to the DRA’s self-characterization of its proposal.

¹⁹ See testimony of DRA witness Logan, Exhibit No. DRA-4, at p.9.

²⁰ See testimony of DRA witness Logan, 2 R.T. 254:6-23.

²¹ See Section 5 of this Opening Brief, *infra*.

SDG&E believes any difference between the actual costs and the cost estimates for the relevant activities is likely to be relatively small, and SDG&E's share of the difference would be proportionately smaller still. Under the DRA's recommendation, SDG&E would be required to file a new application and issue a notice to all ratepayers for what could amount to a negligible change in its electric rates – while SDG&E supports the provision of notices generally, the Commission should consider the high potential for issuing what customers might consider a nuisance insert and a waste of money, effort, postage and paper. Even assuming the noticing of rate applications had some intrinsic value in the broadest sense, DRA conceded it had not considered whether, under its recommendation, the noticing of a small or negligible rate increase by SDG&E associated with its twenty-percent share of a relatively minor cost increase could have counterproductive effects by diluting the effect of notices generally and specifically the effect of notices for more significant other regulatory filings in which the public would have a greater substantive greater interest.²²

In the event any cost increases proved to be beyond a level that could be described as “negligible”, *e.g.*, even up to an amount equaling the cost estimates presented by Edison in Application 11-04-006, it may still be the case those increases would not be controversial and the public interest in the timely completion of the studies would outweigh the value of the noticing requirement served by DRA's cost-cap recommendation. Based on the evidentiary record in this proceeding, Edison's efforts at meeting the requirements and recommendations arising from legislative and regulatory recommendations and directions appears to have drawn little controversy and no ratepayer comment, let alone opposition. At a forecasted cost of \$64.0 million, no party opposed either the studies or the proposed rate increases necessary to cover their costs.²³ SDG&E submits there is no reason to believe the proposed costs for the SONGS 2 & 3 ongoing seismic program or proposed studies are themselves controversial or that the scope of the activities proposed by Edison are unreasonable. To the contrary, all parties supported the underlying activities and are willing to allow the studies to proceed under the current cost estimates.²⁴ With only these facts in evidence, the record strongly supports the inference that any increases in these activities and their associated costs, particularly where the changes are most likely to arise from the discovery of geologically

²² See testimony of DRA witness Logan, 2 R.T. 254:4-255:14.

²³ SDG&E acknowledges DRA proposes to have the utilities bear ten percent (10%) of the costs of the proposed activities. SDG&E notes, however, the DRA recommendation is based upon the “uncertainties” associated with the studies and their costs rather than on any grounds that the cost estimates are unreasonable. See testimony of DRA witness Logan 2 R.T. 211:4-216:11.

²⁴ SDG&E acknowledges A4NR proposes the Commission establish an Independent Peer Review Panel to review the proposed study scope and cost estimates, but notes that even in doing so A4NR strongly indicated that the completion of the studies is important and should be done as quickly as possible. See testimony of A4NR witness Becker, 2 R.T. 245:22-246:6.

significant information or additional regulatory requirements (e.g., imposed by the Nuclear Regulatory Commission or recommended by a SONGS 2 & 3 Independent Peer Review Panel), would also draw little or no opposition. Under these circumstances, the additional notices to ratepayers DRA's recommendation is intended to spawn would add little to the Commission's policies related to keeping the public informed and could very well serve little useful or incremental purpose.²⁵ Rather than require noticing for its own sake, SDG&E submits the Commission should approve SDG&E's proposed Tier 3 advice letter process, which has its own comparable and significant noticing requirements. If the substance and processing of an advice letter filed under SDG&E's proposal indicates additional procedural requirements, including the issuance of additional notices, are in order, then the Commission, whether *sua sponte*, upon the recommendation of the Energy Division staff reviewing the advice letter or upon the request of a party filing a protest, can always require the issuance of additional notices or the conduct of evidentiary hearings based upon its sense of the public interest and the circumstances at hand.

Finally, as SDG&E witness De Marco testified, requiring the utilities to file new applications would almost certainly add time to the regulatory-approval process, diverting attention and effort from the completion of the work and potentially delaying the timely completion of the studies. Particularly where any cost increases, whether due to changes in the study scope or noncontroversial changes to the costs of the scope of the studies as proposed, are small and/or not the subject of any dispute or protest, this regulatory lag would represent a needless loss and be contrary to the public interest.²⁶ Rather than presume this loss of time would be outweighed by the procedural benefits of DRA's cost-cap recommendation and noticing requirement, SDG&E submits the Commission should reject the DRA recommendation at this time. This would not foreclose the Commission from requiring the issuance of a notice to customers if circumstances related to any incremental costs warranted such a requirement.²⁷ But on the record developed to date in this proceeding, there is nothing to presume the additional noticing requirements which are the principal object of DRA's recommendation would serve the public interest, while on the other hand there is substantial evidence to indicate the loss of time could be needless and complicate the timely completion of the studies being performed.

²⁵ See rebuttal testimony of SDG&E witness De Marco, Exhibit No. SDG&E-MLD-1 at pp. MLD-5 to MLD-6.

²⁶ *Ibid.*

²⁷ SDG&E notes the Commission has this very question before it in the PG&E application regarding the costs of the seismic and tsunami studies and risk assessments being performed for the Diablo Canyon site. See Application 10-01-014, *Application of Pacific Gas & Electric Company for Approval of Ratepayer Funding to Perform Additional Seismic Studies Recommended by California Energy Commission*. The Commission obviously has the ability to craft procedural requirements as circumstances require, so rejecting the DRA recommendation at this time hardly forecloses any procedural options the Commission may consider to be appropriate as warranted.

4. DRA Recommendation to Allocate Ten Percent of Study Costs to Utility Shareholders

DRA proposes to omit from rate recovery ten percent (10%) of the SONGS 2 & 3 ongoing seismic program and proposed seismic and tsunami studies and risk assessments.²⁸ The exclusion from ratemaking of this share of costs would occur without regard to the character or purpose of the costs approved by the Commission, and regardless of whether Edison managed these activities within budget or not. DRA bases this cost-sharing recommendation on the potential “uncertainties” associated with the eventual scope of the studies and risk assessments. DRA’s recommendation violates axiomatic ratemaking principles, is otherwise unsupported by the evidentiary record, and should be rejected by the Commission.

Fundamentally, the legal standard for ratemaking is one of reasonableness. In meeting this standard, the Commission must afford a utility a reasonable opportunity to earn a fair rate of return on its investments. This standard is failed when reasonable and foreseeable expenses of utility operations are excluded from rates. See the seminal cases of *Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679, 692-693 (U.S.Sup.Ct., 1923), and *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591, 603, 605 (U.S.Sup.Ct., 1944); also, *Pacific Telephone and Telegraph Company v. Public Utilities Commission*, 62 Cal.2d 634, 647 (Cal.Sup.Ct., 1965). DRA’s recommendation would require a substantial departure from these well-understood and fundamental principles of ratemaking. Here, no party, including DRA, contends the costs for which the utilities are seeking rate recovery are anything other than prudent expenses that will be incurred in the ordinary conduct of the utilities’ business.²⁹ While the Commission certainly has the authority to exclude from rate recovery any costs it deems to be unreasonable or imprudent, no party, not even DRA, contends the costs as estimated by Edison should be disallowed from rate recovery because they are unreasonable, even as to the ten percent (10%) DRA would omit from ratemaking.

DRA’s assertion that, at the present time, there are uncertainties associated with determining the full and final scope of the underlying study activities and associated costs simply fails to justify any exclusion of the costs from ratemaking. DRA’s citation to the extant uncertainties in order justify its

²⁸ See testimony of DRA witness Logan, Exhibit No. DRA-4 at pp. 9-12.

²⁹ See testimony of DRA witness Logan, 2 R.T. 214:25-215:14. See also, *Decision Granting the Application*, Decision 10-08-003 in Application 10-01-014, *id.*, issued August 16, 2010. In that case, the Commission clearly agreed the seismic and tsunami studies and risk assessments being performed for the Diablo Canyon site were prudent expenses incurred in the ordinary conduct of the utility’s business. The issue was, as here, never raised by any party to that proceeding. DRA’s view, upon which its recommendation to allocate ten percent (10%) of project costs to the utilities principally relies, that there is no “legal mandate” to perform the studies is simply irrelevant. See testimony of DRA witness Logan, Exhibit No. DRA-4 and 2 R.T. 217:20-218:11.

allocation of costs to the utilities is simply misplaced and contrary to the law.³⁰ Rather, the existence of these uncertainties only further justifies undertaking the studies – it is the uncertainties associated with the subject of the studies, *i.e.*, the search for unknown, speculated and/or hypothesized tectonic conditions that may, even more speculatively, pose hazards and risks to the operations at SONGS 2 & 3 during the few relevant decades within a geological eon, that compelled first the Legislature,³¹ then the Energy Commission,³² then this Commission's own President,³³ to initiate the series of formal actions by the State driving the utilities to perform the studies in the first place.³⁴ The point of the studies is to resolve these uncertainties to some acceptable degree. That objective is by its nature uncertain, but this did not dissuade the State from pursuing the studies and DRA should not be permitted to second-guess the sequence of actions taken by various state officials and agencies by imposing financial burdens on the utilities charged with performing the studies. The final scope of the activities responding to the State's demands and the costs of performing these activities may be, as DRA asserts, uncertain to some degree, but any uncertainty is not of the utilities' doing but attributable to other, larger influences over which the utilities have little, if any, control. Under these circumstances, it would violate fundamental ratemaking principles to authorize the ongoing seismic program and proposed studies as being in the public interest, require their performance, approve their fair and reasonable costs, but then omit a specified portion of the costs from ratemaking. Authorizing expenditures, under circumstances where the utilities are being compelled to make the expenditure, but only returning ninety cents on the dollar in rates is *ipso facto* confiscatory and should be flatly rejected.

Leaving aside the violence DRA's recommendation to allocate a share of the study costs to the utilities' shareholders would do to ratemaking fundamentals, DRA's notion that its recommendation would

³⁰ As discussed below in Section 6 of this Opening Brief, California regulatory law and ratemaking conventions related to balancing accounts are fully capable of addressing costs that are "uncertain", *i.e.*, fluctuate in response to influences outside the bounds of those normally considered to be manageable or within the normal course of business.

³¹ See 2006 Assembly Bill 1632 (Blakeslee), California Statutes, Chapter 722, adding Public Resources Code Section 25303.

³² See *California Energy Commission 2008, An Assessment of California's Nuclear Power Plants: AB1632 Report*, Commission Report CEC-100-2008-108-CTF, November 2008, ; also, California Energy Commission, 2009 Integrated Energy Policy Report, Final Commission Report, December 2009, CEC-100-2009-003-CMF, December 2009, at pp. 9-10, 111-124, 238-240.

³³ See SDG&E Cross-Examination Exhibit No. SDG&E-X4, California Public Utilities Commission President's Letter.062509 Re Assembly Bill 1632 Studies. See also, *Decision Granting the Application*, Decision 10-08-003 in Application 10-01-014, *id.*, printed opinion at pp. 1-2, where the Commission discusses the events leading to the performance of the comparable studies by PG&E for that utility's Diablo Canyon site.

³⁴ The Nuclear Regulatory Commission has not yet formally joined in calling for the performance of the study activities which are the subject of the instant applications. Nevertheless, the only reasonable inference that can be drawn from the issuance of Generic Letter 2011-XX is that it is highly likely to do so. See testimony of Edison witness Nelson, Exhibit SCE-03 at pp.3-4 and 1 R.T. 77:25-78:23; also, SDG&E Cross-Examination Exhibit No. SDG&E-X3.

provide the utilities with an “incentive” to control costs is unsupported by the evidentiary record.³⁵ SDG&E submits the ability of Edison to control costs would be marginal at best. Edison has been given very little discretion in designing the scope of the study. As DRA witness Logan acknowledged, the Edison study design was responsive to the recommendations of the Energy Commission, down to the specification of the technologies that are to be used in the performance of the studies.³⁶

While DRA witness Logan indicated Edison had some ability to exercise “discretion” over certain “elements” of the proposed studies,³⁷ he never tied his allocation of ten percent (10%) of the project costs to the exercise of this discretion, let alone to poor decisionmaking that led to an undue (perhaps ten percent?) increase in the cost estimate. In fact, he did not consider whether it was the scope of work, rather than the exercise of management discretion, that had the greatest effects on the overall project costs.³⁸ Ultimately, there appeared to be little nexus between (a) the control or discretion the utilities could exert over the project costs and (b) the cost-containment incentive proposed by DRA: (1) the ten-percent (10%) allocation of costs to shareholders is to be imposed on Edison and SDG&E equally, although DRA witness Logan acknowledged SDG&E has considerably less control over the project costs than does Edison;³⁹ (2) the ten-percent (10%) allocation would apply to any additional costs resulting from changes to the scope of work recommended by a SONGS 2 & 3 Independent Peer Review Panel;⁴⁰ (3) the ten-percent (10%) allocation would apply to any additional costs resulting from any requirements that might be adopted by the Nuclear Regulatory Commission;⁴¹ and (4) the ten-percent (10%) allocation would apply to any additional costs resulting from unanticipated environmental-mitigation costs associated with the project.⁴² Moreover, even if the utilities were to manage costs to below the cost estimates to meet the DRA’s “cost containment” objectives, the utilities would forego ninety percent (90%) of the cost savings their efforts produced, providing a weak incentive at best. In this light, the allocation of project costs to shareholders is punitive inasmuch as it bears little relationship to the ability of the utilities to control costs and would be

³⁵ See testimony of DRA witness Logan, Exhibit DRA-4 at pp. 6-7, 9.

³⁶ See testimony of DRA witness Logan, 2 R.T. 213:9-215:14.

³⁷ See testimony of DRA witness Logan, 2 R.T. 221:22-223:15.

³⁸ See testimony of DRA witness Logan, 2 R.T. 232:19-25. Although Mr. Logan acknowledged the majority of the project costs were associated with the use of two- and three-dimensional deep-marine seismic reflection imaging recommended by the Energy Commission rather than the exercise of the utility’s management discretion, he deflected criticisms of assigning ten percent of the related costs of using these technologies by indicating the Energy Commission had no appreciation of the costs of its recommendation. See testimony of DRA witness Logan, 2 R.T. 233:1-234:8. Even if Mr. Logan is correct, assigning to the utilities ten percent (10%) of the costs of following the direction of a regulatory agency, even where that direction proves to be unwittingly expensive, does not justify ignoring the fundamental ratemaking principles cited in the text of this Opening Brief.

³⁹ See testimony of DRA witness Logan, 2 R.T. 234:24-236:5.

⁴⁰ See testimony of DRA witness Logan, 2 R.T. 251:10-252:15.

⁴¹ See testimony of DRA witness Logan, 2 R.T. 253:9-19.

⁴² See testimony of DRA witness Logan, 2 R.T. 253:20-254:5.

applied to all costs without regard to the fact they are more likely to be driven and determined by larger, external influences on project scope, many, if not all, of which are beyond the utilities' control.⁴³

Finally, SDG&E believes DRA's recommendation could result in harm to the credibility of the seismic and tsunami studies and risk assessments. As SDG&E witness De Marco testified, if an Independent Peer Review Panel is established for the SONGS 2 & 3 studies, it is well within reason to anticipate the panel would provide recommendations adding to the project scope of work. The DRA's recommendation would place the utilities in the position of resisting those recommendations or bearing some portion of the costs of acquiescing to the recommendations.⁴⁴ The same would be true with respect to any of the potential corners the DRA's recommendation might "incentivize" the utilities to cut – as SDG&E witness De Marco testified, the production of timely and credible study results far outweighs the public interest in cost containment where the public safety is involved.⁴⁵ If the Commission has an interest in overseeing and limiting project costs, there are other means available to it – as an example, DRA itself acknowledged that an alternative method of overseeing the utilities' costs could be assigning some level of cost oversight to the Independent Peer Review Panel.⁴⁶ This would achieve the purposes of the DRA's recommendation without violating fundamental ratemaking principles, harming the credibility of the studies, or imposing an ineffective and misapplied "incentive" on the utilities.

For the foregoing reasons, the DRA's recommendation to allocate ten percent (10%) of the costs of the SONGS 2 & 3 ongoing seismic program and seismic and tsunami studies and risk assessments should be rejected.

5. Tier 3 Advice Letter

In contrast to DRA's recommendation that the utilities should be required to file additional applications in the event the costs of the ongoing seismic program and proposed studies were to exceed the estimate of \$64.0 million, SDG&E proposes a simpler process pursuant to the Commission's rules governing Tier 3 advice letters. SDG&E proposes to record its allocated share of any amounts exceeding its share of the project costs, that is, amounts exceeding SDG&E's share of \$13.3 million plus the costs of the Independent Peer Review Panel (if such a panel is established for the SONGS 2 & 3 studies), in the proposed SONGS Seismic Research Memorandum Account. Following review of those amounts by the

⁴³ See testimony of SDG&E witness De Marco, Exhibit No. SDG&E-MLD-1 at p. MLD-4 to MLD-5.

⁴⁴ See rebuttal testimony of SDG&E witness De Marco, Exhibit No. SDG&E-MLD-1 at pp. MLD-7 to MLD-8.

⁴⁵ See rebuttal testimony of SDG&E witness De Marco, Exhibit No. SDG&E-MLD-1 at p. MLD-4.

⁴⁶ See testimony of DRA witness Logan, 2 R.T. 219:8-221:21.

Commission and authorization of their collection through rates, SDG&E would transfer the approved amounts to the proposed SONGS Seismic Research Balancing Account for recovery in rates.⁴⁷

Under the SDG&E approach, SDG&E would, at an appropriate time, file a Tier 3 advice letter apprising the Commission and interested parties that (1) SDG&E's share of the actual costs of the SONGS 2 & 3 ongoing seismic program and proposed studies exceeded the amounts authorized by the Commission's order in the instant application by the amount recorded to its SONGS Seismic Research Memorandum, and (2) SDG&E was requesting these additional amounts be transferred to revenue accounts for rate recovery.⁴⁸ In determining when to file such an advice letter, SDG&E would be guided by the further direction of this Commission, for instance, after the Commission had considered and approved Edison's share of the increased costs of the proposed program and studies in Edison's annual Energy Resource Revenue Account proceeding.⁴⁹

First and foremost, SDG&E notes its proposed procedural protocols will assure that only those costs allocated and billed to SDG&E by Edison will be recovered through rates, no more and no less. Additionally, these protocols assure notice will be provided to the public in the event the actual costs of the proposed activities exceed the Edison cost estimate, and further afford all persons and parties procedural due process in virtually the same effects as would be provided under the DRA's recommendation that an entirely new application be required. Under General Order No. 96-B, advice letters are subject to notice and service requirements unless waived by the Commission, assuring that those persons and parties the Commission determines should receive prior notice and service, with an opportunity to protest and be heard, will be afforded due process.⁵⁰ Additionally, the Commission itself must approve Tier 3 advice letters.⁵¹ Approvals of Tier 3 advice letters are thus subject to noticing and publication requirements providing additional opportunities for any person or party to seek additional information or protest the

⁴⁷ As noted previously, in the event the Commission approves the continuation of SDG&E's existing SONGS O&M Balancing Account as requested by SDG&E in its pending *Test Year 2012 General Rate Case* (Application 10-12-006), the amounts recorded in the Seismic Research Memorandum Account and approved by the Commission would be recovered through that existing ratemaking mechanism.

⁴⁸ See General Order No. 96-B, Energy Industry Rule 5.3(4), permitting the filing of Tier 3 advice letters that would increase rates. Also, testimony of SDG&E witness Shimansky, Exhibit No. SDG&E-1 at pp. 5 to 6.

⁴⁹ Edison's ratemaking proposals regarding rate recovery for actual costs above its estimates is substantially similar to SDG&E's proposal. Edison seeks, to the extent its actual costs exceed the cost estimates provided in its application, authority to file Tier 3 advice letters related to the difference. Upon approval by the Commission, the difference would be recorded in Edison's Base Revenue Requirement Balancing Account. The amounts approved through the advice letter process would be subject to Commission review in Edison's annual Energy Resource Revenue Account filings. See testimony of Edison witness Parise, Exhibit No. SCE-1 at p. 25.

⁵⁰ See General Order 96-B, General Rules 4.2, 4.3 and 7.2.

⁵¹ See General Order 96-B, Energy Industry Rule 5.3.

substance of the advice letter or the Commission's disposition of the advice letter.⁵² Finally, the approval of a Tier 3 advice letter is subject to administrative and judicial appeals.⁵³

SDG&E believes its proposed advice letter process is well-suited to the nature of the costs being addressed. As argued previously, there appears to be very little controversy as to whether the underlying activities are in the public interest. Additionally, if there are significant increases in the costs of performing the studies, SDG&E believes these would result from changes in the scope of the studies arising from additional regulatory requirements,⁵⁴ or, if the Commission establishes a SONGS 2 & 3 Independent Peer Review Panel, the additional study recommendations received from that panel,⁵⁵ or the discovery of geologically significant information from the early study activities that might require additions to the original project scope of work. Under these circumstances, SDG&E does not believe there would be substantial opposition to a request for additional funding to cover any additional study requirements but, even if additional funding were to prove controversial, the Tier 3 advice letter process provides explicit procedures for resolving these controversies, including suspending the filing and convening evidentiary hearings where appropriate. SDG&E submits its request for authority to use the Tier 3 advice letter process for approving costs in excess of the cost estimates provided in Application 11-04-006 is aptly structured to address the nature of the matters that would be presented to the Commission and should be granted.

6. Balancing Account Mechanisms and Ratemaking

SDG&E proposes to manage the costs and rates related to the SONGS 2 & 3 ongoing seismic program and proposed seismic studies and risk assessments through a combination of (a) a ratemaking balancing account and, (b) for costs exceeding SDG&E's share of \$13.3 million plus the costs of the Independent Peer Review Panel (if such a panel is established for the SONGS 2 & 3 studies), the proposed SONGS Seismic Research Memorandum Account. Use of these ratemaking conventions is consistent with the Commission's practice regarding "an item of expense or revenue which tends to vary abnormally in comparison to the utility's other financial data." *City of Los Angeles v. Public Utilities Commission*, 15 Cal.3d 680, 692 (Cal.Sup.Ct., 1975). Where, as here, the costs being addressed in a ratemaking proceeding can fluctuate based on their unique or, as DRA describes them, "uncertain" attributes, the use

⁵² See Public Utilities Code Section 311.5; accord, Articles 14 [Recommended Decisions] and 15 [Commission Decisions] of the the Commission's Rules of Practice and Procedure.

⁵³ See General Order 96-B, General Rule 7.7.2; also, Public Utilities Sections 1731, *et seq.*, and 1756, *et seq.*, and Rules 16.1 through 16.3 of the Commission's Rules of Practice and Procedure.

⁵⁴ See, *e.g.*, SDG&E Cross-Examination Exhibit No. SDG&E-X3, the pending Generic Letter 2011-XX of the Nuclear Regulatory Commission.

⁵⁵ See rebuttal testimony of SDG&E witness De Marco, Exhibit No. SDG&E-MLD-1 at p. MLD-7:19-25.

of balancing accounts is particularly well-suited to assure that the rates reflecting those costs are just and reasonable. *Id.*, at 695.

At the present time, SDG&E intends to record its share of the costs of the SONGS 2 & 3 ongoing seismic program and seismic and tsunami study and risk assessments in its existing SONGS O&M Balancing Account pursuant to the authorities granted by previous Commission order.⁵⁶ Those costs constitute operating and maintenance expenses and will be allocated and billed to SDG&E as they are incurred by Edison under the contractual protocols used for all other SONGS 2 & 3 operating and maintenance expenses.⁵⁷ Until the Commission issues its order in the pending SDG&E Test Year 2012 General Rate Case, SDG&E will continue to record and recover these costs in and through the SONGS O&M Balancing Account. In the event the Commission does not authorize SDG&E to continue its SONGS O&M Balancing Account, SDG&E will establish the SONGS Seismic Research Balancing Account, and thereafter record and recover the costs for the SONGS 2 & 3 ongoing seismic program and seismic and tsunami study and risk assessments as approved by the Commission using this new mechanism. SDG&E currently expects its allocable share of the costs for these activities, including overheads billed by Edison to SDG&E, to be \$13.3 million, plus the costs of the Independent Peer Review Panel (if such a panel is established for the SONGS 2 & 3 studies).⁵⁸

To the extent the actual costs of the proposed activities exceed current estimates, SDG&E will record those amounts exceeding \$13.3 million, plus the costs of the Independent Peer Review Panel (if such a panel is established for the SONGS 2 & 3 studies), in the proposed SONGS Seismic Research Memorandum Account. Following review of those amounts by the Commission and authorization of their collection through rates, SDG&E would transfer the approved amounts to the existing SONGS O&M Balancing Account if active at that time or to the proposed SONGS Seismic Research Balancing Account for recovery in rates if the SONGS O&M Balancing Account has been retired.

⁵⁶ See testimony of SDG&E witness Shimansky, Exhibit No. SDG&E-1 at pp. 5-6. See also, *Opinion Approving an Unopposed Settlement of the Ratemaking Treatment of San Diego Gas & Electric Company's Share of Costs Related to Steam Generator Replacement at San Onofre Nuclear Generating Station Units 2 and 3*, Decision 06-11-026 in Application 06-04-018 (*In the Matter of San Diego Gas & Electric Company's Application for Authorization to (1) Participate in the Steam Generator Replacement Project as a Co-Owner of San Onofre Nuclear Generating Station Unit Nos. 2 & 3 (SONGS 2&3); (2) Establish Ratemaking for Cost Recovery; and (3) Address Other Related Steam Generator Replacement Issues (U-902-E)*), Cal. P.U.C. (2006), adopting SONGS O&M Balancing Account, printed opinion at pp.12-13; also *Decision Granting San Diego Gas & Electric Company's Petition to Modify Decision 06-11-026*, Decision 11-07-049 in Application 06-04-018, *id.*, continuing SONGS O&M Balancing Account pending decision in SDG&E's Test Year 2012 General Rate Case, printed opinion at pp. 5-6.

⁵⁷ See testimony of SDG&E witness De Marco, Exhibit No. SDG&E-1 at pp. 1-5; also, *e.g.*, testimony of Edison witness Parise, 1 R.T. 14:16-16:4, and testimony of Edison witness Nelson, 1 R.T. 22:16-22:28.

⁵⁸ See testimony of SDG&E witness De Marco, Exhibit No. SDG&E-1 at pp. 2-5.

During the pendency of these applications, Edison filed a motion to establish a SONGS 2 & 3 Seismic Projects Memorandum Account. Edison proposed to record the actual costs of the activities addressed in Application 11-04-006 to the extent those costs are incurred prior to the effective date of the Commission's order in this proceeding.⁵⁹ This would permit Edison to proceed with activities prior to the order and facilitate the timely completion of the studies. Edison's motion to establish the memorandum account was granted by Administrative Law Judge Barnett on the first day of hearing.⁶⁰ Edison subsequently filed its Advice Letter 2658-E on November 22, 2011, to establish the memorandum account.

Edison witnesses Parise and Nelson testified SDG&E's share of early and initial project costs would be billed to SDG&E as those costs were incurred.⁶¹ In accordance with the existing SONGS O&M Balancing Account protocols discussed above, SDG&E would record and recover its share of these early costs using this existing mechanism. In the event the Commission extinguishes the SONGS O&M Balancing Account prior to the time it issues its final order in this proceeding, there could be a "regulatory gap" through which those early costs incurred by Edison and allocated to SDG&E, specifically, those costs incurred between the time the SONGS O&M Balancing Account lapses and the new SONGS Seismic Research Balancing Account is established, would fall. If necessary for its share of those early costs that may not otherwise be covered by its proposed ratemaking mechanisms, SDG&E will file its own motion under separate cover requesting it be permitted to establish the proposed SONGS Seismic Research Memorandum Account in advance of a final order in this proceeding using the same processes used by Edison for that utility's SONGS 2 & 3 Seismic Projects Memorandum Account.

As noted earlier, SDG&E would, at an appropriate time, file a Tier 3 advice letter apprising the Commission and interested parties of (1) the amount recorded in the SONGS Seismic Research Memorandum Account to be transferred to the SONGS Seismic Research Balancing Account,⁶² and (2) the effect such a transfer would have on electric rates. In determining when to file such an advice letter, SDG&E would be guided by the further direction of this Commission, for instance, after the Commission

⁵⁹ See supplemental testimony of Edison witness Nelson, Exhibit No. SCE-2.

⁶⁰ See 1 R.T. 5:2-6:2.

⁶¹ See testimony of Edison witness Parise, 1 R.T. 15:26-16:4, and testimony of Edison witness Nelson, 1 R.T. 22:16-23:4.

⁶² Any such amounts would be augmented by SDG&E's share of early costs falling through the above-described "regulatory gap" and recorded in this memorandum account. Also, as discussed elsewhere, in the event the Commission extends the existing SONGS O&M Balancing Account as part of its order in the pending SDG&E Test Year 2012 General Rate Case, SDG&E will omit the filing of the new SONGS Seismic Research Balancing Account and transfer these costs to the SONGS O&M Balancing Account for the sake of ratemaking simplicity and continuity. See testimony of SDG&E witness Shimansky, Exhibit SDG&E-1 at p.6.

had considered and approved Edison's share of the increased costs of the proposed program and studies in Edison's annual Energy Resource Revenue Account proceeding.⁶³

SDG&E submits its proposed ratemaking protocols comport with applicable law and longstanding Commission ratemaking principles and practices. DRA's competing recommendations regarding its cost cap and the imposition of a requirement that a new application should be filed for any costs exceeding the pending cost estimates should be rejected for the reasons discussed in Sections 3 and 5 of this Opening Brief, *supra*.

III. Summary and Conclusions

Pursuant to the request of the presiding Administrative Law Judge, SDG&E has attached proposed Findings of Fact, Conclusions of Law and Orders it recommends be entered and adopted in resolution of this proceeding. Although SDG&E takes no position with respect to whether the Commission should establish an Independent Peer Review Panel for the purposes of reviewing the SONGS 2 & 3 ongoing seismic program and proposed seismic and tsunami studies and risk assessments, the weight of precedent and the Administrative Law Judge's explicit preference for establishing a SONGS 2 & 3 Independent Peer Review Panel prompted SDG&E to include findings, conclusions and orders consistent with establishing the panel, subject to the recommendations SDG&E makes with respect to assuring the panel does its work on a timely basis and omitting any Commission review of the costs charged by the members of the panel directly to the utilities and ultimately to the ratepayers.

⁶³ As noted earlier, Edison's ratemaking proposals regarding rate recovery for actual costs above its estimates is substantially similar to SDG&E's proposal. Edison seeks, to the extent its actual costs exceed the cost estimates provided in its application, authority to file Tier 3 advice letters related to the difference. Upon approval by the Commission, the difference would be recorded in Edison's Base Revenue Requirement Balancing Account. The amounts approved through the advice letter process would be subject to Commission review in Edison's annual Energy Resource Revenue Account filings. See testimony of Edison witness Parise, Exhibit No. SCE-1, at p. 25.

Except as noted above, the proposed findings, conclusions and orders provided in the attached Appendix are consistent with the positions argued in this Opening Brief and provide a good summary of SDG&E's positions in this matter. SDG&E requests the Commission adopt them as submitted in the disposition of these consolidated applications.

Respectfully Submitted,

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Appendix A
Proposed Findings of Fact, Conclusions of Law, and Orders

Proposed Findings of Fact

1. Southern California Edison Company (“Edison”) designed its ongoing seismic program and proposed seismic and tsunami studies and risk assessments for San Onofre Nuclear Generating Station Units 2 and 3 to meet the intent of the State Legislature as provided in Public Resources Code Section 25303, the recommendations of the California Energy Commission adopted in that agency’s Integrated Energy Policy Report proceedings, and the prior direction of the Commission.

2. The proposed SONGS 2 & 3 seismic and tsunami studies and risk assessments may also produce information that may address study requirements under consideration by the United States Nuclear Regulatory Commission for commercial reactor licensees.

3. The design of the SONGS 2 & 3 ongoing seismic program and proposed seismic and tsunami studies and risk assessments addresses matters in the public interest and is reasonable.

4. Edison estimated the costs of managing, performing and completing the SONGS 2 & 3 ongoing seismic program and proposed seismic and tsunami studies and risk assessments based upon its expert judgment, market-based information and other reasonably reliable sources.

5. Edison’s cost estimate of \$64.0 million for the SONGS 2 & 3 ongoing seismic program and proposed seismic and tsunami studies and risk assessments is reasonable and should be adopted for ratemaking purposes.

6. The costs of the SONGS 2 & 3 ongoing seismic program and proposed seismic and tsunami studies and risk assessments are operating and maintenance expenses incurred in the ordinary and prudent course of business for the owners of those units.

7. It is reasonably foreseeable, but not necessarily certain, that the actual and final cost of the SONGS 2 & 3 ongoing seismic program and proposed seismic and tsunami studies and risk assessments may exceed the current estimate of \$64.0 million.

8. An Independent Peer Review Panel with members from this Commission’s Energy Division, the California Energy Commission, the California Coastal Commission, the California Geological Survey, the California Seismic Safety Commission, and the County of Orange would be of assistance to the Commission in the oversight and review of the findings of the proposed SONGS 2 & 3 seismic and tsunami studies and risk assessments.

9. Costs that may be billed to the utilities by the Independent Peer Review Panel are subject to state and local rules and regulations related to public expenditures governing the reasonableness of both the level of expenditure and the manner of billings.

10. The actual and final cost of the SONGS 2 & 3 ongoing seismic program and seismic and tsunami studies and risk assessments could exceed the current cost estimates if the Independent Peer Review Panel recommends additions to the proposed scope of work, if the Nuclear Regulatory Commission adopts requirements beyond the scope of work proposed by Edison, or if the findings of the studies indicate the need to expand the proposed scope of the studies.

11. The Tier 3 advice letter process proposed by Edison and SDG&E for any incremental costs exceeding the \$64.0 million cost estimate requires notice to the public and interested parties.

12. The ratemaking mechanisms, balancing accounts and memorandum accounts proposed by Edison and SDG&E are well-suited to address the uncertainties associated with the scope of work and actual and final costs of the SONGS 2 & 3 ongoing seismic program and proposed seismic and tsunami studies and risk assessments.

13. While Edison and, to a lesser extent, SDG&E may have some discretionary control over the actual and final costs of the SONGS 2 & 3 ongoing seismic program and proposed seismic and tsunami studies and risk assessments, their ability to contain these costs is marginal compared to other larger, external influences such as the scope of the studies, the use of technologies recommended by the California Energy Commission, and potentially the findings of the studies.

Proposed Conclusions of Law

1. The conduct and completion of the proposed seismic and tsunami studies as proposed by Southern California Edison Company (“Edison”) are in the public interest and Edison should be authorized to proceed with the studies and such associated activities as are directly and reasonably related to the proposed study design.

2. The estimate of \$64.0 million for the proposed seismic and tsunami studies is reasonable and should be adopted.

3. Edison should be authorized to record and recover its share of the costs of the ongoing seismic program and proposed seismic and tsunami studies, currently estimated to be \$50.1 million, in the manner proposed by the applicant in Application 11-04-006.

4. SDG&E should be authorized to record and recover its share of the costs of the ongoing seismic program and proposed seismic and tsunami studies, currently estimated to be \$12.8 million, plus

allocated overheads and its share of the costs of the SONGS 2 & 3 Independent Peer Review Panel, in the manner proposed by the applicant in Application 11-05-011.

5. To the extent the actual costs of the studies exceed \$64.0 million, the Commission should provide Edison and San Diego Gas & Electric Company ("SDG&E") with an opportunity to recover such amounts exceeding \$64.0 million in rates, provided that Edison and SDG&E provide a demonstration that such amounts, as to substance, were incurred for activities reasonably and directly related to the studies proposed in Application 11-04-006 and, as to amount, are reasonable.

6. It is reasonable to establish and provide for the operation of an Independent Peer Review Panel whose membership shall consist of a member representing this Commission's Energy Division, the California Seismic Safety Commission, the California Geological Survey, the California Coastal Commission, the California Energy Commission, and the County of Orange. The scope and authority of the Independent Peer Review Panel shall be limited to reviewing and commenting on the study design, the progress of the studies, and the findings and/or results of the studies approved by this order.

7. So as to not delay the commencement or completion of the proposed seismic and tsunami studies and risk assessments, it is reasonable to require the Independent Peer Review Panel to perform its work pursuant to a schedule consistent with the time periods described in this decision.

8. It would be reasonable for the Commission to adopt a rebuttable presumption that any costs charged to the utilities by the Independent Peer Review Panel are reasonable and recoverable through rates unless such costs are shown to be unreasonable by substantial evidence to the contrary.

9. The Tier 3 advice letter process proposed by Edison and SDG&E for the recovery of actual costs exceeding the \$64.0 million cost estimate is reasonable and should be adopted.

10. The recommendation of the DRA to require that any costs above the \$64.0 million estimate be the subject of new ratemaking applications should be denied.

11. The recommendation of the DRA to allocate a ten-percent share of the costs of the SONGS 2 & 3 ongoing seismic program and proposed seismic and tsunami studies and risk assessments should be denied.

12. So as to permit the proposed seismic and tsunami studies to proceed immediately, this order should be effective today.

Orders

1. Southern California Edison Company (“Edison”) is authorized to record and recover the actual costs of the ongoing seismic program and the proposed seismic and tsunami studies and risk assessments approved by this order in its existing Base Revenue Requirement Balancing Account up to an amount equal to \$50.1 million.

2. In the event Edison determines the actual total costs, including costs allocated and billed to SDG&E by Edison, of conducting the ongoing seismic program and proposed seismic and tsunami studies and risk assessments approved by this order and any additional studies and activities reasonably and directly related to these studies will exceed \$64.0 million, Edison is authorized to file an advice letter pursuant to Rule 5.3 of Commission General Order 96-B to request the recovery of its share of any additional funding for the studies as appropriate. In filing any such advice letter, Edison shall demonstrate the costs exceeding \$64.0 million are reasonable and prudent.

3. Edison is authorized to establish the IPRP Memorandum Account for the purposes of recording the costs billed to it by the Independent Peer Review Panel established by this order. Edison may file for authority to recover the amounts recorded in the IPRP Memorandum Account in its annual ERRR Review proceeding.

4. San Diego Gas & Electric Company (“SDG&E”) is authorized to establish a SONGS Seismic Research Balancing Account and to record and recover the costs of the ongoing seismic program and proposed seismic and tsunami studies and risk assessments allocated and billed to SDG&E by Edison pursuant to the Second Amended San Onofre Operating Agreement executed by Edison and SDG&E, including those certain overheads charged to SDG&E by Edison pursuant to that agreement and as previously authorized by the Commission, provided that SDG&E shall record and recover such costs in its existing SONGS O&M Balancing Account until the earlier of the expiration date of the SONGS O&M Balancing Account or the completion of the studies, up to an amount equal to \$13.3 million plus any amounts related to the costs associated with the Independent Peer Review Panel.

5. SDG&E is authorized to establish a SONGS Seismic Research Memorandum Account in which it may record any and all costs allocated and billed by Edison to SDG&E related to (a) the ongoing seismic program and proposed seismic and tsunami studies and risk assessments approved by this order and (b) any additional studies and activities reasonably and directly related to these studies exceeding \$13.3 million, plus (c) any amounts related to the costs associated with the Independent Peer Review Panel. SDG&E may seek authority from the Commission to recover the amounts recorded in the SONGS

Seismic Research Memorandum Account at its discretion, but no later than six (6) months following the completion of the studies being performed by Edison. In seeking such authority, SDG&E shall demonstrate that such costs recorded in the SONGS Seismic Research Memorandum Account are reasonable and prudent, provided that in making its demonstration, SDG&E may rely upon the Commission's findings issued pursuant to Ordering Paragraph 2, above, of this order.

6. A SONGS 2 & 3 Independent Peer Review Panel shall be established, such panel to be comprised of a member representing each of the Commission Energy Division, the California Seismic Safety Commission, the California Geological Survey, the California Energy Commission, and Orange County. The members of the panel are authorized to charge Edison for the costs of their participation to the extent authorized by this Commission, their agencies and under California law.

7. Edison shall provide such information, including but not limited to the design of the studies to be conducted and being performed, progress reports and the findings and/or results of the studies, as may be required by the Independent Peer Review Panel.

8. The Independent Peer Review Panel shall provide its comments on all materials, including but not limited to the design of the studies to be conducted and being performed, progress reports and the findings and/or results of the studies, within thirty (30) days of having received any materials from Edison. The failure of the Panel to provide its written comments within thirty (30) days shall be deemed to constitute a waiver by the Panel to provide any such comments.

9. Application 11-04-006 is closed.

10. Application 11-05-011 is closed.

11. This order is effective today.