

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)
_____)

I.12-10-013
(Issued November 1, 2012)

**ALLIANCE FOR NUCLEAR RESPONSIBILITY'S OPPOSITION
TO JOINT MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U338-E) AND
SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)
FOR PROTECTIVE ORDER**

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Date: January 7, 2013

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I. INTRODUCTION

Pursuant to Rule 11.1(e) of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (“A4NR”) respectfully submits its opposition to the Joint Motion of Southern California Edison Company (“Edison” or “SCE”) and the San Diego Gas & Electric Company (“SDG&E”) proposing a “Protective Order” to govern access to certain information in the above-captioned proceeding.

A4NR believes the Commission should have a particular interest in assuring maximum transparency in its investigation into the extended outages of San Onofre Nuclear Generating Station (“SONGS”) Units 2 and 3. The Southern California region – the nation’s second largest economic center – appears headed into a second consecutive summer of electric reliability anxiety due to the unavailability of SONGS. The United States Nuclear Regulatory Commission (“NRC”) has publicly identified severely flawed design assumptions – for which both SCE and SDG&E could be legally culpable -- as a primary cause of damage to the Units 2 and 3 steam generators. The presence of former Edison executives in key energy positions throughout California state government has for years triggered allegations of favored treatment. And the very genesis of this investigation stems from a spectacle of lapsed governmental oversight: despite the combined jurisdictional authority of the CPUC and the NRC, a regulatory “blind spot” failed to prevent \$671 million of new equipment from transforming into what may be useless junk.

Yet, three business days before being compelled to turn over information ordered by the Administrative Law Judge, SCE and SDG&E propose a diversionary procedural feint which

would delegate to themselves the authority¹ to determine which information is legally subject to public disclosure. Rather than fall for this clearly dilatory ploy,² the Commission should immediately deny the Joint Motion and declare its intent under Cal. Pub. Util. Code § 583³ to make public all information obtained in the course of I.12-10-013 unless specifically exempted from such disclosure by the California Public Records Act⁴ or Cal. Pub. Util. Code § 454.5(g).⁵

II. DISCUSSION

Nowhere in the Joint Motion's sparse one-and-a-half-page argument is there any identification of a deficiency in current procedure which needs correction. Without explaining why the elaborate process developed by the Commission pursuant to Cal. Pub. Util. Code § 454.5(g) to shield "market sensitive" information is insufficient, SCE and SDG&E purport to apply D.06-06-066 to fashion a broader draft protective order which is "substantially the same as the Model Protective Order adopted by the Commission in D.08-04-023."⁶ Their Joint Motion neglects to disclose that 126 of the 313 lines in the body of this "substantially the same" document require alteration, but the Joint Motion's marked-to-show-changes Attachment 2 provides ample documentation for the arithmetically curious.

¹ The only limitation on this authority would be that such determinations be made "in good faith." SCE and SDG&E Joint Motion, Attachment 1-1, Section 3. (b) (i).

² SCE and SDG&E would relish this proceeding's early devolution into a procedural struggle over confidentiality, having proposed in their responses to the Order Instituting Investigation that the Commission defer consideration of removing SONGS from rates until some unspecified time after mid-2014.

³ Cal. Pub. Util. Code § 583 authorizes a Commissioner "in the course of a hearing or proceeding" to compel such disclosure.

⁴ Cal. Gov. Code §§ 6250 – 6276.48.

⁵ Cal. Pub. Util. Code § 454.5(g), enacted in the wake of the 2000-2001 electricity market crisis, directs the Commission to "adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan ..."

⁶ SCE and SDG&E Joint Motion, p. 3.

Given their flexible approach to the meaning of the phrase “substantially the same,” it is unsurprising that Edison and SDG&E would give short shrift to the substantive requirements imposed by D.06-06-066.

- “The submitting party must file a motion ... proving ... (t)hat the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.” (D.06-06-066 Ordering Paragraph 2)
- “a party seeking confidential treatment ... shall bear the burden of proving that its information deserves such treatment.” (D.06-06-066 Ordering Paragraph 3)
- “Boilerplate assertions of a need for confidentiality are not appropriate. Rather the producing party must cite the legal basis for confidential protection, along with facts showing the consequences of release.” (D.06-06-066 Ordering Paragraph 3)
- “Mere recitation of the conclusory statement that information is a trade secret ... is not enough to meet the burden of proving entitlement to confidential treatment.” (D.06-06-066 Ordering Paragraph 5)
- “No data that is already publicly available may be characterized or treated as confidential. Information an IOU has furnished to an affiliated company is publicly available.” (D.06-06-066 Ordering Paragraph 7)

Even in the wake of the market manipulation which prompted enactment of Cal. Pub. Util. Code § 454.5(g) and the requirement to enshroud “market sensitive” information, the 2006 Commission struggled with prospectively defining entire categories of procurement information to be confidential in advance of actually seeing it. As noted in D.06-06-066’s Conclusions of Law, “We must strike an appropriate balance ... We are a public agency that regulates public utilities, and most of our business must be conducted in the open.”⁷

Edison’s and SDG&E’s Joint Motion is oblivious to any such concern, let alone the necessity of assuring public confidence in the Commission’s investigation into the fiasco at

⁷ D.06-06-0666, Conclusion of Law #10.

SONGS. Not only does the Joint Motion skip over the obligations which D.06-06-066 imposes on a party seeking confidential treatment of information, it would usurp the Commission's authority and make the two utilities exclusively responsible for such determinations. The Joint Motion doesn't even attempt to show that the Commission's existing confidentiality processes are inadequate for the purposes of I.12-10-013; only that the two utilities would prefer to do things differently.

While it may be argued that A4NR and other parties to this proceeding can gain access to information designated as confidential merely by executing non-disclosure agreements, A4NR believes the public's interest in the transparency of the Commission's investigation in I.12-10-013 extends substantially beyond those with party status.⁸ The Administrative Law Judge's December 10, 2012 ruling, which orders SCE and SDG&E to publicly post their testimony on their respective company web sites, recognizes this. A4NR believes this posting requirement should be broadened to include all responses to data requests that are not exempt from such disclosure under the California Public Records Act or Cal. Pub. Util. Code § 454.5(g). The Assigned Commissioner should make clear that all information obtained in the course of I.12-10-013 will be considered public unless specifically exempted from such disclosure by statute.

III. CONCLUSION

For the reasons set forth herein, SCE's and SDG&E's joint motion should be immediately denied and the Commission should clarify its commitment to public disclosure of all

⁸ Nor should the importance of news media access to such information be downplayed. The seeming inevitability of regulatory fallibility should reaffirm the wisdom in Thomas Jefferson's famous letter to Edward Carrington of January 16, 1787: "Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."

information obtained during the course of I.12.10.013, except that which is exempted from such disclosure by the California Public Records Act or Cal. Pub. Util. Code § 454.5(g).

Respectfully submitted,

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