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

OPENING BRIEF ON SCOPING MEMO LEGAL QUESTIONS

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I. INTRODUCTION.

Pursuant to Rule 13.11 of the California Public Utilities Commission ("Commission" or "CPUC") Rules of Practice and Procedure, the Alliance for Nuclear Responsibility ("A4NR") respectfully submits its opening brief addressing the two topics identified for briefing by the January 28, 2013 Scoping Memo issued by Assigned Commissioner Florio and Administrative Law Judge Darling. A4NR believes both topics are best evaluated by application of four primary rubrics:

- Due process must be extended to Southern California Edison Company ("SCE" or "Edison") and San Diego Gas & Electric Company ("SDG&E");[1]
- Existing statutes must be rigorously applied;
- Edison's easily understood interest in over-collecting revenues must be resisted; and
- The First Law of Holes (i.e., stop digging) must be respected.

Although Edison obviously has the right to offer new arguments in whatever brief it files in response to the Scoping Memo, its December 3, 2012 Response to the Order Instituting Investigation ("SCE OII Response") relies on distorting the procedural setting of I.12-10-013; excising entire sections from the Public Utilities Code; ignoring controlling case law; and paying

[1] Based on its written submittals in this proceeding, SDG&E continues to portray itself as simply a passive partner to SCE in all things related to SONGS. Notwithstanding the admonition of D.12-11-051 (*"As a co-owner of SONGS, SDG&E has an obligation to oversee and monitor SCE's performance and to protect its ratepayers. We expect SDG&E to ensure that funds authorized for SONGS operation and maintenance expenses, RFO expenses, and capital projects are appropriately used and not delayed nor diverted to other projects by SCE."* p. 40), A4NR accepts SDG&E's self-characterization for the purposes of this Opening Brief. For brevity, A4NR will direct its arguments to Edison with the conviction that they apply equally to the acquiescent sidekick.

no heed to common sense. A4NR is confident that a careful consideration of the authority of the Commission, and purpose for which the Legislature granted such authority, will allow this proceeding to move forward as contemplated by the Commission when it adopted its Order Instituting Investigation on November 1, 2012.

II. PROCEDURAL CONTEXT.

With an apparent short-term memory loss ordinarily associated with severe head trauma, the December 3, 2012 SCE OII Response overlooks the single most significant ratemaking fact associated with the present proceeding: **D.12-11-051, adopted by the Commission on November 29, 2012, four days before Edison's OII Response, made clear that because the January 2012 SONGS outage occurred after the General Rate Case's evidentiary record had closed, the entire post-2011 SONGS-related expenses were being approved subject to refund.**

Rather than re-open the record, and throw an already seriously delayed General Rate Case even further off-schedule, the Commission made the following SONGS-related Findings of Fact and Conclusions of Law:

> *Findings of Fact:*
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> *****
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> *12. The GRC record does not contain evidence regarding SCE's operating response or expenses following the shutdown of the two units.*
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> *13. It is in the interests of ratepayers for SCE to track all SONGS-related O&M, savings, and capital expenditures after January 1, 2012 in a memorandum account for future reasonableness review.*

14. The safe operation of the SONGS facilities is a primary concern for the Commission and effect of the current non-operation of the SONGS units on SCE's forecast safety expenses is unknown.

15. SCE's forecast for SCE's share of TY2012 SONGS O&M expenses is $270.5 million.

16. Ratepayers have funded excess positions for two years in order to rectify management problems at SONGS.

17. No party objected to SCE's forecast of basic 2012 O&M SONGS 2 and 3 expenses.

18. SCE proposes personnel reductions for SONGS, which will yield an estimated $150 million in savings over the rate cycle.

19. SCE seeks to allocate its $19.3 million share of net cost savings 50/50 between ratepayers and shareholders based on prior Commission approval of such sharing.

20. DRA and TURN contest any allocation of savings to shareholders.

21. No party opposes continuation of the flexible refueling outage schedule mechanism for the 2012-2014 GRC cycle.

22. SCE's total 2010-2012 capital forecast for its share of SONGS-related expenditures, including $103.517 million from prior years, is $496.327 million. SCE's forecast for 2012 capital spending is $151.114 million.

23. For the HPT project at SONGS Units 2 and 3, SCE forecast $22.466 million in 2011 and recorded $10.209 million in 2010. The HPT project will be suspended in 2012.

24. DRA did not establish that a cost cap associated with turbine work removed from the Steam Generator Replacement Project is applicable to the HPT project.

25. SCE demonstrated that the expected 48 MW output gain can be achieved through new HPTs.

26. For 2012, SCE requests $1.1 million (100% share) for a Service Air Piping project with benefits for worker safety and tool and equipment life.

27. SCE received funding in the 2009 GRC for the Service Air Piping project but deferred it for other projects.

28. SCE requests $1.2 million in 2012 for the Site Parking and Pedestrian Lighting project to improve lighting in three parking lots.

29. Improved lighting in the SONGS parking lots will improve safety for employees, workers, and guests.

30. SCE did not adequately support a 42% contingency for the SONGS lighting project.

31. The SONGS cafeteria has not been upgraded since the 1980s.

32. SCE requests $1.5 million (100% share) in 2011 capital spending for the cafeteria remodeling project and has already replaced the ventilation and fire suppression systems.

33. The cafeteria remodel project will improve working conditions and wellbeing for SONGS employees, workers, and guests who use the facilities.

34. Even under shutdown conditions, SCE has employees, workers, and others on-site and will continue to do so until the SONGS units are either started or decommissioned.

35. SDG&E is a 20% co-owner of SONGS and its request for cost recovery includes a request to continue its balancing accounts for SONGS.

36. SDG&E is subject to the same conditional allowance of post-2011 SONGS-related O&M and capital spending adopted for SCE.

Conclusions of Law

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7. In its next GRC application, SCE should provide the Commission a summary of its SONGS-Safety Culture programs, achievements, and three years of recorded expenses.

8. The O&M costs and capital expenditures adopted in this decision are reasonable.

Section 4

9. It is reasonable to adopt SCE's recorded, unadjusted 2010 generation capital expenditures as a reasonable reflection of ratepayer expense.

10. It is reasonable to authorize SCE to establish SONGSMA, effective January 1, 2012, to track 100% of O&M, 100% of cost savings from personnel reductions, 100% of capital expenditures, and 100% of maintenance and refueling outages, if any, and identify all safety-related costs.

11. SCE should file an application by January 30, 2013 for a reasonableness review of post-2011 SONGS-related expenses. The application should be consolidated with I.12-10-013 where the Commission will examine the costs for reasonableness consistent with a review of the extraordinary circumstances of the extended non-operation of the SONGS units in 2012.

12. It is reasonable to adopt a 100% allocation of the net savings to ratepayers from SONGS workforce reductions delayed since 2009.

13. SCE should report on the actions taken and total expenses incurred to address NRC concerns beginning in 2009, any shareholder costs, and identify whether the expenses are recurring in the next forecast for SONGS O&M.

14. It reasonable to continue the flexible outage schedule mechanism for the three-year (2012-2014) GRC cycle.

15. The evidence does not support that SCE's forecasts for RFO expenses associated with outages in 2012 are reasonable.

16. SCE's requested share of 2011 HPT expenditures is reasonable and adopted.

17. SCE's request for additional funding for the Service Air Piping project is not adopted because SCE did not demonstrate its diversion of prior funding was reasonable.

18. It is reasonable to reduce SCE's request for the Site Parking and Pedestrian Lighting project at the SONGS facility to reflect a 20% contingency factor, resulting in $1.014 million which is reasonable and adopted.

19. SCE's forecast for the Cafeteria Remodel project is reasonable and adopted.

20. Subject to refund, it is reasonable to allow SCE to recover, in the TY2012 revenue requirement, the following SONGS-related expenses: (1) SONGS O&M costs up to $270.5 million; and (2) 2012 capital expenditures up to $138.356 million. Identified savings associated with implementation of identified workforce reductions should be credited as an offset.

21. It is reasonable to apply to SDG&E, the same conditional allowance of post-2011 SONGS-related O&M and capital expenditures adopted for SCE.

22. To the extent SDG&E recovers post-2011 SONGS-related expenses in rates, amounts are subject to refund in the proceeding opened to review the SONGSMA.

As the first line of the Order made clear, "1. Application 10-11-015 **is granted to the extent set forth** in this Decision." (emphasis added). The SONGS-related Ordering Paragraphs were as follows:

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9. With Southern California Edison Company's (SCE) next general rate case application, SCE shall provide a summary of San Onofre Nuclear Generating Station-Safety Culture programs, achievements, and three years of recorded expenses.

10. Southern California Edison Company (SCE) shall establish a San Onofre Nuclear Generating Station Memorandum Account (SONGSMA), effective January 1, 2012, to track 100% of Operations and Maintenance cost, 100% of cost savings from personnel reductions, 100% of capital expenditures, and 100% of maintenance and refueling outages, if any. No later than January 31, 2013,[2] SCE shall file an application for a reasonableness review of the expenses tracked in the SONGSMA. All expenses disallowed by the SONGSMA review shall be refunded to ratepayers; all savings allowed shall be credited to the ratepayers.

11. Given the very unusual circumstances of the San Onofre Nuclear Generating Station (SONGS) shutdown, San Diego Gas & Electric Company (SDG&E) shall participate in the proceeding where the Commission reviews expenses recorded in the San Onofre Nuclear Generating Station Memorandum Account, which will establish SDG&E's pro rata share of reasonable SONGS TY2012 Operations and Maintenance and post-2011 capital spending that is not addressed in SDG&E's own general rate case, Application 10-12-005.

12. In its next general rate case application, Southern California Edison Company shall provide the Commission with a summary of actions taken and total expenses incurred to address regulatory concerns of the Nuclear Regulatory Commission beginning in 2009, any shareholder costs, and identify whether any of the expenses are recurring its next general rate case application.

What would Edison have had the Commission do – assuming SCE agreed that the decision in the General Rate Case should not be delayed further – in the face of an extraordinary outage of the most significant capital investment in Edison's generation system? Simply assume operation throughout the 2012 Test Year and approve Edison's forecasted expenditures as if that were the case, then look the other way? Claims of lack of notice or denial of due process are disingenuous in the extreme. If Edison objected to the approach taken by D.12-11-051, it had the right to ask for rehearing. That it did not, speaks volumes.

[2] This deadline was subsequently rolled back, at Edison's request in I.12-10-013, to March 31, 2013, and then moved to March 15, 2013 by ALJ Darling's February 21, 2013 ruling.

Like it or not, by its own choice, Edison is left with rate treatment of its post-2011 SONGS-related revenue requirements that is best characterized as "interim" or subject to "offset." D.12-11-051 decided a vast number of factors affecting Edison's revenue requirements for the 2012 Test Year, but it specifically deferred judgment on the reasonableness of Edison's SONGS-related expenditures until more evidence could be gathered. Edison can't really have it both ways.

The distinguished semanticist S. I. Hayakawa ended his U.S. Senate career in ignominy when he couldn't find a better rationale for U.S. retention of the Panama Canal than, "After all, we stole it fair and square." For Edison to implicitly resort to a similar argument is unworthy of a regulated public utility whose rates are required by statute to be just and reasonable.[3]

III. STATUTORY CONTEXT.

A latticework of complementary statutory protections in the Public Utilities Code[4] safeguards Edison's customers from rates that are not just and reasonable, all under the aegis of the Commission's plenary authority under § 701:

> *The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.*

The Commission Order which instituted I.12-10-013 placed particular focus on § 455.5 to eliminate, in establishing rates, consideration of the value of and expenses related to major

[3] Cal. Pub. Util. Code § 451.
[4] Unless otherwise stated, all references to statute are to the California Public Utilities Code.

facilities which have been out of service for nine or more consecutive months. If the Commission does elect (§ 455.5 is permissive, not mandatory) to eliminate such consideration or disallow such expenses under this section, then the statute compels a commensurate rate reduction and the establishment of a deferred debit account in which the value eliminated is recorded and treated similar to an allowance for funds used during construction. Should the affected facilities ever return to service, the electrical corporation is permitted to apply to the Commission to include the value of the operating facilities, and expenses related to their operation, in rates. Unless there is a request to include additional plant value in rates, the Commission is authorized under § 455.5(d) to adjust rates without a hearing after service has been restored for at least 100 continuous hours.

Into this seemingly straightforward – and indisputably *optional* – statutory approach to systematizing the Commission's erratic treatment of out-of-service facilities and their associated expenses in rates,[5] the SCE OII Response attempts to shove the poison pill of § 455.5 (c)'s direction that the Commission "consolidate the hearing on the investigation with the next general rate proceeding instituted for the corporation."[6] Without pausing to ask how this timeline would make any sense for a utility whose General Rate Case was still in process when the OII was adopted, or what would happen if – as with SONGS – the pertinent portion of the General Rate Case were effectively continued, it would be wrong to be distracted by Edison's end zone dance. The public interest served by § 455.5(c) is to assure due process and provide

[5] § 455.5 was enacted in 1986 in the wake of widespread controversy over the length of time San Onofre Unit 1 and the Humboldt Bay Nuclear Power Plant were allowed to languish in rates after failing to produce electricity.
[6] SCE OII Response, p. 17.

Edison an evidentiary hearing. Once its initial "gotcha" smirk grows tired, even the SCE OII Response admits as much:

> *Therefore, while SCE's primary position is that any consideration of a rate reduction should be consolidated with its test year 2015 GRC, if the Commission wishes to consider reducing rates sooner, it must hold an evidentiary hearing before implementing any such rate reduction.*[7]

At some point, a choice must be made as to whether the Commission avails itself of the § 455.5 process or prefers the more general authority conferred on it by §§ 451 and 701. A more attentive Commission, or at least one that was more fully staffed, would have been timelier[8] in raising questions on its own about the SONGS outage and the appropriateness of inoperable equipment remaining so long in rates. Belatedly adopting the I.12-10-013 OII only days before the first of the § 455.5(b) notices was due to be received, the Commission earns little praise by this act for its protection of ratepayers.[9] Instead, § 455.5 seems to have been allowed to function as the "free pass" presciently warned of by DRA.[10] Intoxicated by the prospect that this free pass might have renewable potential, Edison conjured the potential capability to bill its customers – based on forecasted Test Year 2012 revenue requirements -- for a plant that doesn't generate (and the replacement power needed to make up for that deficit) throughout 2013 and 2014!

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[7] *Id.*, pp. 20 – 21.

[8] A4NR notes with amazement that the Order which instituted I.12-10-013 was on the Commission's Business Meeting calendar in May and August before eventually being adopted with great fanfare on November 1, 2012.

[9] In fairness, the Commission would not have been forced by § 455(c) to institute an investigation until 45 days after receiving the § 455(b) notice.

[10] Joseph P. Como, Acting Director, Division of Ratepayer Advocates, letter to Commissioners, August 13, 2012: "But Section 455.5 is not intended to be a free pass for utilities to earn a return on nonfunctioning hardware for nine months," p. 2.

From the customers' standpoint, this envisioned overcollection bacchanal should be restricted by the Commission to the same "used and useful" threshold which § 454.8 imposes on cost recovery of "the reasonable and prudent costs of the new construction of any addition to or extension of the [gas or electrical] corporation's plant." A4NR does not suggest that every forced outage succumbs to this test through rote application of a zero tolerance standard. The Commission certainly has the discretion to distinguish the ordinary equipment outages experienced by even the most prudently managed of utilities. These are properly charged to customers as a foreseeable cost of utility service. There are other outages, however, which the Commission can determine either persist too long or are caused by utility imprudence, which deprive the affected equipment of its "used and useful" status. These cannot be charged to customers, and financial responsibility for their correction should best be left to shareholders.

Significantly, the Commission should ponder the strict inter-temporal discipline which § 454.8 requires it to consider for different cohorts of ratepayers: "the commission shall consider a method for the recovery of these costs which would be constant in real economic terms over the useful life of the facilities, so that ratepayers in a given year will not pay for the benefits received in other years." In the SONGS context, precisely what benefit did the ratepayers receive for their 2012 payments? What about their payments in 2013?

In terms of applying the "used and useful" test from a customer perspective, there is no logical distinction between § 454.8's focus on "the new construction of any addition to or extension of" an electrical corporation's physical plant and the existing generation assets of the same corporation. The customer has the benefit of the Legislature's guidance on the former,

and relies upon the Commission's sound judgment regarding the latter. Regarding what might be considered a rational time limit for outages before a major facility, or portion thereof, may forfeit its "used and useful" status, the Legislature said nine months in enacting § 455.5. The Commission has wider discretion, but should be fact-driven.

What facts are most relevant? Here the guidance of § 463(a) is binding:

> *For purposes of establishing rates for any electrical or gas corporation, the commission shall disallow expenses reflecting the direct or indirect costs resulting from any unreasonable error or omission relating to the planning, construction, or operation of any portion of the corporation's plant which cost, or is estimated to have cost, more than fifty million dollars ($50,000,000), including any expenses resulting from delays caused by any unreasonable error or omission. Nothing in this section prohibits a finding by the commission of other unreasonable or imprudent expenses. This subdivision is a clarification of the existing authority of the commission, is not intended to limit or restrict any power or authority of the commission conferred by any other provision of law, and applies to all matters pending before the commission. This section does not prohibit the commission from establishing rates for an electrical or gas corporation on a basis other than an allowed rate of return on undepreciated capital costs.*

A4NR is confident that the Commission knows that, because I.12-10-013 is a ratesetting matter, Edison has the burden of affirmatively establishing by a preponderance of the evidence that its actions have been reasonable and that it is entitled to recover its expenditures as just and reasonable costs necessary for safe and reliable service. No party has the legal burden of proving the unreasonableness of Edison's actions, although A4NR expects the evidence in this proceeding to make it easy to do so.

IV. CASE LAW CONTEXT.

It can come as no surprise that, having failed to recall the key SONGS-related provision the Commission's decision of its GRC (i.e., the refundability of all 2012 SONGS-related

expenditures after review for reasonableness), the SCE OII Response would also overlook the extensive authority that California appellate courts have provided the Commission for proceeding in just such a manner. Chanting incantations about retroactive ratemaking cannot substitute for carefully reviewing the decisions of the past several decades on the subject. A4NR is confident this is well-trod ground for the Commission, and Edison too, and will only touch upon the high points.

As the California Supreme Court observed in *Southern Cal. Edison Co. v. Public Utilities Com. (1978) 20 Cal.3d 813*,

> *If the prohibition against retroactive ratemaking is to remain a useful principle of regulatory law and not become a device to fetter the commission in the exercise of its lawful discretion, the rule must be properly understood. In Pacific Tel. & Tel. Co. v. Public Util. Com. (1965) 62 Cal 2d. 634, the first decision of this court on the question, we construed section 728 to vest the commission with power to fix rates prospectively only. But we did not require that each and every act of the commission operate solely in futuro.*[11]

In *Toward Utility Rate Normalization v. Public Utilities Com. (1988) 44 Cal.3d 870,* the California Supreme Court affirmed that the Commission had the authority to allow an interim rate increase, subject to refund, for the time between PG&E's commencement of operation of the Diablo Canyon Nuclear Power Plant and the Commission's final determination of what part of the utility's investment in plant should be recognized as reasonable and prudent for ratemaking purposes. The Court embraced the Commission's explanation that the purpose for establishing the Diablo Canyon Adjustment Account, which was to be debited with investment-

[11] *Southern Cal. Edison Co. v. Public Utilities Com*., *supra,* p. 816.

related costs, was "to eliminate the possibility of retroactive ratemaking"[12] if the Commission were to grant all or part of the utility's request for a rate increase for Unit 1. Similar Commission decisions for San Onofre and Helms, the Court approvingly recounted, had allowed interim rate increases commencing upon commercial operation, to be held in adjustment accounts and thus subject to subsequent refund.

The Commission's power to grant interim rate increases was recognized by the California Supreme Court in *City of Los Angeles v. Public Utilities Commission (1972) 7 Cal.3d 331*. In the related follow-up case involving the same parties, *City of Los Angeles v. Public Utilities Com. (1975) 15 Cal.3d 680,* Justice Tobriner elaborated on behalf of a unanimous Court just what due process considerations are necessary to vanquish the retroactive ratemaking hobgoblin:

> *The* [*United States Supreme Court*] *has long made clear that within the regulatory context due process is a flexible concept, permitting expert administrative agencies broad latitude in adapting the specific regulatory needs of their jurisdictions…'The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end.'*[13]
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> *In a leading case a unanimous United States Supreme Court rejected the contentions of a California utility that the commission had denied it due process by*

[12] *Toward Utility Rate Normalization v. Public Utilities Com., supra,* p. 873.

[13] *City of Los Angeles v. Public Utilities Com., supra,* p. 698, citing *Power Comm'n v. Pipeline Co.* (1942) 315 U.S. 575, 586; accord, *R. R. Comm'n. v. Pacific Gas Co.* (1938) 302 U.S. 388; *West Ohio Gas Co. v. Public Utilities Com'n.* [No. 1] (1935) 294 U.S. 63, 70; *Market Street R. Co. v. Comm'n.* (1945) 324 U.S. 548, 562; and *Norwegian Nitrogen Co. v. United States* (1933) 288 U.S. 294, 317, 319.

> *using, as its rate base, the figure for which the utility had offered to sell itself to the city in which it was located. (*Market St. Railway Co. v. Comm'n (1938) 324 US 548.*) The railway argued that the use of this figure, which had found its way into evidence incidentally, and which the commission had not indicated it would use to fix the utility's value, denied it due process absent an opportunity to present argument concerning the accuracy and interpretation of the figure. The Supreme Court found the argument without merit; Justice Jackson, writing for the court, noted that the figure in question had been admitted into evidence without limitation to its use. 'Doubtless the decision and the grounds of decision were unexpected. But surprise is not necessarily want of due process.'(*Id., p. 558.)[14]

As discussed above, this is not much of a burden. Even the SCE OII Response, when its hyperventilating momentarily subsides, concedes:

> *… while SCE's primary position is that any consideration of a rate reduction should be consolidated with its test year 2015 GRC, if the Commission wishes to consider reducing rates sooner, it must hold an evidentiary hearing before implementing any such rate reduction.*[15]

By happenstance, though, the first case with which this survey course began, *Southern Cal. Edison Co. v. Public Utilities Com., supra,* provides insight into why "SCE's primary position is that any consideration of a rate reduction should be consolidated with its test year 2015 GRC."[16] Very simply, Edison has an innate, instinctive urge to overcollect that is quite similar to the genetic predisposition of some animal species to store food.

Southern Cal. Edison Co. involved the effort of the Commission – ultimately upheld by the California Supreme Court – to order refunds of past overcollections by the utility through its fuel adjustment clause mechanism. As Justice Mosk, writing for the majority, explained, "the

[14] *Id.,* p. 701.
[15] SCE OII Response, pp. 20 – 21.
[16] *Id.*

commission's decision to further adjust those rates so as to compensate for past overcollections may well be retroactive in effect, but it is not retroactive ratemaking."[17]The court's factual narrative raises an unsettling parallel to the emerging overcollection issue at SONGS:

> *Edison, however, appears to view its fuel clause as a device for accomplishing a wholly different purpose. This was crystal clear in the lengthy testimony of Norman L. Codd, Edison's rate structure engineer and expert witness. Mr. Codd repeatedly denied that the fuel cost adjustment was an emergency measure with the limited goal of producing just enough additional revenue to offset specific, extraordinary increases in fossil fuel expenses; speaking for his company, he described the adjustment instead as a miniature rate proceeding* ***intended to generate whatever higher rates were deemed necessary to prevent 'decay' in the utility's overall rate of return on invested capital.***[18] (emphasis added)
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> *This distortion of the fuel clause permeates Edison's treatment of its overcollections which began to accumulate shortly after the clause was put into effect.*[19] *Edison invoked the clause at every opportunity between May 1972 and December 1974, and in so doing raised its rates no less than 12 times. By the end of 1974, the cumulative total of costs charged to Edison's customers by operation of the fuel clause alone reached approximately $408 million.* (footnote omitted) *During the same period, however, Edison's actual fossil fuel needs turned out to be far lower than predicted…*
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> *Not surprisingly, at the hearings below Edison's witness was extremely reluctant to admit that the company in fact treated such overcollections as earnings; rather he took refuge in the repeated assertion that the funds could not be 'isolated' from Edison's overall revenues. It clearly appears from published figures, however, that Edison's overcollections pursuant to the fuel clause were not only large in the absolute sense,*

[17] *Southern Cal. Edison Co. v. Public Utilities Com*., *supra,* p. 830.
[18] *Id.,* pp. 819 – 820.
[19] The decision's footnote 8 at this point in the text states: "*Edison's misconception also underlies its contention that it is entitled to keep these overcollections because during the years in question its actual rate of return averaged less than the minimum reasonable rate previously authorized by the commission. The contention fails for two reasons. First, as noted above, Edison was not entitled to earn a profit on its expenses. Second, even its lawful profit was not guaranteed. A utility is entitled only to the opportunity to earn a reasonable return on its investment; the law does not insure that it will in fact earn the particular rate of return authorized by the commission, or indeed that it will earn any net revenues.* (Power Comm'n v. Pipeline Co. (1942) 315 U.S. 575, 590; Bluefield Co. v. Pub. Serv. Comm'n (1923) 262 U.S. 679, 692-693; Re Gen. Tel. Co. of Cal. (1969) 69 Cal.P.U.C. 601, 610; Oakland v. Key System Transit Lines (1953) 52 Cal.P.U.C. 779, 786.)"

they amounted to a very significant proportion of the company's general revenue picture.[20]

In the factual setting which confronts the Commission in I.12-10-013, Edison has been allowed by D.12-11-051 to collect a SONGS-related revenue requirement based on a forecasted 2012 Test Year which presumed both units at SONGS would be fully operational other than during scheduled refueling outages. Based on the testimony served in I.12-10-013, Edison puts its 2012 SONGS revenue requirement at $ 739 million[21] while SDG&E's 2012 SONGS revenue requirement would add another $ 252.82 million.[22] Determining how much of this was ***actually*** spent in 2012, and what volume of such expenditures can be considered reasonable, is one of the paramount tasks of this proceeding. Under Edison's proposed deferral of consideration of any SONGS-related rate reductions until the Test Year 2015 GRC, the SONGS-related revenue requirements for 2013 and 2014 would presumably escalate at the same rate allowed for base revenue requirements in D.12-11-051[23] irrespective of whether any actual expenditures take place at SONGS or not. Compounding the glory of this prospective free ride is the fact that Edison expects to collect the costs of the replacement power necessitated by the SONGS outage separately from the SONGS-related revenue requirement.

Even when ostensibly subject to refund, cash collections carry certain panache as they roll through a public company's earnings statement. To the extent they are not offset by expenditures, they fall directly to the bottom line. The amounts authorized for SONGS-related

[20] *Id.,* pp. 821 – 822.
[21] "SCE's Testimony Regarding Proposed Rate Adjustments for SONGS Units 2 and 3," December 2012, Table III-1, p. 7.
[22] "Prepared Testimony of San Diego Gas & Electric Company Regarding Proposed Rate Adjustments for SONGS Units 2 and 3," December 17, 2012, Table III-1, p. 4.
[23] Edison's base revenue requirements are $5.67 billion in 2012, $6.03 billion in 2013, and $6.39 billion in 2014.

revenue requirements aggregate into a considerable sum over the 2012 – 2014 rate cycle, an unfortunate reprise of Justice Mosk's undeniably astute appraisal: "not only large in the absolute sense, they amounted to a very significant proportion of the company's general revenue picture."[24]

V. SCOPING MEMO QUESTIONS.

With context properly established, the answers to the questions posed by the Scoping Memo are straightforward:

1. (a) Does the Commission have legal authority to reduce SCE's and SDG&E's electric rates to reflect the value of any portion of the SONGS facility which has been out of service for more than nine months and, further, to exclude from rate recovery any expenses related to that facility?

A4NR response: Yes.

1. (b) If so, from what date in 2012 is the Commission authorized to remove value from rate base and exclude 2012 expenses from rate recovery pursuant to Pub. Util. Code § 455.5?

A4NR response: November 1, 2012 if proceeding pursuant to § 455.5; as early as January 1, 2012 if proceeding under other Commission authority and properly supported by Findings of Fact and Conclusions of Law.

1. (c) Is the Commission required to delay such an order until the utilities' 2015 GRCs?

A4NR response: No.

2. (a) Does the Commission have legal authority to order SCE and SDG&E to refund rates collected by the utilities upon finding that some 2012 expenses related to post-outage operations at SONGS recorded in the SONGSMA were not reasonable and necessary?

A4NR response: Yes.

2. (b) If so, is there any legal basis to delay such an order?

[24] *Southern Cal. Edison Co. v. Public Utilities Com.*, *supra,* p. 822.

A4NR response: Yes. Due process entitles SCE and SDG&E to a hearing and a Decision which is properly supported by Findings of Fact and Conclusions of Law.

VI. CONCLUSION.

A4NR is disappointed that the Commission has yet to remove the out-of-service portions of SONGS from rates some four months after adopting its OII and 13 months after the initial unscheduled outage. California law affords the Commission extraordinarily broad discretion in determining when to do this, but the legacy of an inexcusably slow earlier Commission process in addressing significantly smaller sums at Humboldt Bay and San Onofre Unit 1 should loom large. The Legislature responded to that lethargy by enacting § 455.5 with its nine month tripwire and its negative debit account.

A promise that SONGS overcollections are subject to refund has some protective quality at first, but unavoidably suffers eroding credibility over time. What started as a large crater becomes an unmanageable sinkhole if the unjustifiable amounts continue to accrete. The Commission ignores the First Law of Holes at its peril.

Respectfully submitted,

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ALLIANCE FOR NUCLEAR RESPONSIBILITY