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
) (Filed October 25, 2012)
) ) A.13-01-016
) ) A.13-03-005
) ) A.13-03-013
) ) A.13-03-014
) )
) And Related Matters.
) )
) )
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)

ALLIANCE FOR NUCLEAR RESPONSIBILITY’S OPENING COMMENTS
OPPOSING THE PROPOSED JOINT SETTLEMENT AGREEMENT AND
THE JOINT MOTION FOR ADOPTION OF THE SETTLEMENT AGREEMENT

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I. INTRODUCTION.


A4NR respects the role that timely and well-crafted settlements can play in Commission proceedings, and does not question the motivations of any of the parties who negotiated the Proposed Settlement or co-sponsored the Joint Motion. In A4NR’s view, however, the Proposed Settlement is untimely and falls considerably short of the criteria specified by Rule 12.1(d) as prerequisites for Commission approval.\(^1\) A4NR recommends that the Commission reject the Proposed Settlement and make use of the procedures identified in Rule 12.4 to craft a counter-proposal to the co-sponsors of the Joint Motion.\(^2\) A4NR’s Opening Comments explain the basis for its opposition to the Proposed Settlement; identify the portions of the

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\(^1\) Rule 12.1(d) states: “The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.”

\(^2\) Rule 12.4 states: “The Commission may reject a proposed settlement whenever it determines that the settlement is not in the public interest. Upon rejection of the settlement, the Commission may take various steps, including the following: ... (c) Propose alternative terms to the parties to the settlement which are acceptable to the Commission and allow the parties reasonable time within which to elect to accept such terms or to request other relief.”
Proposed Settlement which it supports as well as the defects which render the Proposed Settlement unworthy based on the Rule 12.1(d) criteria; and suggest a path forward for the Commission.

II. THE CONTEXT FOR THE PROPOSED SETTLEMENT IS FATALLY FLAWED.

A primary defect of the Proposed Settlement is its awkward timing and undiscguised attempt to abort the Commission’s assessment of the ramifications of a SONGS demise proximately caused by Southern California Edison Company (“Edison” or “SCE”).

A. THE NRC CITATION MAKES EDISON CULPABLE.

While questions of prudence have repeatedly been deferred to the yet-to-be started Phase 3 of the Commission’s investigation, the U.S. Nuclear Regulatory Commission’s (“NRC”) formal citation of Edison for failure to properly supervise Mitsubishi’s design of the replacement steam generators places Edison at the head of the chain of causation:

The Mitsubishi FIT-III thermal-hydraulic computer model (FIT-III) output gap velocities were not appropriately modified for triangular pitch designed steam generators. There were opportunities to identify this error during the design of the replacement steam generators. Mitsubishi was the vendor selected by Southern California Edison to design and manufacture the replacement steam generators. On numerous occasions during the design process, Southern California Edison personnel questioned the results from and appropriateness of using FIT-III, but ultimately accepted the design as proposed by Mitsubishi. Mitsubishi hired consultants with expertise in designing large steam generators, but did not rigorously evaluate all concerns raised by the consultants about use of FIT-III and specific results obtained from that thermal-hydraulic model. As a result, replacement steam generators were installed at San Onofre with a significant design
deficiency, resulting in rapid tube wear of a type never before seen in recirculating steam generators.³

The September 20, 2013 NRC citation was preliminary, and Edison was given a chance to respond. As the Reynolds letter explained,

Before we make a final decision on this matter, we are providing you with an opportunity: (1) to attend a Regulatory Conference where you can present to the NRC your perspective on the facts and assumptions the NRC used to arrive at the finding and assess its significance, or (2) submit your position on the finding to the NRC in writing.⁴

B. EDISON ADMITTED IT VIOLATED NRC REGULATIONS.

Edison elected to respond in writing, and begrudgingly acknowledged its “failure to comply with SONGS Technical Specification requirements for steam generator tube integrity and leakage control, and upon an apparent violation of the requirements of 10 CFR Part 50, Appendix B, Criterion III regarding design control.”⁵ While elaborating at length the degree to which it had relied upon Mitsubishi, and minimizing the significance of its own failings, Edison’s response to the NRC “acknowledges the responsibility imposed upon it ... recognizes that SCE ‘shall retain responsibility for the quality assurance program.’ Therefore, SCE does not contest its responsibility under NRC regulations for a violation of Criterion III.”⁶

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³ Letter from NRC Acting Regional Administrator Steven A. Reynolds to SCE Senior Vice President and Chief Nuclear Officer Peter Dietrich, September 20, 2013, p. 2, accessible at http://pbadupws.nrc.gov/docs/ML1326/ML13263A271.pdf
⁴ Id., p. 3.
⁵ Letter from SCE Senior Vice President and Chief Nuclear Officer Peter T. Dietrich to NRC Acting Regional Administrator Steven A. Reynolds, October 21, 2013, p. 2, accessible at http://pbadupws.nrc.gov/docs/ML1329/ML13296A018.pdf
⁶ Id., p. 3. With characteristic incorrigibility, the Edison response concludes with a reach for the proverbial fig leaf: “SCE understands that the NRC issuance of the finding and violation relates only to compliance with NRC’s
While A4NR’s motion for the Commission to take official notice of Edison’s October 21, 2013 response still remains pending, the NRC subsequently provided Edison with the “final results of our significance determination.” The “final results” letter characterized the “failure to verify the adequacy of the thermal-hydraulic and flow-induced vibration design of the Unit 3 replacement steam generators” as an “escalated enforcement action” in accordance with NRC enforcement policy. Edison was given 30 days to appeal the NRC staff’s determination of significance, and directed to provide a written evaluation of whether “any reason for this violation may apply to work activities during decommissioning and dry cask storage, including oversight of contractor activities.”

Edison’s response to the NRC “final results” letter chose not to appeal the determination of significance. Notwithstanding Edison’s earlier admissions and its choice to “not contest its responsibility under NRC regulations for a violation of Criterion III”—the company’s reply to the “final results” letter inserted a gratuitous passage in the second page of an attachment, insisting that

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7 A4NR Motion for Official Notice, November 22, 2013.
8 Letter from NRC Regional Administrator Marc L. Dapas to SCE Senior Vice President and Chief Nuclear Officer Tom Palmisano, December 23, 2013, p. 1, accessible at http://pbadupws.nrc.gov/docs/ML1335/ML13357A058.pdf
9 Id., pp. 1 – 2.
10 Id., p. 2.
11 Letter from SCE Senior Vice President and Chief Nuclear Officer Peter T. Dietrich to NRC Acting Regional Administrator Steven A. Reynolds, October 21, 2013, p. 3.
SCE has determined that its oversight of MHI with respect to design and design verification activities was consistent with regulatory requirements and industry standards for vendor oversight ...  

Regarding the topic to which Edison had been directed to respond by the NRC, the company reported that similar problems would not recur during decommissioning because no changes are contemplated in spent fuel management that

would require the procurement of equipment involving a design that has not been already in use in the industry and which would involve the level of complexity and specialized expertise that was necessary for the design of the replacement steam generators.  

C. A “REASONABLE MANAGER” MEETS REGULATORY REQUIREMENTS.

The NRC’s December 23, 2013 “final results” letter places Edison’s failure-to-verify violation distinctly outside the protection of the Commission’s cornerstone “reasonable manager” standard. Utility management is not expected to be either omniscient or infallible. As the Commission articulated in reviewing utility response to the 2003 San Diego wildfires, “the reasonableness of a particular management action depends on what the utility knew or should have known at the time that the managerial decision was made, not how the decision holds up in light of future developments.” A lengthy line of Commission decisions, however, stretching back decades, has recognized the indispensable role which regulatory compliance plays in setting the boundaries of reasonableness:

13 Id.
14 D.05-08-037, p. 10.
The reasonable and prudent act is not limited to the optimum act, but includes a spectrum of possible acts consistent with the utility system need, the interest of the ratepayers, and the requirements of governmental agencies of competent jurisdiction.15 (emphasis added)

Despite Edison’s feeble and untimely attempt to partially walk back its nolo contendere plea to the NRC – without finding the gumption to actually appeal – the governmental agency responsible for oversight of nuclear power plant operations determined that Edison had failed to verify the adequacy of the thermal-hydraulic and flow-induced vibration design of the replacement steam generators. Installation of the defectively designed steam generators proximately caused the commercial destruction of Southern California’s largest electricity generation asset, with resultant consequences measured in multiple billions of dollars. Pointing the finger at a vendor (perhaps accurately) as the more culpable party is of no relevance to ratepayers, who look to the Commission to assure that a utility manages its operations (and vendors) as a “reasonable manager” would.

D. THIS IS A BAD TIME FOR A SETTLEMENT.

It comes as no surprise that Edison, or its junior partner at San Onofre, San Diego Gas & Electric Company (“SDG&E”), would consider this an opportune moment – before the Phase 1 Proposed Decision comes to the Commission for approval, before a Phase 2 Proposed Decision is published, before a Phase 3 Pre-Hearing Conference is held or Scoping Memo issued – to preclude further investigation. With causation effectively established by Edison’s admission of

15 ld., p. 11, citing D.90-09-088 as “based on language in D.87-06-021, and quoted with approval in D.98-09-040.”
a violation of NRC regulations regarding design control, and the “reasonable manager” standard breached, foreclosing a careful evaluation of economic consequences is supremely rational for the two utilities. Settlement triage may require excising the defective steam generators from capital recovery on the day after the radiation leaked, with a seemingly long amortization period for the rest of the prematurely retired plant tempered by a rate of return on those assets during the amortization more generous than past Commission precedents. Those concessions by Edison and SDG&E pale in significance to stopping the inquiry before it digs too deep.

Rule 12.1’s restrictions on the timing and scope of settlement proposals seem designed to prevent the damage to the public interest that can flow from arbitrarily pre-emptive and/or unduly expansive settlements. Rule 12.1 limits the time for settlement proposals to “any time after the first prehearing conference and within 30 days after the last day of hearing.” Broadly bookending the timeframe during which settlement proposals are considered appropriate accomplishes two things: one, it precludes attempts to resolve issues before their broad outlines have been defined at a prehearing conference; two, it ties efforts to resolve issues more closely to the evidence-gathering stage of a proceeding, before Commission decisionmakers have invested substantial resources into digesting the record and briefs in order to draft a Proposed Decision.

The timing limitations Rule 12.1 places on settlement proposals are closely anchored to its restriction on scope: “Resolution shall be limited to the issues in that proceeding and shall

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16 The NRC’s final determination of Edison’s violation is subject to official notice as an official act of a federal executive agency pursuant to Cal. Evid. Code §452(c) and Commission Rule 13.9.
not extend to substantive issues which may come before the Commission in other or future proceedings.” Some pitfalls should be apparent from the frequent failings of much “comprehensive” problem-solving that emerges from a legislative deal-making culture. The heady atmosphere created by a small number of actors gathered in closed setting to negotiate sweeping solutions carries certain traits: a proclivity to overreach; a tendency to overlook inconvenient details; and a cocoon of unforeseen consequences. The Joint Motion’s claim that the Proposed Settlement is “a comprehensive agreement on all major issues”\(^{17}\) should trigger careful scrutiny by the Commission for each of these malignancies.

The adverse effects flowing from abuse of Rule 12.1’s limits are unmistakable in the Proposed Settlement. Dated 128 days after the Phase 1 Proposed Decision, 197 days after the close of the Phase 2 hearings, 263 days after the close of the Phase 1A hearings, and 344 days after the close of the Phase 1 hearings, is it any wonder that the Proposed Settlement varies in several material ways from the evidentiary record? Or that several of its provisions are at such material variance with the Public Utilities Code, especially the “used and useful” ramifications arising from the euthanized Phase 2? Or worse, that the hurried effort to pronounce Phase 3 stillborn before its prehearing conference is even scheduled has left the largest negative consequences arising from the SONGS shutdown – electricity price increases and CO\(_2\) emissions – completely unaddressed in the Proposed Settlement?\(^{18}\)

\(^{17}\) Joint Motion, p. 36.
\(^{18}\) A potential Phase 4 to address adjustments to the 2013 SONGS revenue requirement was also tentatively identified, “if needed,” in the Scoping Memo and Ruling issued for Phase 1, January 28, 2013, p. 4.
Despite the Commission’s declared intent to investigate “the causes of the outages, the utilities’ responses, the future of the SONGS units, and the resulting effects on the provision of safe and reliable electric service at just and reasonable rates.”19 (emphasis added) the Proposed Settlement would foreclose further inquiry into negative externalities proximately caused by SONGS’ demise. The Joint Motion asserts that the Proposed Settlement “if approved by the Commission, would resolve all issues” in I.12-10-013 “and all proceedings that have been consolidated therewith.”20 How does the Proposed Settlement address the demonstrable increases in the wholesale market price of electricity attributable to the SONGS shutdown? By blindfolding the Commission to a multi-billion dollar issue yet to be addressed in I.12-10-013:

The Commission shall not impose any disallowance, on either of the Utilities, of any of the Utilities’ costs incurred to purchase power in the market as a result of the non-operation of SONGS. None of the Settling Parties will advocate before the Commission or any other judicial, legislative, or administrative body for any disallowance of past or future costs incurred by Utilities to purchase power in the market as a result of the non-operation of SONGS.21

No future adjustments or disallowances to the Utilities’ ERRA accounts shall be made as a result of the non-operation of SONGS. This limitation includes foregone revenues; there will be no future adjustments or disallowances to the Utilities’ ERRA accounts as a result of foregone sales of SONGS output. No Settling Party shall object in an ERRA or other Commission proceeding to the Utilities’ showing on the grounds that the applied-

19 OII, p. 1.
20 Joint Motion, p. 1.
21 Proposed Settlement, Section 4.10 (c).
for purchased power-related expenses were related to the non-operational status of SONGS.\textsuperscript{22}

Even the replacement power methodology painstakingly assembled in Phase 1A, which the Proposed Settlement seeks to obliterate entirely, did not attempt to calculate the exogenous impact of the SONGS outage upon wholesale electricity prices. Rather, an effort was made to determine which components of 2012 ex-post market prices should be aggregated and properly defined as replacement power costs incurred by Edison and SDG&E in 2012 to substitute for the lost output from SONGS.\textsuperscript{23} A4NR will address the Proposed Settlement’s gift of blank checks to both Edison and SDG&E for their claimed replacement power costs in Section IV.C. and V.C. of these Opening Comments at pp. 27 – 31 and 42 – 43, respectively, below. The broader question of the wholesale electricity market’s reaction to the commercial destruction of Southern California’s largest electricity generating plant – felt not only by Edison and SDG&E bundled customers, but by customers of other load-serving entities as well – was recently taken up by Working Paper 248 of the Energy Institute at Haas, a joint venture of the University of California’s (“UC”) Haas School of Business and the UC Energy Institute.

Authored by Dr. Lucas Davis, Associate Professor of Economic Analysis and Policy at the Haas School of Business, and Dr. Catherine Hausman, Assistant Professor of Public Policy at the

\textsuperscript{22} Id., Section 4.10 (d).
\textsuperscript{23} The July 22, 2013 Hearing Room Ground Rules for Evidentiary Hearings issued by ALJs Darling and Dudney limited Phase 1A’s scope: “Phase 1A of this OII will address the method for calculating the cost of replacement power during 2012 due to the SONGS outage. This scope includes developing a formula/method for the calculation of costs (capacity, energy, foregone sales, and congestion) and establishing what values should be entered in to that formula. The scope of Phase 1A does not include discussion of long term replacement options for the generation, argument about who should bear the costs of replacement power (this will be decided in Phase 3), or any 2012 operations or capital costs of the SONGS facility. Other Phases will address different aspects and costs associated with SONGS.”
University of Michigan, the paper\textsuperscript{24} was announced on the UC Energy Institute’s web site four days after the date of the Proposed Settlement. The Davis-Hausman paper is stunning in its quantification of three negative externalities prompted by the SONGS outage, each of them completely ignored by the Proposed Settlement:

(1) THE IMPACT ON THE WHOLESALE PRICE OF ELECTRICITY.

We find that the SONGS closure increased the cost of electricity generation in California by about $369 million during the first twelve months. This is a large change, equivalent to a 15 percent increase in total generation costs, yet it went almost completely unnoticed because of a large offsetting decrease in natural gas prices that occurred in 2012.\textsuperscript{25}

Over ten years with a 1.6% discount rate this is $3.4 billion.\textsuperscript{26}

(2) THE IMPACT ON CO$_2$ EMISSIONS.

The SONGS closure also had important implications for the environment, increasing CO$_2$ emissions by 9.2 million tons in the twelve months following the closure. To put this in some perspective, this is the equivalent of putting more than 2 million additional cars on the road, and implies a social cost of emissions of $331 million per year.\textsuperscript{27}

(3) THE IMPACT ON OPPORTUNITIES TO EXERCISE MARKET POWER.


\textsuperscript{25} Id., p. 2.

\textsuperscript{26} Id., p. 27.

\textsuperscript{27} Id., p. 2. The Davis-Hausman paper does not expressly identify a ten-year cost of additional CO$_2$ emissions, but applying the same social discount rate of 1.6% used for the wholesale electricity price impact produces a $3.1 billion result. Davis-Hausman use the social cost of carbon officially calculated by the federal Interagency Working Group, although an April 4, 2014 article published in the journal Nature by Nobel Laureate Kenneth Arrow and seven other co-authors (accessible at http://www.nature.com/news/global-warming-improve-economic-models-of-climate-change-1.14991#/b1) criticizes this estimate as too low.
We are also able to determine which individual plants were most affected by the SONGS closure. Because of the transmission constraints, the largest out-of-order increases are at Southern plants, and the largest out-of-order decreases are at Northern plants. We also find large out-of-order decreases during high load hours at two Southern plants: Alamitos and Redondo, both owned by the same company. This is surprising but, as it turns out, not coincidental. The Federal Energy Regulatory Commission alleged market manipulation at these plants over the period 2010 to 2012, for which JP Morgan paid fines of over $400 million. This suggests that our approach may serve as a useful diagnostic tool. Although a large out-of-order effect does not prove that a plant is exercising market power, it is a good indicator of unusual behavior.28

F. THE PROPOSED SETTLEMENT IGNORES CORE CPUC PRIORITIES.

None of these negative externalities is addressed by the Proposed Settlement, and each of them involves a core priority of the Commission. All of them pose perplexing challenges to the Commission in fashioning an appropriate remedy that stems from Edison’s breach of the “reasonable manager” standard, and properly quantifying a recoverable amount. This is most problematic for the Davis-Hausman suggestions of enhanced opportunities for market manipulation attributable to the SONGS outage. A4NR is also mindful that the Commission lacks the legal authority to award compensatory damages and must confine its regulatory remedies to reparations. D.14-03-032, dismissing a customer complaint against Edison, recently summarized the limits of “the Commission’s specific authority to remedy wrongs

28 Id., p. 3.
committed by regulated utilities against California ratepayers.” 29 The decision cited Walker v. P.T. & T. Co., 1971 Cal. PUC LEXIS 1288, to explain that the Commission restricts reparations to relief limited to a refund or adjustment of part of all of the utility charge for a service or group of related services. Consequential damage on the other hand is an amount of money sufficient to compensate an injured party for all the injury proximately caused by a tortious act. 30

While this formulation supports reparations as an appropriate remedy for Edison and SDG&E bundled customers’ share of increases in wholesale electricity costs caused by Edison’s failure to meet the “reasonable manager” standard, it leaves customers of other CPUC-regulated utilities, municipal utilities, and direct access providers without Commission remedy. As explained in D.14-03-032,

*The Commission’s interpretation of the extent of its ability to redress economic harms to ratepayers is consistent with Pub. Util. Code § 2106, which authorizes an action for monetary damages by a ratepayer in Superior Court.*31

An even larger problem may loom for the Commission if it seeks to redress the “social cost” of the increased CO2 emissions which the Davis-Hausman paper attributes to the SONGS closure. In classic “tragedy of the commons” fashion, these are not costs that have appeared yet on any bundled customer’s electricity bill. But can the Commission simply look away from

29 D.14-03-032, p. 4.
30 Id., p. 5.
31 Id. “This Commission has repeatedly ruled that only the Superior Court has the power to award consequential damages as opposed to reparations. (See, e.g., Balassy v. Sprint Telephony PCS, LP, (2012) Decision (D.) 12-04-031; Gregory v. Pacific Bell Telephone Company, (2011) Decision (D.) 11-11-003 [“It is clear that complainant seeks damages for defendants’ alleged improper conduct. As we have no jurisdiction to award damages, we dismiss the complaint for failing to plead a cause of action within our jurisdiction”]). (Day v. Verizon California, (2006) Decision (D.) 06-06-061 [“Complainant’s remedy for any alleged intentional damage to her DSL service is with the courts, not the Commission”]; and Swepton v. California-American Water Company, (2004) Decision (D.) 04-12-032 [“Since the Commission has no jurisdiction to award damages, the courts have held that complaints alleging breach of contract should be brought in civil courts”].)
the largest single setback to California’s loudly trumpeted “AB 32”32 program, especially when proximately caused by the unreasonable conduct of one of its principal regulatees? How credible are state government’s aspirations to global leadership in climate policy33 if such a transgression by a state-regulated entity is simply ignored?

D.14-03-032 pointed to one conceivable remedy for those negative externalities identified in the Davis-Hausman paper which are seemingly beyond the reach of the Commission’s authority to order reparations.

In so ruling [to dismiss the complaint], however, we stress that we are sympathetic to the [complainants’] predicament. Therefore, we instruct our Safety and Enforcement Division to conduct an investigation of the January 13, 2013 incident ... to determine if SCE has violated any of the Commission's statutes, rules, or orders, and, if so, to determine if a fine or penalty would be appropriate pursuant to, at a minimum, Pub. Util. Code §§ 2100 through 2105.34

This critical step has not yet taken place in I.12-10-013, and it should be one of the approaches the Commission considers in refocusing Phase 3 as A4NR suggests in Section VII of these Opening Comments at pp. 58 – 59 below.

33 As Governor Brown announced September 13, 2013 in signing a first-of-its-kind agreement on climate change between China and a subnational entity, “The fact that the National Development and Reform Commission of the People’s Republic of China is entering into an agreement with one of the fifty states reflects the important position of California not only in the economy, but in science, technology and climate change initiatives. I see the partnership between China, between provinces in China, and the state of California as a catalyst and as a lever to change policies in the United States and ultimately change policies throughout the world.” Accessible at http://gov.ca.gov/news.php?id=18205
34 D.14-03-032, p. 6.
Negative externalities of such large magnitude stemming from the forced premature retirement of SONGS, yet completely unaddressed by the Proposed Settlement, should compel the Commission to an inescapable conclusion:

- with Edison’s violation of NRC regulations now acknowledged with finality;
- a chain of proximate causation of the SONGS demise now clearly established;
- and potential negligence by Edison’s vendor, Mitsubishi, of no relevance to the duty owed by a “reasonable manager” to ratepayers;

now is not the time to terminate an investigation into properly remedying those wrongs.

III. THE PROPOSED SETTLEMENT ERASES THE ACCOUNTABILITY PRINCIPLE WHICH UNDERPINS THE “REASONABLE MANAGER” STANDARD.

Out of obvious necessity, the Joint Motion is candid about its avoidance of the proverbial elephant in the room: “The Agreement is not dependent on a finding on the causes of the extensive and excessive tube wear in Units 2 and 3, and is likewise silent regarding questions of prudence.”  

A. THE “FORCE-MAJEURE-IFICATION” OF EDISON’S LIABILITY.

This confectionary artifice absolves Edison management of culpability for its admitted violation of NRC regulations concerning design control, and ignores the large majority of multi-billion dollar consequences that flowed from that violation. With the expediency required to

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35 Joint Motion, p. 38.
find compromise, the Proposed Settlement implicitly fingers a foreign bogeyman (Mitsubishi) while treating Edison as if it was the slightly under-insured victim of a force majeure event.

Effectively, ratepayers end up indemnifying Edison for its own negligence in failing to verify the Mitsubishi design. The Proposed Settlement extracts a $757.4 million deductible from Edison (partly passed through to SDG&E) for this otherwise generous insurance policy in the form of writing off the net book value of the Steam Generator Replacement Project (“SGRP”) as of the day after the defective design rendered Southern California’s largest generating asset inoperable. Apart from a small assortment of triviata, the Proposed Settlement forgives all else and reimburses Edison and SDG&E amounts present valued at $3.299 billion\textsuperscript{36} for their troubles.

Embracing this mostly blame-free resolution to the largest generating plant calamity in California history would strip the Commission’s “reasonable manager” standard of any applicability to large cases. The message sent would be unmistakable: if the damages are large, the ratepayers are ready. Serious mistakes that could be avoided by prudent utility behavior would simply be explained away with the bumper sticker logic, “Stuff Happens.” The abandoned containment domes at San Onofre would become California icons – no less prominent than the Golden Gate Bridge or the Hollywood Sign – to the socialization of risk and the privatization of gain.

\textbf{B. Edison’s Investors Got a Very Good Deal.}

\textsuperscript{36} Joint Motion, Attachment 2.
With an élan approaching Churchill’s famous “nothing in life is so exhilarating as to be shot at without result,”
Edison International’s (“EIX”) Form 8-K filing and a presentation to investment analysts on the day of the settlement announced the good news:

- the additional “impairment charge” prompted by the Proposed Settlement will only be $155 million, supplementing the original $575 million recorded in the second quarter of 2013 when the permanent closure was announced.\(^{38}\)
- apart from the SGRP-related disallowances, the voluminous other provisions of the Proposed Settlement will only require $35 million in impairment.\(^{39}\)
- except for nuclear fuel, which it is trying to sell, the unamortized portion of Edison’s investment in SONGS can be excluded from SCE’s regulatory capital requirement at Edison’s option – reducing common equity requirements by more than $300 million as of March 31, 2014.\(^{40}\) The prepared statement of EIX Chairman and Chief Executive Officer Theodore F. Craver Jr. may have been overly adrenalized in its even more fulsome description:

> As of March 31, 2014, the balance of the SONGS regulatory asset is projected to be $1.34 billion...Importantly, the full SONGS regulatory asset can be removed from the ratemaking capital structure so it won’t require SCE to maintain 48%...


\(^{38}\) EIX Form 8-K, March 27, 2014, p. 3, accessible at [http://www.edison.com/home/investors/sec-filings-financials/sec-filings.html?company=&formType=Current+Reports](http://www.edison.com/home/investors/sec-filings-financials/sec-filings.html?company=&formType=Current+Reports) SDG&E’s Form 8-K filed the same day stated that its 2013 Annual Report had reported a pretax loss of $200 million in the second quarter of 2013 “as a result of its assessment of the financial impact of the outcome of the SONGS OII proceeding. After adjustment for the Settlement Agreement, the total impairment recorded due to the early retirement of SONGS Units 2 and 3, including amounts previously recorded in 2013, is currently estimated at $187 million pretax ...” SDG&E Form 8-K, March 27, 2014, unnumbered p. 3, accessible at [http://investor.shareholder.com/sre/secfiling.cfm?filingID=86521-14-17&CIK=86521](http://investor.shareholder.com/sre/secfiling.cfm?filingID=86521-14-17&CIK=86521)

\(^{39}\) EIX Form 8-K, March 27, 2014, p. 3.

\(^{40}\) Id., p. 2.
common equity against it. This reflects the fact that this asset isn’t earning an equity return.\textsuperscript{41} (emphasis added)

The disparity between Mr. Craver’s prepared statement (i.e., 48% of $1.34 billion is $643 million) and the Form 8-K’s $300 million estimate may stem from the fact that his statement neglects to expressly exclude the portion of the regulatory asset comprised of nuclear fuel.

- Edison “does not expect implementation of rate recoveries and rate refunds contemplated by the Settlement Agreement will have a material impact on future net income.”\textsuperscript{42}

- the Proposed Settlement is projected to actually “result in a core earnings benefit of approximately $0.03 per share in 2014 and $0.04 per share annualized,” declining at an unspecified pace over 10 years.\textsuperscript{43}

In what might best be considered a burst of rational exuberance, on March 31, 2014 (the second trading day after their investor teleconference announcing the Proposed Settlement) EIX Chairman and Chief Executive Officer Craver and Chief Financial Officer W.


By the May 2, 2014 presentation to investors, the size of the SONGS regulatory asset had grown by $31 million to $1.371 million, according to EIX Form 8-K, May 2, 2014, Exhibit 99.1, p. 40, accessible at http://www.edison.com/home/investors/sec-filings-financials/sec-filings.html?company=&formType=Current+Reports

\textsuperscript{42} Id., p. 4.

James Scilacci liquidated 43.8% and 77.7%, respectively, of their legally marketable holdings of Edison International common stock.\(^{44}\)

C. EDISON’S ‘WE’RE ALL IN THIS TOGETHER’ MANTRA EXEMPTED THE EXECUTIVE SUITE DURING THE 2012-13 SONGS DEBACLE.

In mid-August, 2013, shortly after the close of the Phase 1A evidentiary hearings, Edison purchased full-page newspaper ads headlined “To the Customers of Southern California Edison” to communicate its philosophy of shared responsibility:

_The American utility system works because everybody is in it together. Everyone shares the benefits and the costs. These private investment and cost recovery principles have worked for decades ... SCE’s position is that the costs associated with the shutdown of SONGS that are not recovered from Mitsubishi or through insurance should be borne fairly in accordance with these principles._\(^{45}\)

But a review of the 2013 and 2014 EIX/SCE joint proxy statements to shareholders suggests this message was not intended for either company’s Board of Directors Compensation and Executive Personnel Committee. The 2012-13 experience with losing the utility’s largest single capital asset was a financially enjoyable one for Edison executives. Mr. Craver was rewarded in 2012 with a 6% increase in total compensation to $11,490,586\(^{46}\) and the only mention of the SONGS shutdown in the 2013 joint proxy statement’s description of 2012

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\(^{44}\) These transactions are reported on two separate EIX Form 4 filings dated April 2, 2014, both accessible at [http://phx.corporate-ir.net/phoenix.zhtml?c=85474&p=irol-secEdison](http://phx.corporate-ir.net/phoenix.zhtml?c=85474&p=irol-secEdison)

\(^{45}\) Accessible at [http://www.songscommunity.com/docs/openletter_Eng_10x135_4C.PDF](http://www.songscommunity.com/docs/openletter_Eng_10x135_4C.PDF)

compensation is the explanation offered for shifting the Chief Nuclear Officer out of his SONGS-specific performance incentive plan:

... since both nuclear reactors at SONGS have been shut down since January 2012, the SCE Committee determined that it would instead be appropriate to determine all of Mr. Dietrich’s annual incentive for 2012 using the methodology described above for the EIX Executive Incentive Compensation Plan.\(^47\)

The recently distributed 2014 joint proxy statement makes clear what priority the SONGS closure played in establishing 2013 executive compensation. There are only three mentions of SONGS in the 63-page document:

- in a section labeled “Financial Highlights” where it is explained that “EIX’s consolidated core earnings exceeding our goal was a key factor in determining 2013 annual incentive awards,” a footnote discloses. “In 2013, core earnings excluded an impairment charge related to the permanent retirement of the San Onofre Nuclear Generating Station, and certain other non-core items.”\(^48\)

- a footnote mentioning that part of Mr. Dietrich’s 2013 compensation included the “vesting of prior-year awards under a retention and performance incentive plan for executives employed at the San Onofre Nuclear Generating Station.”\(^49\)

- the proponent’s statement on behalf of “Item 4 Shareholder Proposal Regarding an Independent Board Chairman” includes the sentence, “In September 2013, Federal

\(^47\) Id., p. 30.
\(^49\) Id., p. 43.
regulators said Edison and Mitsubishi were responsible for design flaws that led to the permanent shutdown of the San Onofre Nuclear Plant.”

If the SONGS status played no role whatsoever, which factors were considered of greater significance to establish Edison executive compensation in 2013? The Compensation and Executive Personnel Committee awarded both EIX and SCE executives with performance scores 35% above target, and under the heading “Key Factors Contributing to Actual Score” for the utility executives the only descriptions were:

- Achieved core earnings of $1.265 billion, which exceeded the target of $1.222 billion.
- Exceeded or met most of SCE’s operational and service excellence goals, including reliability and cost efficiency goals.
- Achieved passage of rate reform legislation, AB 327.
- Exceeded goals for work environment improvement project.

A4NR served testimony in Phase 1 on the ineffectiveness of existing financial incentives to motivate Edison executives in addressing the SONGS debacle, but it was deferred to Phase 3 in response to an Edison motion to strike. In considering the Proposed Settlement, the Commission should weigh the ramifications of allowing further erosion in its “reasonable manager” standard. In light of the scale of consequences stemming from the SONGS closure,

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50 Id., p. 61.
51 Id., p. 33.
52 May 10, 2013 emailed ruling of ALJ Darling.
53 Edison Motion to Defer and Strike Testimony, April 2, 2013, Exhibit A, p. 2.
and the message sent to utility managers for many years into the future, the Commission should ponder: is this a teachable moment?\textsuperscript{54}

\textbf{IV. MATERIAL ELEMENTS OF THE PROPOSED SETTLEMENT ARE INCONSISTENT WITH THE I.12-10-013 RECORD.}

The Proposed Settlement quickly runs aground on the first of Rule 12.1(d)’s tests: “reasonable in light of the whole record.” By arriving outside the “30 days after the last day of hearing” limit established by Rule 12.1, the Proposed Settlement is exposed not merely to the interpretations of the record provided by A4NR and other parties (as is the case with the record developed in Phase 2), but the distilled weighing of evidence already performed in the Phase 1 Preliminary Decision (“Phase 1 PD”). The Proposed Settlement seeks not only to foreclose the Commission from voting on the Phase 1 PD but goes so far as to urge the Commission to “withdraw” it.\textsuperscript{55} Curiously, the Joint Motion submitted seven days later elects not to call attention to this overreach and instead simply urges the Commission to refrain from “Issuing any further Proposed Decisions regarding any phase of the OII.”\textsuperscript{56}

Even without being adopted by the Commission, because the Phase 1 PD has not prompted any Alternate Proposed Decision from any Commissioner pursuant to Rule 14.2, it is

\textsuperscript{54} The concept was popularized by Robert Havighurst in his 1952 book, \textit{Human Development and Education}. In the context of education theory, Havighurst explained, “A developmental task is a task which is learned at a specific point and which makes achievement of succeeding tasks possible. When the timing is right, the ability to learn a particular task will be possible. This is referred to as a ‘teachable moment.’ It is important to keep in mind that unless the time is right, learning will not occur. Hence, it is important to repeat important points whenever possible so that when a student’s teachable moment occurs, s/he can benefit from the knowledge.” Id., p. 7.

\textsuperscript{55} Proposed Settlement, Section 4.17. Pursuant to Cal. Pub. Util. Code §311(d), a proposed decision by an ALJ is “a part of the public record in the proceeding.”

\textsuperscript{56} Joint Motion, p. 43.
entitled to some deference as a reasonable description of the Phase 1 evidentiary record. The fact that it comes after the parties have submitted opening and reply briefs, and has been revised in the wake of comments and reply comments from the parties, and after Commissioner Sandoval convened a January 15, 2013 all-party meeting which four Commissioners attended, suggests that such deference should be substantial.

Apart from the headline concessions of preventing any recovery of $757.4 million of the $768.5 million recorded cost of the SGRP (100% share), and removing $787.6 million of the remaining capital assets at SONGS from rate base as of February 1, 2012, major aspects of the Proposed Settlement are unreasonable in light of the evidentiary record developed in Phase 1, Phase 1A, and Phase 2 of I.12-10-013.

A. O&M EXPENSES ASSOCIATED WITH ASSETS REMOVED FROM RATE BASE.

As recited in the Proposed Settlement, D.12-11-051 provisionally authorized $387.4 million (100% share) for SONGS base O&M for 2012 and $397.6 million (100% share) for 2013. The Proposed Settlement allows these amounts to be retained by the utilities, subject to some limitations on what such funds were expended for and the provision that SDG&E refund any amounts provisionally authorized for 2012 which exceed recorded costs for 2012 invoiced by SCE. The Phase 1 PD states that “review of 2012 O&M costs and capital expenditures recorded

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57 However, Section 4.2(c) of the Proposed Settlement allows the utilities to “retain all amounts collected in rates as the Capital-Related Revenue Requirements for the SGRP for periods prior to February 1, 2012.” Summing Edison’s and SDG&E’s responses to the April 24, 2014 ALJ ruling, this amount totals $194.08 million. See footnotes 130 and 131 below.
58 Proposed Settlement, Section 3.43.
in the SONGS Memorandum Accounts ... are the primary focus of review in Phase 1.”

The Phase 1 PD concludes that Edison acted as a “prudent operator” during January and February of 2012, but questions the reasonableness of Edison’s actions beginning in mid-March of 2012 and makes the following Conclusions of Law:

2. SCE’s decision-making process was not reasonable when the utility decided after May 7, 2012 to pursue a restart of U2 without evaluation of other options.

3. SCE’s decision in May 2012 to maintain all systems and operations required for a fully operational facility, including retaining and adding to existing staff, resulting in large O&M expenses, was unreasonable.

4. The record does not establish that costs associated with the restart and long-term repair options (SGIR) are routine O&M for which it would be just and reasonable to collect immediate recovery from ratepayers.

5. It is reasonable for savings realized from employee layoffs to be credited to ratepayers as part of the overall costs subject to rate recovery for 2012 O&M.

6. SCE’s request to recover all O&M recorded in 2012 is unreasonable.

The Proposed Settlement establishes the date on which SONGS could no longer be considered an operable electricity generating asset as February 1, 2012, thereby compounding the unreasonableness of recovering 2012 O&M expenses disallowed or made subject to further review (a total of $196.603 million) by a Phase 1 PD for which time of commercial death is outside the scope of Phase 1. As the Phase 1 PD also notes, “In Phase 3, we will examine the
SGRP as a whole and it is possible that some or all SGIR-related expenses in 2012 may be found unreasonable."64

A key premise underlying the Phase 1 PD’s treatment of Base O&M is a “gradual decrease”65 to a level that “approximately conforms with SCE’s unsupported estimate that about one-third of SCE’s Base-Routine O&M is necessary to maintain safe conditions and full regulatory compliance in a permanent shutdown mode.”66 (emphasis added) The Phase 1 PD would arrive at that level on November 1, 2012 while the Proposed Settlement would extend through year-end 2013 without recognizing a need for any such decline. Applying the evidence-based Phase 1 PD logic to 2013, even though based on what it says is an “unsupported estimate,” at least $265.067 million (two-thirds) of the $397.6 million (100% share) provisionally authorized for SONGS base O&M in 2013 – and all of whatever is claimed for SGIR O&M without a Commission finding of reasonableness – would not be recoverable.

By simple arithmetic, at least $461.67 million ($196.603 million plus $265.067 million) is unreasonable in light of the whole record as interpreted by the Phase 1 PD.

B. CONSTRUCTION WORK IN PROGRESS.

Based upon the Phase 1 PD, Edison had $284.283 million,67 and SDG&E had $98.813 million,68 recorded as Construction Work in Progress (“CWIP”) as of January 31, 2012. The

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64 Id., p. 31.
66 Id., p. 46. The Phase 1 PD notes: “There is some agreement [among the non-utility parties] that it may be reasonable for ratepayers to pay for ‘safety-related’ costs, but no party accepted SCE’s expression of judgment as to the percentage of functional group expenses. DRA points out the offered percentages lack workpapers or other supporting documentation.” Id., pp. 40 – 41.
67 Id., Appendix A.
68 Id., Appendix B.
Proposed Settlement divides CWIP into Cancelled CWIP and Completed CWIP, with different AFUDC accrual time limits and amortization periods.\textsuperscript{69} In both instances, once amortization as a regulatory asset begins, the rate of return will be increased from the AFUDC rate to the rate provided for Base Plant. The Joint Motion identifies, as of December 31, 2013, the amount of Edison’s Cancelled CWIP as $153 million and Completed CWIP as $302 million, an increase of 60% since SONGS stopped generating electricity.\textsuperscript{70} The Joint Motion is silent about the amount of CWIP recorded by SDG&E, but the recently submitted SDG&E-22 indicates it had climbed to $239.886 million as of December 31, 2013.\textsuperscript{71} This is an increase of 143% since SONGS became inoperable.

The question of whether allowing CWIP for projects that never come into electricity service is consistent with the law is discussed in Section V.B. of these Opening Comments at pp. 40 – 42 below. The Phase 1 PD establishes an evidentiary baseline to measure the magnitude of growth in CWIP balances since the plant closure, and neither the Proposed Settlement nor the Joint Motion provide any indication of what growth in CWIP has occurred since December 31, 2013 or how much CWIP will be accrued before these amounts finally stop accruing on the Effective Date.\textsuperscript{72} On the apparent presumption that payments from the Nuclear Decommissioning Trusts are of diminished significance to ratepayers, the Proposed Settlement observes,

\textit{The Settling Parties agree that the Utilities will, to the extent permitted by applicable tax laws without penalty and CPUC action, seek reimbursement of Completed CWIP that}

\textsuperscript{69} Proposed Settlement, Section 4.8(a).
\textsuperscript{70} Joint Motion, p. 13. See also Proposed Settlement, Sections 3.40 and 3.41.
\textsuperscript{71} SDG&E-22, Attachment A.
\textsuperscript{72} Proposed Settlement, Sections 4.8(a)(i)(C) and 4.8(a)(ii)(C).
enters service after June 7, 2013, as expenses from the Nuclear Decommissioning Trusts rather than recovering this investment through rates. 73

Whether the Proposed Settlement’s overall approach to the Nuclear Decommissioning Trusts is in the public interest is discussed below in Section VI.C. of these Opening Comments at pp. 53 – 58. With respect to CWIP, however, not even the Phase 1 PD’s reliance on “SCE’s unsupported estimate that about one-third of SCE’s Base-Routine O&M is necessary to maintain safe conditions and full regulatory compliance in a permanent shutdown mode;” 74 or Edison’s Phase 2 assertions that 23% of the SONGS assets “remain needed at SONGS” as of May 31, 2013 despite the cessation of electricity generation; 75 or Edison’s December 2012 calculation that 23.8% of SONGS assets are “unrelated to the production of electricity” 76 provides the Commission any guidance as to what proportion of CWIP Edison and SDG&E will attempt to charge to the Nuclear Decommissioning Trusts.

The extraordinary and continuing growth in CWIP since the SONGS closure, as well as the overall opacity concerning its likely size on the Effective Date (Attachment 2 to the Joint Motion does not even list CWIP as a line item), render the Proposed Settlement’s treatment of more than $695 million (as of December 31, 2013) in CWIP unreasonable in light of the whole record.

C. REPLACEMENT POWER COSTS.

The Proposed Settlement’s most open-ended language is reserved for replacement

73 Id., Section 4.8(b).
74 Phase 1 PD (Rev. 1), p. 46.
75 SCE-42, p. 9.
76 SCE-1, pp. 6 – 7.
power costs. Without identifying who will make the designation, and without resort to
definitions, the Proposed Settlement declares:

The Utilities will recover in rates the full amount of any costs designated as SONGS
‘replacement power costs,’ SONGS ‘replacement energy costs,’ or ‘net SONGS costs’
incurred to purchase power in the market from January 1, 2012, until the last day of the
month of the Effective Date.77

Both Edison and SDG&E made Form 8-K filings on March 27, 2014 estimating the
amount of “market power costs” each had borne through December 31, 2013 ($1.013 billion for
SCE and $244 million for SDG&E78) “using the methodology followed in the OII.”79 The reference
to the “methodology followed in the OII” appears to be to that employed by the utilities in the
monthly reporting required by the OII and not to the methodology recommended by the Phase
1 PD after two days of evidentiary hearings; opening and reply briefs; publication of a PD;
comments on the PD by the parties; an all-party meeting attended by four Commissioners; and
a revised Phase 1 PD. But the Proposed Settlement does not commit the utilities to apply any
particular methodology, and it forcefully binds each of the Settling Parties (and attempts to
bind the Commission) from insisting otherwise:

The Commission shall not impose any disallowance, on either of the Utilities, of any of
the Utilities’ costs incurred to purchase power in the market as a result of the non-
operation of SONGS. None of the Settling Parties will advocate before the Commission
or any other judicial, legislative, or administrative body for any disallowance of past or
future costs incurred by the Utilities to purchase power in the market as a result of the
non-operation of SONGS.80

77 Proposed Settlement, Section 4.10(a).
78 SDG&E-22, Attachment A, submitted May 1, 2014 in response to the April 24, 2014 ALJ Ruling, raises this amount
to $255.369 million as of December 31, 2013.
80 Proposed Settlement, Section 4.10(c).
As described in the Phase 1 PD,

*The purpose of Phase 1A of this proceeding is to adopt a method for calculating the approximate cost of replacement energy and capacity, foregone sales, and other market related costs (collectively ‘replacement power costs’) of the outage of SONGS. If, in a later phase (tentatively Phase 3) of this proceeding the Commission determines a certain range of dates that SCE and SDG&E should not be allowed to recover the replacement power costs, this method will be applied to calculate replacement power costs for those dates.*

A primary difference between the Proposed Settlement and the Phase 1A methodology is the treatment of foregone sales revenues from SONGS, which was a prominent concern of the Order instituting I.12-10-013, mentioned in four separate paragraphs including Ordering Paragraphs 4.d. and 4.g. As reported in Edison’s most recent Monthly Compliance Report ordered by the OII, foregone sales revenues attributable to the SONGS outage totaled $349.007 million thru March 31, 2014. SDG&E-22 reports $65.529 million in foregone sales revenue through December 31, 2013. But the Proposed Settlement would delete such foregone sales revenues entirely from the calculation of replacement power costs:

*No future adjustments or disallowances to the Utilities’ ERRA accounts shall be made as a result of the non-operation of SONGS. This limitation includes foregone revenues; there will be no future adjustments or disallowances to the Utilities’ ERRA accounts as a result of foregone sales of SONGS output. No Settling Party shall object in an ERRA or other Commission proceeding to the Utilities’ showing that the applied-for purchased power-related expenses were related to the non-operational status of SONGS.*

Because the Proposed Settlement provides for the recovery of SONGS Base Costs, and a

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81 Phase 1 PD (Rev. 1), p. 73, footnote omitted.
82 OII Ordering Paragraphs 4.d. and 4.g., p. 23. Other references are found at p. 13.
84 SDG&E-22, Attachment A.
85 Proposed Settlement, Section 4.10(d).
rate of return thereon, recovery of replacement power costs would represent double recovery and should be disallowed under Cal. Pub. Util. Code §463(a). 86 It would be indefensible to use any methodology other than the one painstakingly established in the Phase 1A record. Even if the Commission were to allow SCE and SDG&E to recover their replacement power costs as of February 1, 2012, the Phase 1A record strongly reinforces the priority that the OII placed on foregone sales revenues and these amounts should be netted out. As the Phase 1 PD explains,

Our intended, high-level, definition of replacement power costs is the net increase in costs to the utility of meeting its energy and capacity obligations to bundled customers. More specifically, this definition: Includes the cost to replace lost, potential generation as well as lost revenues from potential sales. SCE’s argument that foregone sales should not be considered has no merit.87

Similarly, although the utilities appear not to have calculated foregone Resource Adequacy (“RA”) sales as ordered by the OII, the Phase 1 PD is insistent that this cost not be ignored: “Consequently, we require the Utilities to provide detailed explanation and calculation of lost RA value, including both purchases of replacement capacity and foregone sales, for both U2 and U3 ...”88

As discussed in Section V.C. of these Opening Comments at pp. 42 – 43 below, the Proposed Settlement’s allowance of recovery of replacement power costs after January 31, 2012 is contrary to the ratepayer protections provided in §463(a). 89 To calculate replacement

86 Cal. Pub. Util. Code §463(a) states, in pertinent part: “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,” (emphasis added)
87 Phase 1 PD (Rev. 1), p. 75.
88 Id., p. 88.
89 Unless otherwise noted, all statutory references are to Cal. Pub. Util. Code.
power costs using anything other than the methodology prescribed by the Phase 1 PD would be unreasonable in light of the whole record. Even if the recovery of replacement power costs is allowed, the Proposed Settlement’s exclusion of at least $414.536 million in foregone sales revenues thru March 31, 2014, as well as unquantified lost RA value, to net against the replacement power costs for which the utilities would be reimbursed, is unreasonable in light of the whole record.

D. THIRD PARTY RECOVERIES.

The Proposed Settlement goes to considerable length to apportion potential recoveries from Mitsubishi and NEIL between the utilities and their ratepayers. An initial deduction is made of litigation costs recorded since January 31, 2012 (“including but not limited to fees paid to outside attorneys and experts”) which are “associated with pursuing and preparing to pursue” such recoveries. The Proposed Settlement is silent concerning any review by the Settling Parties of these litigation costs, but appears to exempt them from CPUC review. On an annual basis, should any amount remain from a recovery from Mitsubishi or NEIL after deducting the aggregated litigation costs, each utility will share the net proceeds with ratepayers based on a tiered formula. For recoveries from NEIL, the utilities will retain 17.5% of what the Joint Motion describes as “excess recoveries” and the remaining 82.5% will be distributed to ratepayers. For recoveries from Mitsubishi, the utilities will apply different

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90 This amount only includes SDG&E’s foregone sales revenues ($65.529 million) through December 31, 2013 and does not include foregone RA value for either utility.  
91 Proposed Settlement, Section 2.43.  
92 Id.  
93 Id., Section 4.11(g)ii.  
94 Joint Motion, p. 34.
sharing percentages depending on the size of such “excess:”

- “SCE shall retain 85% of the first $100 million, 66.7% of the next $800 million, and 25% of any further recoveries, and shall distribute the remainder to ratepayers.”

- “SDG&E shall retain 85% of the first $25 million, 66.67% of the next $200 million, and 25% of any further recoveries, and shall distribute the remainder to ratepayers.”

The Proposed Settlement does not identify the amounts which Edison and SDG&E are seeking from Mitsubishi and NEIL, but Edison’s Form 8-K filed March 27, 2014 states:

\textit{In October 2013, after a prescribed waiting period, SCE sent [Mitsubishi] a formal request for arbitration under the auspices of the International Chamber of Commerce seeking at least $4 billion of damages for all losses on behalf of itself and its ratepayers and in its capacity as Operating Agent for San Onofre. [Mitsubishi] has denied any liability and has asserted counterclaims for $41 million, for which SCE has denied any liability.\textsuperscript{98}}

SDG&E’s Form 8-K, also filed on March 27, 2014, mentions a lawsuit it has filed against Mitsubishi, which has been stayed pending Edison’s arbitration, but does not identify an amount for claimed damages.\textsuperscript{99}

\textit{Neither the Proposed Settlement nor the Joint Motion identifies an amount being sought from NEIL, which insures the two SONGS units for accidental outages as well as for accidental property damage. Edison International’s Form 10-Q, filed April 29, 2014, disclosed the following:}

\textsuperscript{95} Id.
\textsuperscript{96} Id., siting Proposed Settlement Section 4.11(c)(ii)(A).
\textsuperscript{97} Id., siting Proposed Settlement Section 4.11(c)(ii)(B).
\textsuperscript{98} EIX Form 8-K, March 27, 2014, p. 2.
\textsuperscript{99} SDG&E Form 8-K, March 27, 2014, unnumbered p. 3.
The estimated total claims under the accidental outage insurance through December 31, 2013 are approximately $409 million (SCE’s share of which is approximately $320 million). Accidental outage policy benefits are reduced by 90% for the periods following announcement of the permanent retirement of the Units... SCE has not submitted a proof of loss under the accidental property damage insurance. It is possible that the NEIL Board of Directors will make a coverage determination by the end of the second quarter of 2014, but it may take longer. No amounts have been recognized in SCE’s financial statements, pending NEIL’s response.  

Regarding the accidental property damage coverage from NEIL, the Proposed Settlement contains among its recitals the following seemingly inaccurate statement:

The Utilities have also submitted claims to NEIL based on their assessments that both SONGS units sustained accidental property damage. SCE has submitted proofs of loss under insurance policies covering SONGS and is continuing to pursue recovery as of the date of this Agreement.  

Edison’s Form 8-K, however, filed on the same day as the Proposed Settlement, states that it has “placed NEIL on notice” but that “SCE has not submitted a proof of loss under the accidental property damage insurance.” A similar statement regarding the absence of a submitted proof of loss under the NEIL accidental property damage insurance was included in the Edison Form 10-K filed on February 26, 2014 and, as noted above, on the Edison Form 10-Q filed on April 29, 2014.

SDG&E has not disclosed an estimated amount of its claims under either the NEIL

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101 Proposed Settlement, Section 3.33. “Agreement” is defined in Section 2.2 as “This document and any appendices.”
102 EIX Form 8-K, March 27, 2014, p. 2.
accidental outage or accidental property damage policies.

After the announcement of the Proposed Settlement and the filing of the Joint Motion, A4NR propounded data requests to the four parties which had negotiated the Proposed Settlement (SCE, SDG&E, TURN, and ORA) to better determine the basis for the apportionment of potential recoveries from Mitsubishi and the extent of any due diligence performed on the merits of the SCE and SDG&E claims. The consistent responses from the four parties indicate that investigation by ORA and TURN was quite limited:

- ORA stated that it “did not independently assess the merit” of SCE’s claim against Mitsubishi\(^{104}\) and that it did not request any documents relating to the arbitration from SCE;\(^{105}\)

- ORA stated that it “did not independently assess the merit” of SDG&E’s claim against Mitsubishi\(^{106}\) and that it did not request any documents relating to the litigation claim from SDG&E;\(^{107}\)

- TURN stated that it “did not conduct any due diligence on the merits of the claims being pursued by SCE/EME against Mitsubishi via arbitration except for reviewing SCE’s October 16, 2013 request for arbitration,”\(^{108}\) and that it “did not request any documents as part of the settlement negotiations that constitute pleadings or evaluations of the merits of the claims against Mitsubishi.”\(^{109}\)

\(^{104}\) ORA response to A4NR question 1, April 24, 2014.
\(^{105}\) ORA response to A4NR question 2, April 24, 2014.
\(^{106}\) ORA response to A4NR question 9, April 24, 2014.
\(^{107}\) ORA response to A4NR question 10, April 24, 2014.
\(^{108}\) TURN response to A4NR question 1, April 24, 2014.
\(^{109}\) TURN response to A4NR question 2, April 24, 2014.
• TURN stated that it “did not conduct any due diligence on the merit of the claims being pursued by SDG&E against Mitsubishi,” and that it did not request any documents related to the litigation from SDG&E.

• SCE stated that “(n)o documents were requested or provided as part of the settlement negotiations that constitute pleadings or evaluations of the merits of the claims against Mitsubishi,” but that it has posted a redacted version of its request for arbitration at the SONGS Community website and provided a copy to TURN.

• SDG&E stated, “No documents were requested or provided that constitute pleadings or evaluations of the merits of the claims against Mitsubishi.”

As the Phase 1 PD observes, “Despite requests that we do so, we decline to speculate here as to future third party recovery or to prematurely apply credits before funds are in hand.” The open-ended definition of unreviewable litigation costs; the patchy disclosures in the Proposed Settlement and Joint Motion; their contradiction by the Edison Form 8-K and Form 10-K disclosures regarding the NEIL accidental property damage coverage; the absence of scrutiny by ORA or TURN of the merit of the utility claims against Mitsubishi; render any estimate of likely recoveries baseless speculation. Under such circumstances, fashioning an elaborately tiered formula for sharing recoveries with ratepayers – on claims which Edison tallies at more than $4.4 billion and which SDG&E declines to quantify – is an exercise in either fantasy or arbitrariness.

110 TURN response to A4NR question 9, April 24, 2014.
111 TURN response to A4NR question 10, April 24, 2014.
112 SCE response to Question 01, Data Request Set A4NR-SCE-005, April 16, 2014.
113 SDG&E response to Question 1, A4NR-SDG&E-DR-04, April 24, 2014.
114 Phase 1 PD (Rev. 1), p. 50.
The best indicator of the potential for unhappy results is the door-slam on regulatory oversight:

- In consideration of sharing of net SONGS Litigation Recoveries, the Utilities shall have complete discretion to settle, compromise, or otherwise resolve claims against NEIL and/or Mitsubishi in any manner and whenever the Utilities determine, in the exercise of their business judgment, without prior or subsequent review or approval, disapproval, or disallowance by the CPUC or any parties to this OII.\textsuperscript{115}

- The CPUC shall not review the reasonableness or prudence of the Utilities’ litigation, settlement, compromise, or other resolution of such claims and shall not impose any ratemaking adjustment in respect of such claims except as expressly provided in this Agreement.\textsuperscript{116}

The Proposed Settlement’s treatment of potential third party recoveries is unreasonable in light of the whole record.

E. COMMUNITY OUTREACH AND EMERGENCY PREPAREDNESS.

As pointed out in the Phase 1 PD,\textsuperscript{117} at the request of the Joint Parties and others, the Commission included in the Phase 1 Scoping Memo a review of the reasonableness and effectiveness of SCE’s actions and expenditures for community outreach and emergency preparedness related to the SONGS outages.\textsuperscript{118} Considerable hearing time was expended on these topics. Without finding Edison’s 2012 actions and expenditures to be unreasonable, the Phase 1 PD orders some substantial changes:

We are not persuaded that SCE’s SONGS-related outreach fails to meet regulatory requirements or misleads the public. The Emergency Planning zones are

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\textsuperscript{115} Proposed Settlement, Section 4.11(f).
\textsuperscript{116} Proposed Settlement Section 4.11(g)(ii).
\textsuperscript{117} Phase 1 PD (Rev. 1), p. 66.
\textsuperscript{118} Phase 1 Scoping Memo and Ruling, January 28, 2013, p. 4.
\end{flushright}
established by the federal government, and there is insufficient evidence in the record for the Commission to intervene in the multi-jurisdictional emergency planning in place. Although some community outreach activities listed by SCE may have a self-serving component in terms of corporate image, we have previously supported an IOU’s involvement with communities within its service territory.

On the other hand, we agree with the thrust of parties’ concerns that, going forward, communities surrounding SONGS will begin to learn more about the coming decommissioning and have new questions and concerns. Therefore, the Commission finds it is in the public interest for SCE to expand its public education about SONGS and the future decommissioning beyond the 20-mile designated public education zone to 50 miles for the immediate future. SCE shall be particularly sensitive to pockets of alternative language users and coordinate with community based organizations to ensure wide distribution of public information and availability of emergency planning information.

Therefore, within 90 days of the effective date of the decision, SCE shall make an Information-only Filing, as defined in Section 3.9 of the General Rules of General Order 96-B, to the Commission which identifies SCE’s strategy for expanding its public outreach activities as described.119

The Proposed Settlement and Joint Motion are devoid of any mention whatsoever of this subject.

The continuing potential, as SONGS heads into decommissioning, for a divergence in views over emergency preparedness between Edison and its regulators arose most recently in the NRC’s March 26, 2014 announcement of a Severity Level IV violation by Edison:

A non-cited violation was identified for the licensee’s failure to obtain prior approval from the NRC before implementing changes to the licensee’s Emergency Plan, as required by 10 CFR 50.54(a)(3). Specifically, the licensee did not obtain NRC approval before implementing Emergency Plan Revision 34 on August 20, 2013, and Revision 35 on December 18, 2013, which, together, eliminated thirty-nine emergency response organization positions from the Emergency Plan.

119 Phase 1 PD (Rev. 1), pp. 68 – 69. This topic is further addressed in Findings of Fact 46, 47, and 48; Conclusions of Law 18 and 19; and Ordering Paragraph 7.
The failure to obtain prior NRC approval before implementing Emergency Plan changes that required such approval was a performance deficiency. This violation was evaluated using the NRC Enforcement Policy and determined to be more-than-minor because the violation impacted the NRC’s ability to perform its regulatory functions.\textsuperscript{120}

Edison submitted a request on March 31, 2014, for exemption from certain emergency planning requirements in order to “to discontinue offsite emergency planning activities and reduce the scope of onsite emergency planning as a result of the substantially lower onsite and offsite radiological consequences of accidents possible at SONGS.”\textsuperscript{121}

In light of the priority which the Commission has placed on public safety, the Proposed Settlement’s omission of any consideration of community outreach and emergency preparedness is unreasonable in light of the whole record.

\section{V. MATERIAL ELEMENTS OF THE PROPOSED SETTLEMENT ARE INCONSISTENT WITH THE PROTECTIONS ESTABLISHED BY THE PUBLIC UTILITIES CODE.}

The Proposed Settlement addresses the point at which SONGS could no longer be considered “\textit{used and useful},” a core requirement of “\textit{just and reasonable}” rates under Cal. Pub. Util. Code §451, by abandoning “\textit{the Net Book Value of the SGRP as of February 1, 2012}”\textsuperscript{122} and converting the remainder of SONGS capital assets into a “\textit{regulatory asset}” as of the same date.\textsuperscript{123} Despite their detachment from any used and useful asset providing electricity service

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\textsuperscript{120} Letter from Mark S. Haire, NRC Region IV Chief, Plant Support Branch 1, Division of Reactor Safety, to Tom Palmisano, SCE Senior Vice President and Chief Nuclear Officer, March 26, 2014, Attachment, p. 2, accessible at http://pbadupws.nrc.gov/docs/ML1408/ML14085A502.pdf
\textsuperscript{121} Letter from Thomas J. Palmisano, SCE Vice President and Chief Nuclear Officer, to NRC Document Control Desk, March 31, 2014, p. 2, accessible at http://pbadupws.nrc.gov/docs/ML1409/ML14092A332.pdf
\textsuperscript{122} Proposed Settlement, Section 4.2(d).
\textsuperscript{123} \textit{Id.}, Section 4.3(b).
\end{flushright}
to customers, the Proposed Settlement would allow both O&M and CWIP expenses to continue to accrue. As the Assigned Commissioner’s and Administrative Law Judge’s Ruling on Legal Issues previously explained, “it is impossible to ignore §451.”\(^{124}\)

**A. CONTINUED COLLECTION OF O&M REVENUE REQUIREMENTS FOR A PREMATURELY RETIRED PLANT NO LONGER PROVIDING SERVICE IS THE EPITOME OF “UNJUST” AND “UNREASONABLE.”**

As described in Section IV.A. of these Opening Comments at pp. 23 – 25 above, the Proposed Settlement allows the utilities to retain $387.4 million (100% share) for SONGS base O&M for 2012 and $397.6 million (100% share) for 2013,\(^{125}\) subject to some limitations and the requirement that SDG&E refund any amounts provisionally authorized for 2012 which exceed recorded costs invoiced by SCE. This is $785 million which – except to the extent that bonafide decommissioning costs can be recovered from the Nuclear Decommissioning Trusts, or that base O&M costs were incurred prior to February 1, 2012 – is completely disconnected from any electricity service provided to Edison or SDG&E customers. As Cal. Pub. Util. Code §451 specifies: “Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.”

The Commission attempted to make this clear to Edison in its earlier treatment of an extended, but impermanent, outage at the Palo Verde Nuclear Generating Station:

*The economic consequences of protracted outages is governed by Public Utilities Code Section 455.5. The proper rate making treatment of a facility which remains out of service permanently is simple. Retroactive to the date on which the facility ceased to be used and useful for its dedicated purpose the ratepayers are to be held harmless*

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\(^{124}\) April 30, 2013 Ruling, p. 10.  
\(^{125}\) Proposed Settlement, Section 3.43.
against all costs. Further, the value of the facility is considered removed from the ratebase as of that date. For obvious reasons, such a disabled or disused facility is not considered in any further general rate cases.126 (emphasis added)

Nor does reliance on §455.5 create a nine-month grace period during which orphaned O&M expenses might be considered acceptable. As the Commission observed in an earlier case:

Edison points out that PU Code § 455.5(e) explicitly reserves for the Commission the right to review the costs of facilities out of service for less than nine months.127

Burdening ratepayers with O&M revenue requirements for 2012 and 2013, provisionally authorized by the Commission on the assumption that they had a linkage to a used and useful electric generating asset, is inconsistent with the protections against “unjust or unreasonable” charges contained in the Public Utilities Code.

B. ALLOWING CWIP FOR SONGS PROJECTS WHICH NEVER ENTER SERVICE IS THE EPITOME OF “UNJUST” AND “UNREASONABLE.”

As described in Section IV.B. of these Opening Comments at pp. 25 – 27 above, the Proposed Settlement allows recovery of more than $695 million (as of December 31, 2013) of CWIP, with the specific date that the AFUDC return converts to the rate of return allowed on Base Plant determined by whether the CWIP is characterized as “Cancelled” or “Completed.”128

“Completed CWIP” is defined to be associated with SONGS-related projects that “will enter service at any point after February 1, 2012, including all CWIP that will enter service after the

126 D.93-05-013, 49 CPUC 2d 218, 221.
127 D.92-04-033, 43 CPUC 2d 738.
128 Proposed Settlement, Section 4.8.
Effective Date.” But this begs the question: if SONGS ceased to provide electricity service as of February 1, 2012, how can any CWIP projects enter service after February 1, 2012?

Notwithstanding the eligibility of any bonafide decommissioning project to be funded from the Nuclear Decommissioning Trusts, all CWIP projects that cannot qualify as bonafide decommissioning projects must be evaluated as projects intended to provide electricity service. If that was no longer possible as of February 1, 2012, none of these CWIP projects can be said to ever enter service. There is no distinction between Cancelled CWIP and Completed CWIP: all must be treated as abandoned plant. As the Commission explained in accepting a settlement between DRA and PG&E in which rate recovery was allowed for only $98.8 million of the $252 million cost of the long-troubled Helms pumped-storage facility:

*By booking costs in a CWIP account, the utility is protected against exclusion of costs in rates on the basis of retroactive ratemaking, although costs may be excluded on other grounds specified in PU Code Section 728. Utilities are not allowed to place CWIP funds in rate base before the new facility is used and useful, however, they are allowed to accumulate financing costs through the allowance for funds used during construction (AFUDC) mechanism during that period. These accounting mechanisms are consistent with law and general accounting practices under the Uniform System of Accounts Prescribed for Public Utilities and Licensees, which we have adopted.*

In order to qualify for amortization, abandoned plant must meet criteria the Commission articulated in the 1992 Geysers 21 decision, which allowed recovery of – but no return on -- investment:

*... we find that PG&E has met our criteria for recovery of abandoned projects as has been set forth in prior Commission decisions. Those criteria include the following: (1) that the project ran its course during the period of unusual and protracted uncertainty, (2)*
the project was reasonable throughout the project’s duration in light of both the relevant uncertainties that then existed and of the alternatives for meeting the service needs of the customers, and (3) that the projects were cancelled promptly when conditions so warranted.  

With respect to the SONGS CWIP, none of these identified criteria can be met for projects that had not been completed by February 1, 2012. For a category of expenditures which never contributed to providing electricity service to customers, but which appears to have grown by more than 60% on Edison’s books and more than 143% on SDG&E’s since the SONGS shutdown, to be included in rates would be inconsistent with the protections against “unjust or unreasonable” charges contained in the Public Utilities Code.

C. THE PROPOSED SETTLEMENT IS DESIGNED TO PRECLUDE ENFORCEMENT OF CAL. PUB. UTIL. CODE §463(a).

The Proposed Settlement is inconsistent with the ratepayer protections provided by §463(a), which states in pertinent part:

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...

This statutorily-prescribed disallowance of “direct or indirect costs resulting from any unreasonable error or omission” contravenes the Proposed Settlement’s provisions for Base

131 D.92-12-057, p. 217.  D.84-09-089, p. 229, and D.86-10-069, p. 180, clarify that “the period of unusual and protracted uncertainty” extended for a decade and not, as in the case of SONGS, weeks or months.
O&M ($785 million, 100% share); CWIP (Edison $455 million as of December 31, 2013, SDG&E $239.886 million as of December 31, 2013); and replacement power (Edison $1,206.316 million as of March 31, 2014\textsuperscript{132}, including $349.007 million foregone SONGS energy sales but excluding foregone RA value; SDG&E $255.370 million as of December 31, 2013, including $65.529 million foregone SONGS energy sales but excluding foregone RA value\textsuperscript{133}). To allow such amounts to be included in rates would be inconsistent with the protections against “\textit{unjust or unreasonable}” charges contained in the Public Utilities Code.

VI. THE PROPOSED SETTLEMENT IS NOT IN THE PUBLIC INTEREST.

Incorporating Sections IV and V of these Opening Comments by reference -- because a Proposed Settlement which is unreasonable in light of the whole record, and which is inconsistent with the law, cannot be in the public interest -- A4NR cites the following three additional, material aspects of the Proposed Settlement which are contrary to the public interest.

A. CONCEALING THE PORTION OF THE PRE-FEBRUARY 1, 2012 SGRP AMOUNT WHICH IS IN BREACH OF THE CPUC COST CAP.

The Proposed Settlement would allow Edison and SDG&E to “\textit{retain all amounts collected in rates as the Capital-Related Revenue Requirements for the SGRP for periods prior to February 1, 2012}.”\textsuperscript{134} According to Edison’s and SDG&E’s separate May 1, 2014 responses to

\textsuperscript{133} SDG&E-22, Attachment A.
\textsuperscript{134} Proposed Settlement, Section 4.2(c).
Question 04 posed by ALJs Darling and Dudney in their April 24, 2014 ruling, this amount totaled $194.08 million ($168.18 million for Edison\textsuperscript{135} and $25.9 million for SDG&E\textsuperscript{136}). Based on SCE-54, an estimated 20% of these amounts are attributable to removal and disposal costs,\textsuperscript{137} for which the Commission has an approved escalation factor. To bolster the retention of the remaining 80% ($155.264 million), for which no escalation factor has ever been approved, the Proposed Settlement attempts to compel the Commission to make two highly disputable findings based on Edison “testimony” never admitted to evidence or subjected to cross examination:

(i) The Commission shall find that SCE’s testimony in support of A.13-03-005 conclusively established that the total cost of the SGRP was $612.1 million in 2004 dollars (100% share). The Settling Parties shall not take the position, in any proceeding whatsoever, that SCE spent more than $612.1 million (100% share, 2004$) on the SGRP.

(ii) The Commission shall find that SCE’s testimony in support of A.13-03-005 utilized appropriate inflation indexes to deflate the total cost of the SGRP from nominal dollars to 2004 dollars. This includes the use of the Handy-Whitman index for fabrication and construction costs and the Commission-approved nuclear decommissioning burial escalation rates for burial costs. The Settling Parties shall not take the position, in any proceeding whatsoever, that SCE used inappropriate inflation indexes in its testimony in support of A.13-03-005.\textsuperscript{138}

While the Settling Parties may legitimately compromise whatever differences they have, it is overreach to enlist the Commission unnecessarily in the culmination of a sustained and deceptive effort by Edison to conflate the Handy-Whitman index with the appropriate metric for the Commission to use for the estimated 80% of allowed SGRP recovery not associated with

\textsuperscript{135} SCE-54, Response to Question 04, unnumbered page 2, Column H.
\textsuperscript{136} SDG&E-22, p. 3.
\textsuperscript{137} SCE-54, Response to Question 04, unnumbered page 2.
\textsuperscript{138} Proposed Settlement, Section 4.16(b).
removal and disposal.

As recorded in the minutes of the May 2, 2011 meeting of the San Onofre Board of Review, an exchange between Edison Senior Vice President and Chief Nuclear Officer Peter T. Dietrich and SDG&E Senior Vice President James P. Avery identified a price swing of $100 million for total SGRP costs depending upon the choice of inflation index:

Mr. Avery asked what the cost of the project was in today’s dollars. Mr. Dietrich explained that if SCE used CPI as an escalation factor the project would be $25M over the $670M target, but if SCE used the Handy-Whitman index, the SGRP would be $75M under the $670M target. Mr. Dietrich said that SCE asked for more specificity from the CPUC on the escalation issue. Mr. Avery responded this was not his recollection, SCE was insistent on being vague during the original filing.  

The Commission’s 2005 Decision originally approving the steam generator replacement project emphasized that it was not selecting the appropriate inflation index at that time

“(s)ince the inflation adjustment was not addressed in the record.” The Commission specifically deferred the selection of the appropriate inflation adjustment until it could be addressed in SCE’s application to include the project permanently in rates. The only example cited in the entire decision of a specific index that might be used for future inflation adjustments was the Consumer Price Index: “The inflation adjustment should be made based on reliable publications such as the Consumer Price Index published by the U.S. Bureau of Labor Statistics.”

Beginning with the February 29, 2012 Form 10-K filings by both EIX and SCE, four weeks after the outage, Edison misleadingly described certain “adjusted for

\textsuperscript{139} A4NR-23.  
\textsuperscript{140} Id., p. 3. The original $680 million target was reduced to $670.8 million by D. 11-05-035.  
\textsuperscript{141} D.05-12-040, Conclusion of Law 68.  
\textsuperscript{142} Id., Ordering Paragraph 13.  
\textsuperscript{143} Id., Finding of Fact 149.
"inflation" CPUC-authorized expenditures for the SGRP by omitting reference to the method by which Edison had inflated the cost cap. This misrepresentation was taken one step further by EIX Chairman and CEO Craver in his July 31, 2012 quarterly earnings call with 11 investment analysts, implying that the SGRP spending was below the CPUC cost cap: “As of June 30, SCE has spent $593 million on the project compared to the inflation-adjusted authorized spend of $665 million, or SCE’s 78% ownership share.” (emphasis added)

The misstatement contained in the EIX and SCE February 29, 2012 Form 10-K filings was repeated in Form 10-Q filings made by both companies on May 2, 2012; July 31, 2012; and November 1, 2012. One week after A4NR filed C.13-02-013, alleging that Edison’s misrepresentations violated state and federal securities statutes as well as Commission rules, Edison made the following material clarification in its February 26, 2013 Form 10-K filings concerning what the CPUC had actually authorized: “the CPUC authorized expenditures of approximately $525 million ($665 million based on SCE’s estimate after adjustment for inflation using the Handy-Whitman Index).” (emphasis added) Edison has continued to use this clarification in its subsequent Form 10-K and Form 10-Q filings.

Nevertheless, in its prepared Phase 2 testimony Edison reverted to obfuscatory language, asserting that D.05-12-040 “found that $680 million was a reasonable

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145 Mr. Craver’s prepared remarks containing this statement were previously available on the investor relations page of the EIX web site, but have been removed. They remain accessible at http://seekingalpha.com/article/767301-edison-international-management-discusses-q2-2012-results-earnings-call-transcript, where the quoted statement can be found at p. 2.
146 C.13-02-013 remains pending.
estimate” for the SGRP (ignoring that D.11-05-035 had reduced this to $670.8 million), and that, “Adjusting for inflation, SCE’s capital investment in the RSG project was ultimately less than this estimate.” When asked about this omission of how inflation was estimated, Edison’s witness, Russell Worden, denigrated the appropriateness of using the Consumer Price Index to evaluate the steam generator replacement project: “My recollection is it includes a component such as fast food and vacation homes ... I think a more refined escalator is used for utility-specific calculations.” Mr. Worden admitted that the truthfulness of his cost claims for the steam generator replacement project depends upon which inflation index is used, and begrudgingly recalled, “subject to check, that we used the Handy-Whitman de-escalator.” Edison’s brief clarified that the cost cap claim in SCE-40 was based upon “(a)djusting for inflation using the Handy-Whitman Index.”

The Commission has not had the opportunity to determine if the Handy-Whitman index is the appropriate one to use for adjusting the SGRP costs for inflation. The I.12-10-013 parties have not had the opportunity to examine the components of the Handy-Whitman index, what proportion of its data inputs are obtained from geographic markets that are applicable to SONGS, what use of it is made by other similarly situated utilities, or how applicable it may be to a project like the SGRP during the 2005-12 period in question. One striking point of comparison came from the following exchange in A.12-11-009 with PG&E Senior Vice President and Chief Nuclear Officer Edward Halpin:

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149 Mr. Russell Worden (SCE), Transcript, p. 2360.
150 id., p. 2361.
151 Edison Phase 2 Opening Brief, p. 34.
Q. “...What use does Diablo Canyon make of the Handy-Whitman construction cost index in developing your budgets?”

A. “I’m not familiar with the Handy-Whitman.”

A difference of $100 million derived from use of the Handy-Whitman Index rather than the Consumer Price Index, when applied to the 80% of SGRP costs not attributable to removal and disposal, represents a swing of 18.6%. Applied to the Proposed Settlement’s allowed $155.264 million of SGRP costs not attributable to removal and disposal, the difference between inflation indexes is $28.926 million – one-quarter of which ($7.231 million) would be above the SGRP cost cap, based on Mr. Dietrich’s May 2, 2011 statements to the San Onofre Board of Review, if the Consumer Price Index were used instead. In evaluating the merits of a multi-billion dollar settlement, the Commission may not consider these to be material amounts. Even so, the Commission should not sanctify the subterfuge embedded in Sections 4.16(b)(i) and 4.16(b)(ii) of the Proposed Settlement unless it wants to elicit more of it in future cases.

B. ABUSING THE 5% RETENTION BY EVADING CPUC REVIEW OF SALES OF M&S AND NUCLEAR FUEL INVENTORY.

Neither the Proposed Settlement nor the Joint Motion identifies definitive values for M&S or nuclear fuel. Although Section 3.39 of the Proposed Settlement values Edison’s share of M&S as of December 31, 2013 at $99 million and SDG&E’s as of December 31, 2013 at $10.4 million, the “ILLUSTRATIVE EXAMPLE” Appendix A to the Proposed Settlement shows a

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152 A.12-11-009, Mr. Ed Halpin (PG&E), Transcript, p. 3149.
153 $100 million ÷ .8($670.8 million) = 0.1863
February 1, 2012 value for M&S of $99 million, presumably for both utilities. SCE-54 places the year-end 2013 value of M&S at $80 million. SDG&E does not provide a separate value for M&S, instead combining it with Gross Plant. Irrespective of what the amount of M&S valued at “Original Cost” is, Section 2.22 of the Proposed Settlement defines “M&S Net Proceeds” (the amount against which the ratepayers’ 95% share is calculated) to net out “costs incurred by SCE in order to sell such materials and supplies.”

Attachment 2 to the Joint Motion calculates, “FOR ILLUSTRATIVE PURPOSES ONLY,” a present value revenue requirement (using a 10.00% discount rate) for nuclear fuel of $394 million for Edison and $88.3 million for SDG&E. But the Proposed Settlement itself suggests substantially greater complexity:

- Section 3.38 identifies Edison’s share of “Nuclear Fuel Investment” as $477 million as of December 31, 2013, “exclusive of any paid or accrued Fuel Cancellation Costs.”

SDG&E’s commensurate share, as of December 31, 2013 and subject to the same exclusion, is $115.8 million.

- Section 2.30 defines “Nuclear Fuel Investment” as the “Net Book Value of all nuclear fuel (including in-core fuel and pre-core fuel), plus [emphasis in the original] all Fuel Cancellation Costs.”

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154 Pursuant to Section 2.21 of the Proposed Settlement, this presumably is calculated at original cost, which is how it will be amortized as a regulatory asset as of the last day of the month of the Effective Date under Section 4.5(a).
156 SDG&E-22, pp. 3 – 4.
157 “Original Cost” is not defined in the Proposed Settlement.
158 Proposed Settlement, Section 4.5(b)(i).
159 Id., Section 2.22.
160 Joint Motion, Attachment 2, unnumbered p. 2.
161 Id., unnumbered p. 3.
162 Proposed Settlement, Section 3.38.
163 Id.
164 Id., Section 2.30.
• “Net Book Value” is defined to be “Original Cost” less the accumulated amortization and depreciation expenses, if any, associated with an investment.\textsuperscript{165} “Original Cost” is not defined in the Proposed Settlement.

• “Fuel Cancellation Costs” is defined to be the “total recorded costs (other than those costs that the Utilities are able to recover from the Nuclear Decommissioning Trusts)” associated with cancelling SCE’s contracts to purchase nuclear fuel, “\textbf{including but not limited to the following costs:}”\textsuperscript{166} (emphasis added)

\begin{enumerate}
\item[(a)] Termination fees and other amounts paid to obtain a release of any obligations under fuel procurement contracts.
\item[(b)] Amounts paid by SCE as Operating Agent for itself and on behalf of SDG&E to fuel procurement vendors pursuant to settlements, judgments, or arbitration awards related to disputes arising from SCE’s termination of alleged contractual obligations to purchase nuclear fuel.
\item[(c)] Attorneys fees and other litigation costs incurred on and after January 1, 2013 by SCE as Operating Agent for itself and on behalf of SDG&E in seeking to minimize its obligations under fuel procurement contracts through arbitrations, negotiations, and/or judicial or administrative proceedings.\textsuperscript{167}
\end{enumerate}

• In order to “\textit{incentivize}” Edison to “\textit{minimize the Fuel Cancellation Costs incurred after}” the March 27, 2014 date of execution between the Settling Parties of the Proposed Settlement, Section 4.7(c) establishes an additional “\textit{incentive mechanism}” to be shared by both utilities. The “\textit{Nuclear Fuel Investment}” is increased by 5% of the difference between:

\begin{enumerate}
\item[(A)] The sum of all amounts “\textit{stated as SCE’s purchase obligations ... in outstanding nuclear fuel contracts, on the one hand;}” and
\end{enumerate}
Without quantifying any value, Section 4.6(c) states that the Settling Parties agree that, as of the March 27, 2014 date of execution of the Proposed Settlement, “SCE still has outstanding alleged contractual obligations to purchase nuclear fuel.” (emphasis added)

So, by A4NR’s reading of the Proposed Settlement, Edison (with a forced sharing with SDG&E) is given an “incentive mechanism” to allege and/or acquiesce to alleged “contractual obligations” since it can earn 5% of the difference between the alleged “purchase obligation” and its recorded “Fuel Cancellation Costs.” A4NR has difficulty understanding how this “incentive mechanism” will encourage Edison to “minimize” such “Fuel Cancellation Costs,” because it is able to directly include them in its “Nuclear Fuel Investment,” upon which it can also make 5% when it sells nuclear fuel. Of course, this 5% can only be applied against “Fuel Net Proceeds,” which have no clear relationship to “Nuclear Fuel Investment.” Such “Fuel Net Proceeds” must be net of “costs incurred” by Edison in order to sell such nuclear fuel, “including but not limited to” storage and other costs.
costs “incurred in order to render the nuclear fuel saleable.”\textsuperscript{183}

Regarding M&S, perhaps because there is less money involved, the pathway to the utilities’ 5% is less convoluted. An “incentive mechanism”\textsuperscript{184} is established which allows the utilities to retain 5% of their “M&S Net Proceeds,”\textsuperscript{185} which are calculated as “Original Cost”\textsuperscript{186} minus “costs incurred by SCE in order to sell such materials and supplies.”\textsuperscript{187} Such “costs incurred by SCE” are neither defined, nor subjected to any limitation, by the Proposed Settlement.

Notwithstanding the generosity of a 5% commission, which is the equivalent of some 50 years of earnings at the current 0.10 - 0.11% annual yield of 90-day commercial paper,\textsuperscript{188} A4NR’s Phase 2 Opening Brief supported its application to the sale of both M&S and nuclear fuel.\textsuperscript{189} It never occurred to A4NR that this could evolve into “5% of anything Edison says,” which is the only sentient interpretation that can be given the Proposed Settlement. Approval of such loose, open-ended provisions without subjecting all calculations to a strict requirement for reasonableness review would make a mockery of the public interest. Reliance on the feeble enforcement clause of Section 6.1, providing the resource-limited ORA and TURN “the prerogative to review and validate any amounts used;” to “meet and confer with the Utilities;” and to “protest the advice letters if such concerns are not resolved to their satisfaction”\textsuperscript{190}

\textsuperscript{183} Id.
\textsuperscript{184} Id., Section 4.5(b).
\textsuperscript{185} Id., Section 2.22.
\textsuperscript{186} Id., Section 2.21. “Original Cost” is undefined in the Proposed Settlement.
\textsuperscript{187} Id., Section 2.22.
\textsuperscript{188} http://online.wsj.com/mdc/public/page/2_3020-moneyrate.html
\textsuperscript{189} A4NR Phase 2 Opening Brief, p. 26.
\textsuperscript{190} Proposed Settlement, Section 6.1.
would be a profoundly inadequate substitute for Commission oversight.

C. LOOTING THE NUCLEAR DECOMMISSIONING TRUSTS.

Drenched in the moral hazard that often accompanies decisions about other people’s money, the Proposed Settlement repeatedly prioritizes seeking payment from the Nuclear Decommissioning Trusts over obligating current ratepayers for the significant liabilities to Edison and SDG&E which the Proposed Settlement embraces. This problem is both exacerbated and facilitated by the persistent refusal of the Proposed Settlement to quantify the amounts at stake.

The Proposed Settlement’s contemplated reaches into the Nuclear Decommissioning Trusts fall into two categories: openly declared intent and implicitly declared intent. In the former category are recoveries of M&S Investment; \textsuperscript{191} Completed CWIP “that enters service after June 7, 2013”;\textsuperscript{192} and 2013 recorded Non-O&M Expenses and Non-O&M Balancing Account Expenses.\textsuperscript{193} The only declared restraint on these efforts is the phrase which appears in each of the pertinent sections of the Proposed Settlement: “to the extent permitted by applicable tax laws without penalty and CPUC action.”\textsuperscript{194} In pondering how much of a protective barrier this phrase offers against inappropriate raids on the trusts, the Commission should recall that:

\textsuperscript{191} Id., Section 4.5(d).
\textsuperscript{192} Id., Section 4.8(b).
\textsuperscript{193} Id., Section 4.9(g).
\textsuperscript{194} Id., Sections 4.5(d), 4.8(b), and 4.9(g).
• “M&S Investment” is valued at “Original Cost,” which is undefined in the Proposed Settlement;

• “Completed CWIP that enters service after June 7, 2013” for a facility which has been out-of-service since February 1, 2012 is a non sequitur; and

• the April 24, 2014 ALJ Ruling observed that “Non-O&M expenses are defined in §2.27 by what they are not, rather than specifically identified.”

Even more difficult to bound are the provisions in the Proposed Settlement which express an implicit intent to pursue funding from the Nuclear Decommissioning Trusts but which offer no guidance on how such amounts will be determined or whether they are subject to any limitations:

• the definition of “Fuel Cancellation Costs” contains the parenthetical exclusion for “(other than those costs that the Utilities are able to recover from the Nuclear Decommissioning Trusts),” suggesting an intent to seek some level of recovery of these loosely defined (see Section VI.B. of these Opening Comments at p. 50 above) amounts from the trusts;

• Section 4.9(f) of the Proposed Settlement commits the utilities to refund any portion of the 2013 base O&M revenue requirements described in Section 4.9(e)(i) – (iii) which they recover from the Nuclear Decommissioning Trusts, suggesting an intent to seek some level of recovery of these amounts from the trusts;

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196 Proposed Settlement, Section 2.17.
• although the absence of a refund commitment or any other mention of the Nuclear
Decommissioning Trusts in the Proposed Settlement’s discussion of 2012 base O&M
revenue requirements197 may indicate no attempt will be made to seek recovery of such
amounts from the trusts, the indirect manner in which Section 4.9(f) discusses the issue
regarding 2013 base O&M revenue requirements makes it impossible to rule out an
attempt to recover 2012 amounts as well.

• 2014 “SONGS-related O&M and non-O&M” expenses, which are expressly made subject
to CPUC reasonableness review by the Proposed Settlement,198 also appear to be
candidates for recovery from the Nuclear Decommissioning Trusts.199

The Proposed Settlement’s overriding philosophy is expressed candidly in the Joint
Motion:

The Agreement requires the Utilities to attempt to recover their costs from the
Nuclear Decommissioning Trusts, rather than ratepayers, whenever possible. To the
extent that the Agreement allows rate recovery of costs that the Utilities may be able to
recover from the trusts, the Agreement also requires that the Utilities refund any rates
collected that duplicate recoveries from the trusts.200

This approach is misguided for a nuclear plant which has shut down well ahead of the
license expiry assumption upon which its Nuclear Decommissioning Trusts were sized. It is ill-
advised for a plant for which a Post Shutdown Decommissioning Activities Report (“PSDAR”),
with budget, has yet to be filed with the NRC. It ignores the fact that the Commission has yet to

197 Id., Section 4.9(a).
198 Id., Section 4.9(h).
199 Id., Sections 4.9(i) and 4.9(j)(iv).
200 Joint Motion, pp. 34 – 35, footnotes omitted.
decide the 2012 Nuclear Decommissioning Cost Triennial Proceeding.\textsuperscript{201} The Proposed Settlement’s attempts to constrain Commission review of payments from the trusts directly contradict the requirements of California’s Nuclear Facility Decommissioning Act of 1985.\textsuperscript{202}

The Legislature was clear as to why the trusts were to be created:

\begin{quote}
It is the intent of the Legislature in enacting this chapter to protect electric customers, both present and future, from the risks of unreasonable costs associated with ownership and operation of nuclear powerplants. To that end, the commission or board with respect to each electric utility owning or operating a nuclear powerplant, shall develop regulations and guidelines that promote realism in estimating costs, provide periodic review procedures that create maximum incentives for accurate cost estimations, and provide for decommissioning cost controls.\textsuperscript{203}
\end{quote}

The Commission is tasked under the statute with determining \textit{“reasonable and prudent decommissioning costs of the nuclear facilities”}\textsuperscript{204} and whether costs are \textit{“reasonable in amount and prudently incurred.”}\textsuperscript{205} Without directly acknowledging it, the Proposed Settlement would upend the existing system by which the Commission regulates disbursements from the trusts. This would be a radical departure from what Edison itself described recently:

\textit{The Commission has an established approval process for disbursement.}\textsuperscript{206} Specifically, Section 2.01 of the Commission-approved Master Trust Agreements for SONGS 2 & 3 states that the Trustee shall make payments of the Decommissioning Costs in accordance with Master Trust Agreement procedures, which include a requirement for \textquote{a CPUC Order authorizing either Interim Disbursements or Final Disbursements.}\textsuperscript{207}

\begin{footnotesize}
\textsuperscript{201} Reply briefs were submitted in A.12-12-013 on January 24, 2014. A Proposed Decision has not yet been published by the Commission.
\textsuperscript{206} Resolution E-3057 (approving Advice 768-E and the nuclear decommissioning tax-qualified and non-qualified trust agreements for SONGS and Palo Verde).
\textsuperscript{207} Advice 768-E (filed Sept. 30, 1987), Attachment (Southern California Edison Company Nuclear Facilities Qualified CPUC Decommissioning Master Trust Agreement For San Onofre and Palo Verde Nuclear Generating Stations).
\end{footnotesize}
Section 1.01(9) provides that ‘CPUC Order shall mean an order or resolution issued by the CPUC after the Company, the Committee, the CPUC Staff, the Trustee, and other interested parties have been given notice and an opportunity to be heard. The order may be issued with or without hearing or by the CPUC Advice Letter procedure or comparable procedure.’ 208 In addition, a Resolution approving disbursement by Advice Letter is not the end of the Commission’s oversight process: SCE must also submit for Commission review SCE’s actual recorded decommissioning costs in the NDCTP (or other proceeding that may be designated by the Commission). 209 This is an additional layer of oversight that ensures the disbursed funds were expended in a reasonable and prudent manner. 210

The Proposed Settlement’s treatment of the Nuclear Decommissioning Trusts as a convenient and unattended purse would directly favor the posting of nominal credits to current ratepayers over stewardship of trust assets (collected from past ratepayers as a cost of electricity from SONGS) to protect future ratepayers (who will receive no electricity from SONGS) from unfunded decommissioning liabilities. Even a passing familiarity with the crises currently faced by public employee pension funds across the United States would suggest this is an imprudent course. A4NR recommends that the Commission insist upon a post-PSDAR evidentiary showing that the SONGS trusts are adequately funded before approval of any Proposed Settlement, and that all existing Commission oversight authority is expressly recognized and left unaltered by the terms of any such Proposed Settlement.

In doing so, the Commission should be guided by the provisions of Cal. Pub. Util. Code §8322:

... The principal considerations in establishing a state policy respecting the economic aspects of decommissioning are as follows:

208 Id.
209 D.07-01-003, p. 7; A.12-12-013, Exhibit SCE-08, p. 12, lines 20-22.
210 A.12-12-013, Edison Opening Brief, pp. 21 – 22.
(1) Assuring that the funds required for decommissioning are available at the time and in the amount required for protection of the public.

(2) Minimizing the cost to electric customers of an acceptable level of assurance.

(3) Structuring payments for decommissioning so that electric customers and investors are treated equitably over time so that customers are charged only for costs that are reasonably and prudently incurred.

VII. WHAT THE COMMISSION SHOULD DO NOW.

A4NR recommends that the Commission deny the Joint Motion, reject the Proposed Settlement, and make use of the process contemplated by Rule 12.4 to fashion a counter-proposal correcting the defects in the Proposed Settlement identified by these Opening Comments. A4NR supports the core framework of the Proposed Settlement, as summarized in TURN’s April 11, 2014 Notice of Ex Parte Contact with Commissioner Peevey and his Chief of Staff,

that it is appropriate to cease collections of all costs relating to the steam generators on February 1, 2012 and to allow the utilities to amortize their base plant investments over 10 years earning a return only on the cost of debt and 50% of the cost of preferred stock

and considers it a sound foundation upon which the Commission should craft a counter.

Removing the Proposed Settlement’s many deficiencies identified in these Opening Comments is the challenge which the Commission must address.

The Commission should also refocus its investigation to make the primary objective of

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211 TURN Notice of Ex Parte Contact, April 11, 2014, p. 2.
Phase 3 to “encompass review of the full range of post-outage costs,” as earlier promised.

The NRC’s final determination of Edison’s violation of the applicable design control regulations, Edison’s admission thereof, and its decision not to appeal the NRC determination, conclusively establish Edison’s failure to meet the “reasonable manager” standard which the Commission has applied for decades. A forensic allocation of comparative blame between Edison and Mitsubishi is of no relevance to ratepayers, who look to Edison (and SDG&E) to perform prudently in providing electricity service and to apply proper oversight to vendors like Mitsubishi. The Commission need not intrude upon, or await the results of, the arbitration and litigation between the two utilities and Mitsubishi. The ratepayers have no dog in those fights.

In moving forward with Phase 3, the Commission should be particularly aware of the limits to its reparations remedy. As described in Section II.E. of these Opening Comments at pp. 9 – 12 above, Edison’s failure to comply with NRC design control regulations caused damage far beyond what has appeared in its bundled customers’ (or SDG&E’s bundled customers’) bills to date. The Commission should determine whether it has the authority under the Public Utilities Code to initiate civil action on behalf of the People of California in Superior Court to recover these damages, or whether it should seek the assistance of the Attorney General.

VIII. CONCLUSION.

For the reasons explained in these Comments, the Proposed Settlement is neither reasonable in light of the whole record, consistent with law, or in the public interest.  A4NR

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212 Phase 1 PD (Rev. 1), p. 9, citing OII at p. 8.
urges the Commission to deny the Joint Motion, reject the Proposed Settlement as drafted, and formulate an appropriate counter-proposal.

Respectfully submitted,

By: /s/ John L. Geesman

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