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)
And Related Matters.	)	A.13-01-016 A.13-03-005 A.13-03-013 A.13-03-014

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S REPLY TO RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY TO MOTION SEEKING INVESTIGATION OF THE EXTENT OF SANCTIONS TO BE ORDERED AGAINST SOUTHERN CALIFORNIA EDISON COMPANY FOR VIOLATION OF COMMISSION RULES 1.1 AND 8.4

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Date: March 9, 2015

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I. INTRODUCTION.

Pursuant to Rule 11.1(f) of the California Public Utilities Commission ("Commission" or "CPUC") Rules of Practice and Procedure, the Alliance for Nuclear Responsibility ("A4NR") respectfully submits this reply to the Response filed February 25, 2015 by Southern California Edison Company ("SCE") to A4NR's February 10, 2015 Motion Seeking Investigation Of The Extent Of Sanctions To Be Ordered Against Southern California Edison Company For Violations of Commission Rules 1.1 and 8.4. On February 26, 2015 A4NR by telephonic voicemail sought the permission of Administrative Law Judge ("ALJ") Kevin Dudney to file this Reply on March 9, 2015. On February 27, 2015 by telephonic voicemail ALJ Dudney granted such permission.

The belabored explanation in SCE's Response of when restrictions on undisclosed ex parte communications apply, and when they do not, should establish the necessity of the remedy sought by A4NR's Motion.[1] The baseless narrowing in SCE's Response of the applicability of these restrictions – a conspicuous exception to SCE's recently trumpeted "*policy to avoid 'close calls' when it comes to compliance*"[2] and its commitment *"to open and fair communications with our regulators to ensure fair decision making in matters involving the*

[1] *"The Commission should order SCE to file in the I.12-10-013 public docket copies of all of its communications, as defined in SCE's February 5, 2015 New Policy, with the Commission and its staff since the January 31, 2012 SONGS tube leak concerning the subject matter of the I.12-10-013 investigation. Additionally, SCE should be directed to also file all of its internal communications which discuss any communications identified by the immediately preceding sentence, excluding only those protected from disclosure by an attorney-client or attorney work product privilege. The Commission should afford the I.12-10-013 parties a sufficient opportunity to respond to SCE's filings, including rights of discovery, and to submit briefs recommending appropriate sanctions the Commission should apply consistent with D.14-11-041."* A4NR Motion, pp. 9 – 10.

[2] This is the phrasing used in the press release SCE issued simultaneously with its late-filed Notice of Ex Parte Communication, which is Exhibit B to the A4NR Motion and also accessible at http://newsroom.edison.com/releases/southern-california-edison-files-notice-with-state-utilities-commission-announces-strengthened-policies-governing-contacts-with-the-commission

public interest"[3] – proclaims exemptions so sweeping as to erase any reasonable doubt that extensive undisclosed ex parte communications took place during I.12-10-013. The Commission should be fully informed about all communications between SCE and CPUC personnel in order to determine whether violations of its Rules or Cal. Pub. Util. Code §1701.3 have occurred.

Significantly, SCE's Response makes no mention whatsoever of the statutory proscriptions applicable to I.12-10-013 which are contained in Cal. Pub. Util. Code §1701.3:

> *(c) Ex parte communications are prohibited in ratesetting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice. Written ex parte communications may be permitted by any party provided that copies of the communication are transmitted to all parties on the same day. If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days...*

II. SCE's RESPONSE REDEFINES THE WORD "PROCEEDING."

The linchpin of SCE's attempt to escape Rule 8.4's restrictions on undisclosed ex parte communications is to convert I.12-10-013 from a single formal proceeding, initiated by a Commission Order, into four separate proceedings – individually initiated by an assigned Commissioner scoping memo only as each Phase of I.12-10-013 commenced. By this blinkered approach, no restrictions would apply until the scoping memo for a particular Phase was issued,

[3] This is the phrasing used in the *"New Policy"* hyperlinked to the SCE press release described above, and is Exhibit D to the A4NR Motion and also accessible at http://www.edison.com/content/dam/eix/documents/newsroom/news-releases/Communications_and_Interactions_with_the_CPUC_Policy_v_1.pdf

and the restrictions would only apply to issues identified in that particular Phase's scoping memo.

The SCE Response serpentines down a tortuous path to truncate the application of §1701.3(c)[4] and its prohibition of unreported ex parte communications in ratesetting cases. The only statutory provision cited in the entire SCE Response is §1701.2(a),[5] which simply provides that *"The assigned commissioner or the assigned administrative law judge shall hear the case in the manner described in the scoping memo."* Notwithstanding SCE's failure to point out that §1701.2 is expressly limited to adjudicatory cases, not ratesetting cases like I.12-10-013, the SCE Response hopscotches between Rule 1.3(f)'s definition of a *"scoping memo"* as *"an order or ruling describing the issues to be considered in a proceeding and the timetable for resolving the proceeding;"* Rule 8.1(c)(1)'s limitation of an *"ex parte communication"* to one that *"concerns any substantive issue in a formal proceeding;"* and Rule 7.3's description of a *"scoping memo"* as something issued by the assigned Commissioner *"which shall determine the schedule (with projected submission date) and issues to be addressed."*[6] Ergo, according to the SCE Response, *"a communication concerning an issue **not** identified in a scoping memo is not an 'ex parte communication' as defined in the Rules and is not subject to a reporting requirement."*[7] (emphasis in original)

Contrary to the plain language of §1701.3(c), this jerry-built construction would eliminate application of the prohibition on unreported ex parte communications between the

[4] Unless otherwise identified, all section references are to Cal. Pub. Util. Code.
[5] SCE Response, p. 2.
[6] Rule 7.3(a). See SCE Response, p. 2.
[7] SCE Response, pp. 2 – 3.

October 25, 2012 adoption **by the full Commission** of the Order Instituting Investigation ("OII") and the January 28, 2013 issuance **by the assigned Commissioner** of the scoping memo which *"sets forth the schedule, issues and procedural requirements for Phase 1 of this proceeding."*[8] SCE's Response offers no explanation of how the Commission's Rules can be read to suspend the §1701.3(c) prohibition after the Commission has initiated a formal proceeding, or to subordinate (for purposes of scoping the prohibition) the substantive issues identified **by the full Commission** in the OII to those identified 95 days later for Phase 1 **by the assigned Commissioner**.

Revealingly, during this purported 95-day open season for unreported ex parte communication, SCE chose at least twice not to avail itself of the farfetched logic offered now by its Response. On December 6, 2012 SCE late-filed notice of ex parte communications on November 30, 2012 with Commissioner Florio's and Commissioner Sandoval's advisers discussing, among other subjects, *"Issues to be considered in the OII Phased Proceedings;"*[9] and on December 7, 2012 it filed notice of a December 4, 2012 telephone conversation between Russell Worden, SCE's Director, SONGS Strategic Review, and ALJ Darling.[10] According to the December 7 notice, beside addressing procedural issues for providing notice for planned public participation hearings,

> *Mr. Worden also briefly addressed the following topics: (1) SCE's current work with Mitsubishi Heavy Industries (MHI) the designer and fabricator of the SONGS Replacement Steam Generators (RSGs); (2) the timing of the RSG capital cost filing pursuant to the Commission's decision approving new steam generators; and (3) access*

[8] Phase 1 Scoping Memo, p. 1.
[9] SCE's Late-Filed Notice of Ex Parte Communication, December 6, 2012, p. A-1.
[10] SCE's Notice of Ex Parte Communication, December 7, 2012.

to SCE documents as well as Nuclear Regulatory Commission documents from the NRC websites.[11]

The SCE Response does not explain why the company felt compelled in 2012 to file notices of ex parte communications prior to the issuance of a scoping memo by the assigned Commissioner. Nor does it describe how *"any substantive issue in a formal proceeding"*[12] could have been identified prior to the issuance of a scoping memo by the assigned Commissioner. The SCE Response's rationalization for defiance of the §1701.3(c) ban appears to have only occurred to the company later.

III. SCE's RESPONSE IGNORES THE OII's IDENTIFICATION OF ISSUES.

Without explanation, the SCE Response characterizes the Phase 1 Scoping Memo issued by Commissioner Florio and ALJ Darling as the *"First Scoping Memo."*[13] This characterization is critical to SCE's argument for two reasons. First, it places the starting time for observance of the §1701.3(c) ban at January 28, 2013, as discussed above. Second, and more importantly, it confines the scope of the §1703.1(c) ban to only the Phase 1 issues identified in the January 28, 2013 *"First Scoping Memo"* at the time of the Warsaw, Poland, Bristol Hotel meeting between SCE Executive Vice President of External Relations (and former General Counsel) Stephen Pickett and CPUC President Peevey. The SCE Response seizes upon the acknowledgment in the

[11] *Id.,* pp. 1 – 2.
[12] Rule 8.1(c)(1).
[13] SCE Response, p. 3.

"First Scoping Memo" that future phases would be *" 'scoped in more detail in the future and may somewhat vary as new information is obtained' "*[14] to conclude,

> *Accordingly, at the time of the March 26, 2013, meeting, only Phase 1 issues were explicitly defined as being within the scope of the OII. Communications about issues that might conceivably arise in future phases were therefore not at that time reportable as ex parte communications...*[15]

Without even attempting to reconcile this narrow construction with the significantly more open-ended definition of "*ex parte communication"* contained in §1701.1(c)(4),[16] the SCE Response employs the conditional voice to allow that, *"communications about such issues might be reportable only if they fall within the scope of future phases as specifically described in the First Scoping Memo."*[17] The SCE Response's next sentence immediately discounts this conditional possibility, however, because *"the First Scoping Memo* ***described future phases in tentative and general terms****, and expressly recognized that the scope of future phases could be affected by later developments."*[18] (emphasis added) The SCE Response's unsurprising conclusion:

> *Accordingly, communications on issues that might subsequently be deemed to be within the scope of future phases,* ***but which were not specifically delineated*** *in the First Scoping Memo as being within the scope of those future phases, were not reportable as ex parte communications.*[19] (emphasis added)

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[14] *Id.,* p. 4.
[15] *Id.*
[16] Cal. Pub. Util. Code §1701.1(c)(4) states: " *'Ex parte communication,' for purposes of this article, means any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter."*
[17] SCE Response, p. 4.
[18] *Id.*
[19] *Id.,* pp. 4 – 5.

The same scofflaw philosophy that enables the SCE Response to omit acknowledgment of the §1701.3(c) ban on unreported ex parte communications, and to reinterpret Article 8 of the Commission's Rules to pre-condition its applicability on issuance of a scoping memo from the assigned Commissioner, also prompts SCE to simply ignore the content of the Order adopted by the full Commission to initiate I.12-10-013. Nowhere in the SCE Response is this topic discussed, but the Commission should be fully aware that its October 25, 2012 Order contained the following:

> *5. Preliminary Scoping Memo*
>
> *Pursuant to Rule 7.1(c), we include a preliminary Scoping Memo to provide an initial determination of this proceeding's scope, schedule, need for hearing, and other procedural matters. The determination of category may be appealed as described below.*
>
> *5.1. Issues*
>
> *The general scope of this OII is to review the effect on safe and reliable service at just and reasonable rates on and after January 1, 2012 of the outages at SONGS Units 2 and 3. The issues include:*
>
> *1. Whether or not rate adjustments should be made; if so, when they should start, the correct amount, and the correct accounting of these adjustments.*
>
> *2. The reasonableness and prudency of each utility action and expenditure with respect to the steam generator replacement program and subsequent activities related thereto.*
>
> *3. The reasonableness and prudency of each utility action and expenditures in securing energy, capacity and other related services to replace the output of SONGS during the outage.*
>
> *4. The cost-effectiveness of various options for repairing or replacing one or both units of SONGS.*
>
> *5. Any additional ratemaking issues associated with the above, including the availability of warranty coverage or insurance for any costs related to the SONGS outage.*

6. The reasonableness and necessity of each SONGS-related operation and maintenance expense, and capital expenditure made, on and after January 1, 2012 reviewed within the context of the facts and circumstances of the extended outages of Units 2 and 3.[20]

Six pages later came the admonition:

9. Ex Parte Communications

Communications with decision makers and advisors in this rulemaking are governed by Article 8 of the Rules of Practice and Procedure. (Rule 8.1, et seq.) Specifically, Rule 8.3(c) states that ex parte communications in ratesetting proceedings are subject to the restrictions stated in Rule 8.3, and the reporting requirements set forth in Rule 8.4.[21]

It is hard to imagine what deficiency in the above language SCE might point to as justification for delaying application of the §1701.3(c) ban until January 28, 2013 or shrinking its applicability to conform to the procedural phasing of the I.12.-10-013 proceeding. The failure of the SCE Response to identify any such shortcoming in the OII – or even engage the subject at all – forfeits any claim to a coherent, lawful rationale supporting its position.

IV. SCE's RESPONSE FORGETS THE PURPOSE OF THE §1701.3(c) BAN.

Notwithstanding SCE's *"New Policy"* and its boastful commitment *"to open and fair communications with our regulators to ensure fair decision making in matters involving the public interest,"*[22] the SCE Response is devoid of any recognition that the §1701.3(c) ban serves a purpose that might justify a reporting burden. A4NR suspects the Commission will find this

[20] OII, pp. 14 – 15.
[21] *Id.,* p. 16.
[22] See footnote 3 above.

insolence particularly offensive. Any Californian exposed to the news media in the past six months knows that there is something seriously askew with unreported ex parte communications at the CPUC. This awareness is probably most acute within the Commission itself.

In testimony to the Little Hoover Commission last week, one of the legal consultants hired by the CPUC to independently review its ex parte practices and rules, Michael J. Strumwasser, was emphatic on this point:

> *At the outset, please let me relate how impressed we have been with the earnest desires of everyone we have encountered at the CPUC to reform its ex parte practices. There appears to be a widespread recognition that the Commission has lost public confidence in the fairness and independence of its regulatory actions and in the ethical behavior of its officials. There seems to be a sense that the path to restored public confidence lies in increased transparency and accountability.*[23]

Mr. Strumwasser's prepared statement to the Little Hoover Commission summarized why proper reporting of ex parte communications is an essential element of fairness to the parties in proceedings like I.12-10-013:

> *First, we view ex parte rules as fundamental to the fairness of Commission hearings and decisions. Open-government laws like the Bagley-Keene Open Meeting Act are aimed at ensuring the general public open access to the conduct of government business. Rules regulating ex parte contacts in adversarial proceedings such as formal CPUC ratesetting hearings—like their counterparts governing judicial proceedings—are intended in the first instance to ensure fairness **to the parties**. Those parties are entitled to know what their opponents are saying to the decision-makers, what the decision-makers said in response, and to have a realistic, meaningful opportunity to respond. To be sure, restricting ex parte communications may (or may not) enhance transparency and improve the public's access to government decisions, but the first job of ex parte rules is*

[23] "Statement of Michael J. Strumwasser, Strumwasser and Woocher LLP, Legal Consultant to the California Public Utilities Commission, Before the Little Hoover Commission, Sacramento, California," March 5, 2015, p. 2.

to give each party a genuinely equal opportunity to persuade the agency of the merits of the party's position.[24] (footnotes omitted, emphasis in original)

And he noted that, while there are significant exceptions to the statutory prohibition of ex parte communications in ratesetting cases, *"those exceptions are conditioned on notice and opportunity for opposing parties to participate and to have their own ex parte meetings."* (footnote omitted) [25]

The Commission should review the SCE Response – its arbitrary reinterpretation of statutory and Commission reporting requirements, its evolving but still pointedly ambiguous disclosures concerning Mr. Pickett's and Mr. Craver's ex parte communications, and the likely multitude of similarly unreported I.12-10-013 ex parte communications lurking in the chasms of exemptions and exceptions asserted by the SCE Response – with Mr. Strumwasser's remarks about fairness foremost in mind.

V. SCE's RESPONSE IS WRONG ABOUT EQUAL TIME.

Because SCE's Late-Filed Notice of Ex Parte Communication identifies CPUC President Peevey as the initiator of the meeting with Mr. Pickett,[26] the SCE Response insists that *"A4NR is incorrect in asserting that a contemporaneous reporting of the* [Pickett-Peevey] *meeting would have triggered an equal time right."*[27] This assertion directly contradicts two of the three

[24] *Id.,* pp. 5 – 6.
[25] *Id.,* p. 4.
[26] SCE's Late-Filed Notice of Ex Parte Communication, February 9, 2015, p. 1.
[27] SCE Response, p. 9.

provisions of §1701.3(c)[28] which specify exceptions to its general prohibition on ex parte communications in ratesetting cases. While the SCE Response neglects to mention §1701.3(c) at all, the statutory provisions state:

- *"oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice,"* and
- *"If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted."*

Rather than address the unmistakable requirements of the statute, or the underlying objective of fairness to the parties, the SCE Response instead engages in a semantic deconstruction of Rule 8.3(c)(2) – which assigns advance noticing responsibility in that subset of ex parte meetings that are initiated by a request from an interested person – and concludes that without a *"request"* there can be no *"grant"* that would trigger the equal time rule.[29] The statute does not mention the word *"request"* or pre-condition application of the equal time requirement on a *"request"* having been made, but the SCE Response ignores the statute entirely with the same equanimity that former General Counsel Pickett did.

[28] The third exception addresses written ex parte communications that are transmitted to all parties on the same day that they are shared with the decisionmaker. SCE unilaterally excuses itself from the requirement to transmit the written notes which Mr. Pickett shared with President Peevey: *"Mr. Pickett took notes during the meeting, which Mr. Peevey kept; SCE does not have a copy of those notes."* SCE's Late-Filed Notice of Ex Parte Communication, February 9, 2015, p. 1.

[29] SCE Response, p. 9.

More alarming, the SCE Response concludes its discussion of equal time with the remarkable observation, *"Indeed, as far as SCE is aware, the Commission's practice has been not to give parties equal time meetings for communications initiated by a decisionmaker."*[30] To the extent this *"practice"* has included *"ex parte communications"* as defined by §1701.1(c)(4) that are otherwise *"prohibited in ratemaking cases"* by §1701.3(c), such meetings have been unlawful.

VI. SCE's "ONE-WAY CONVERSATIONS" LOOPHOLE IS DISQUIETING.

The SCE Response ventures into the metaphysics of *"communication"* in attempting to justify the nearly two-year delay in reporting Mr. Pickett's ex parte meeting with President Peevey. SCE's Late-filed Notice of Ex Parte Communication previously focused its rationale for tardiness on confusion over the source of *"substantive communication,"* suggesting that *"based on Mr. Pickett's recounting of the conversation, the substantive communication on a framework for a possible resolution of the OII was made by Mr. Peevey to Mr. Pickett, and not from Mr. Pickett to Mr. Peevey."* [31] The SCE Response introduces a new concept, "*when a decision maker engages in a one-way communication,"*[32]as a rationale for not reporting at all. A4NR acknowledges that §1701.1(c)(4) does not include non-verbal communication within its definition of "*ex parte communication"*[33] but the likelihood of a CPUC President's soliloquy not

[30] *Id.*
[31] SCE's Late-Filed Notice of Ex Parte Communication, February 9, 2015, p. 1.
[32] SCE Response, p. 8.
[33] Consequently, Earl Long's legendary advice to his older brother, Huey, who once chaired the Louisiana Public Service Commission -- "*Don't write anything you can phone. Don't phone anything you can talk. Don't talk anything you can whisper. Don't whisper anything you can smile. Don't smile anything you can nod. Don't nod anything you can wink."* -- continues to provide three bulletproof safe harbors from ex parte communication reporting requirements at the CPUC. http://www.brainyquote.com/quotes/quotes/e/earllong212427.html

eliciting any oral response whatsoever from an SCE Executive Vice President and former General Counsel seems infinitesimal.

Eventually, the strained credulity of this scenario seems to have been too great – at least after Mr. Pickett's meeting notes were seized during execution of a search warrant at President Peevey's home – for SCE to continue to stonewall disclosure. Equally problematic to the two years, and resulting prejudice to I.12-10-013 parties, allowed to slip by before SCE reached this conclusion is the brazen admission in SCE's Response: "*the consistent practice of parties appearing before the Commission traditionally has been not to file ex parte notices for one-way conversations.*"[34] The anomalous occurrence of "*one-way conversations*" apparently takes place with sufficient frequency to have produced a tradition, and *"consistent practice,"* of non-reporting.

VII. NEW DISCLOSURES IN SCE'S RESPONSE RAISE MORE QUESTIONS.

The SCE Response dribbles out a few additional details about what the February 9, 2015 Late-Filed Notice described as Mr. Pickett's *"update on the status of SCE's efforts to restart"* Unit 2,[35] but remains adamant that *"(c)ommunications about the status of SCE's efforts to restart Unit 2 were not within the scope of the OII."*[36] The Response deflects the observation in A4NR's Motion that Unit 2 restart efforts were a core subject of Phase 1 of the OII by parsing, "*Phase 1 was limited to SCE's actions in 2012. Mr. Pickett's update on the status of restart in*

[34] SCE Response, p. 8.
[35] SCE's Late-Filed Notice of Ex Parte Communication, February 9, 2015, p. 1.
[36] SCE Response, p. 5.

March of 2013 was not within that scope."[37] The Response further narrows the content of Mr. Pickett's update to "*the status of SCE's efforts to persuade the Nuclear Regulatory Commission ("NRC") to permit restart of Unit 2;"*[38]*"the actions of SCE and the NRC with respect to restart;"*[39] and *"whether the NRC would concur with SCE's plan to restart Unit 2."*[40] Even this recasting of Mr. Pickett's update does not shield SCE's conclusion that it was unreportable from the following questions:

- if Mr. Pickett's update pristinely avoided any of the 2012 activities that were the subject of Phase 1, were there earlier unreported SCE communications with President Peevey after the October 25, 2012 adoption of the OII that included discussion of those activities?
- why doesn't Mr. Pickett's update easily fall within the scope of Paragraph 2 of the Preliminary Scoping Memo (*"2. The reasonableness and prudency of each utility action and expenditure with respect to the steam generator replacement program and subsequent activities related thereto."*[41]) contained in the OII?
- why doesn't Mr. Pickett's update easily fall within the scope of Paragraph 6 of the Preliminary Scoping Memo (*"6. The reasonableness and necessity of each SONGS-related operation and maintenance expense, and capital expenditure made, on and after*

[37] *Id.*
[38] SCE Response, p. 2.
[39] SCE Response, p. 5.
[40] *Id.*
[41] OII, p. 15.

January 1, 2012 reviewed within the context of the facts and circumstances of the extended outages of Units 2 and 3."[42]) contained in the OII?

Nor does the SCE Response's trickle of new information about a phone call Mr. Craver acknowledged he made to President Peevey ("*There is no basis for A4NR's speculation that the Craver-Peevey call also involved a discussion of settlement of the OII, and in fact that topic was not discussed in the call."*[43]) add much illumination. The SCE Response characterizes the call as "*not reportable as an ex parte communication"*[44] based on verbal comments made by ALJ Darling at the January 8, 2013 I.12-10-013 prehearing conference. Citing the transcript, the SCE Response claims, *"The ALJ specifically stated that whether SCE would shut down SONGS was not within the scope of the OII."*[45] But the prehearing conference transcript reference cited by the SCE Response says something slightly different: *"Also questions about the future operations of SONGS we believe is most appropriate to be considered in the long-term procurement planning proceeding and not this OII."*[46] Even if the ALJ's verbal comments or the Phase 1 Scoping Memo are interpreted as shifting Mr. Craver's disclosure obligation to R.12-03-014, which is also a ratesetting case subject to the §1701.3(c) prohibition, the SCE Response offers no explanation for why Mr. Craver's ex parte communication has never been reported in that docket.

[42] OII, p. 15.
[43] SCE Response, p. 11.
[44] *Id.,* p. 7.
[45] *Id.*
[46] Transcript, p. 3, ln. 25 – p. 4, ln. 1. The January 28, 2013 Scoping Memo issued for Phase 1 narrowed this delegation to "*reliability"* considerations: *"Issues related to the future operation of SONGS as a reliability source shall be considered in the Long-Term Procurement Planning (LTPP) proceeding, Rulemaking (R.) 12-03-014."* Phase 1 Scoping Memo, p. 4.

But the SCE Response's declaration, "*that topic* [i.e., settlement of the OII] *was not discussed in the call"*[47] glosses over the facts relied upon in A4NR's Motion. The A4NR Motion quoted from Mr. Craver's June 7, 2013 transcribed remarks to financial analysts (*"The last couple of days I've been able on the phone with the Governor, as well as President Peevey."* [48]) and inferred that there may have been more than one Craver-Peevey call. Permanently closing the plant, only 10 weeks after the Pickett-Peevey meeting, while leaving potential settlement of the OII unaddressed, seems distinctly less plausible than its opposite for a CEO of Mr. Craver's financial acumen, if not in "*the call"* then in some other ex parte communication. The potential ramifications for shareholders stemming from the permanent shutdown announcement clearly occupied a prominent role in Mr. Craver's June 7, 2013 teleconferences, both with financial analysts and with the news media.

And the euphemism used in SCE's Late-Filed Notice of Ex Parte Communication – *"a framework for a possible resolution of the Order Instituting Investigation"*[49] – was quickly abandoned by SCE's media spokeswoman in the first news cycle after the disclosure of the Pickett-Peevey meeting was publicized: *"According to Mr Pickett, Mr. Peevey outlined key elements of what Mr. Peevey regarded as potential* ***elements of a settlement*** *of the Commission's investigation into the issues, the technical and shutdown issues, at San Onofre."*[50] (emphasis added)

[47] SCE Response, p. 11.
[48] A4NR Motion, pp. 7 – 8.
[49] SCE's Late-Filed Notice of Ex Parte Communication, February 9, 2015, p. 1.
[50] Telephone interview with Maureen Brown on KPBS Evening Edition, February 13, 2015, accessible at 7:21 at http://video.pbs.org/viralplayer/2365425376/

Nor are any of the parties to I.12-10-013 likely to soon forget the discussion, at the May 14, 2014 hearing on the proposed settlement, of whether unreported ex parte communications about the settlement had taken place:

> *COMMISSIONER PEEVEY: As far as TURN goes, I think it's general knowledge my relationship with TURN is, to be fair, chilly. And I have never talked to Mr. Freedman on this topic during that whole time at all. Period. Mr. Freedman. That's it. Sorry.*
>
> *MR. AGUIRRE: What about Southern Cal Edison?*
>
> *COMMISSIONER PEEVEY: Sorry. Edison?*
>
> *MR. AGUIRRE: Yeah.*
>
> *COMMISSIONER PEEVEY: I'm not here to answer your questions.*
>
> *ALJ DARLING: Mr. Aguirre.*
>
> *COMMISSIONER PEEVEY: I'm not here to answer your goddamn question. Now shut up. Shut up.*[51]

A4NR is content to let the Commission determine, on the basis of the limited facts that have come to light thus far and the reasonable inferences that can be drawn from them, whether the prospect of other unreported ex parte communications occurring in I.12.10-013 is sufficiently high to compel the additional disclosures from SCE requested in the A4NR Motion.

VIII. SCE's RESPONSE MISSTATES KEY PROCEDURAL FACTS.

The SCE Response errs in asserting *"there is no pending proceeding to consider imposition of sanctions on SCE in connection with the Notice or otherwise,"*[52] inexplicably

[51] Trancript, p. 2781, lns. 12 – 28.
[52] SCE Response, p. 10.

overlooking the fact that *"D.14-11-040 left the I.12-10-013 proceedings open for consideration and potential prosecution of possible Rule 1.1 violations."*[53] Similarly, the SCE Response is mistaken in its claim that *"there is no pending proceeding in which discovery is permitted,"*[54] since the plenary authority granted the Commission by §701 indisputably extends to ordering discovery.[55]

At this point, the only remedy sought by A4NR is additional information. The SCE Response describes this as an *"extraordinary request"*[56] and mischaracterizes A4NR's position as one which assumes a sanction automatically results whenever a late-filed notice of ex parte communication is filed. The SCE Response brusquely rejects any parallel to the situation in which PG&E finds itself,[57] but an unwillingness to recognize §1701.3(c)'s ban on unreported ex parte communications, combined with a willful distortion of Article 8 of the Commission's Rules, suggests a current compliance attitude which may actually be worse.

IX. CONCLUSION.

[53] D.15-01-037, extending the statutory deadline for completion of these proceedings.
[54] SCE Response, p. 1.
[55] Cal. Pub. Util. Code §701 states: *"The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."*
[56] SCE Response, p. 10.
[57] The Commission's March 3, 2015 presentation of its Annual Report to the California Senate Energy, Utilities and Communications Committee, a videotape of which is accessible at http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=2593 , reflected the significance which the CPUC's new leadership attaches to the PG&E ex parte communications scandal: *"There are probably emails which are violations of our ex parte communications* [rules] *where people are gaining information or views that are not, that other parties are not aware of and don't have an opportunity to counter."* (President Picker at 1:07:39) *"The 65,000 emails were indeed shocking to the organization."* (Executive Director Sullivan at 1:12:00) *"I don't know what the investigators will find. I actually am depending on them because they are better investigators than I'll ever be. And it's probably somewhat ineffective, or never really going to be comforting to the public, if we do it ourselves. So in some ways I'm comforted to know that we're getting that kind of scrutiny. At the end of it, then, there may be a way that you* [the Legislature] *can take action. There's real, you* [the Legislature] *have the ultimate authority to impeach somebody because of their actions, if it's warranted.* (President Picker at 1:56:29)

For the reasons stated herein, and in A4NR's Motion, the Commission should order SCE to file in the I.12-10-013 public docket copies of all of its communications, as defined in SCE's February 5, 2015 *"New Policy,"* with the Commission and its staff since the January 31, 2012 SONGS tube leak concerning the subject matter of the I.12-10-013 investigation. Additionally, SCE should be directed to also file all of its internal communications which discuss any communications identified by the immediately preceding sentence, excluding only those protected from disclosure by an attorney-client or attorney work product privilege. The Commission should afford the I.12-10-013 parties a sufficient opportunity to respond to SCE's filings, including rights of discovery, and to submit briefs recommending appropriate sanctions the Commission should apply consistent with D.14-11-041.

Respectfully submitted,

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Date: March 9, 2015

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ALLIANCE FOR NUCLEAR RESPONSIBILITY