

AMENDMENT

Pursuant to Rule 1.12 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the Alliance for Nuclear Responsibility (“A4NR”) respectfully files this Amendment to its April 27, 2015 Petition for Modification (“PFM”) of D.14-11-040:

1. The attached Supplemental Declaration of John L. Geesman is included in the PFM as Appendix 1A.
2. The following language is inserted before the first full paragraph on page 6 of the PFM:
 - filed an application for rehearing of D.14-11-040 pursuant to Rule 16.1(c) alerting the Commission to the legal error of approving a settlement that had been procured by fraud, and preserving A4NR’s appellate rights to allege a violation of Cal. Pub. Util. Code §1757(a)(5).
3. The second sentence of the first full paragraph on page 6 of the PFM is rewritten as follows:

A4NR supports its contentions about changes in facts and circumstances with the Declarations attached as Appendix A and Appendix A1, and proposes specific wording to carry out its requested modifications to D.14-11-040 in the attached Appendix B.
4. The erroneous reference to Cal. Pub. Util. Code §1703(c) on pages i, 2, and 3 of the PFM, and in proposed Conclusion of Law 3 on page 2 of Appendix B, is replaced with the correct reference to Cal. Pub. Util. Code §1701.3(c).

Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN
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Date: May 26, 2015

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

Appendix A1

Supplemental Declaration of John L. Geesman

SUPPLEMENTAL DECLARATION OF JOHN L. GEESMAN

Under penalty of perjury, I, John L. Geesman declare as follows:

1. This declaration supplements my declaration of April 27, 2015, which was attached as Appendix A to the Petition to Modify D.14-11-040 (“PFM”) filed by the Alliance for Nuclear Responsibility (“A4NR”) on April 27, 2015.
2. This declaration reflects my review of the materials filed by Southern California Edison Company (“SCE”) on April 29, 2015 in response to an April 14, 2015 Ruling by Administrative Law Judges Melanie M. Darling and Kevin Dudney. I focus on a subset of those communications and declarations which are directly pertinent to A4NR’s belief that D.14-11-040 is fatally infected by extrinsic fraud and fraud-by-concealment.
3. Despite the opportunity to tailor his recall of events to best rebut the arguments in the PFM, the Declaration of Stephen Pickett strongly reinforces the unfair negotiating advantage gained by SCE’s unreported oral and written ex parte communications with President Peevey in Warsaw, Poland. Mr. Pickett declares that he *“did not engage in settlement negotiations with President Peevey”*¹ and that he *“did not understand President Peevey’s comments to be a directive on how a settlement should be structured.”*² Nevertheless, after *“taking notes in an effort to organize President Peevey’s comments for my own benefit,”*³ and after briefing his

¹ SCE April 29, 2015 Response, Appendix F, ¶12

² *Id.*, ¶10.

³ *Id.*, ¶11.

corporate superiors “about what President Peevey had said to me about SONGS in Poland,”⁴

Mr. Pickett reconstructed the notes he had handed over to Peevey in Warsaw into “a document that I titled ‘Elements of a SONGS Deal.’”⁵

4. On March 27, 2013, the day after the Pickett-Peevey meeting in Warsaw, a thirty minute “CFEE Download” was electronically calendared for April 1, 2013 between Mr. Pickett and Mr. Craver, Mr. Scilacci, Mr. Adler, and Mr. Litzinger.⁶

5. At the April 1 meeting, Mr. Pickett says “the issue was raised of whether my meeting with President Peevey constituted a reportable ex parte communication.”⁷ Notwithstanding Mr. Pickett’s statement that “I did not believe it was reportable, based on my general understanding of the ex parte rules,”⁸ the reportability question apparently was left unresolved. According to Mr. Pickett, “After the April 1 meeting I consulted with SCE’s counsel on the ex parte reporting issue, and no ex parte notice was filed at that time.”⁹

6. SCE’s April 29, 2015 Response states that “At the conclusion of the April 1, 2013 meeting, Mr. Litzinger told Mr. Pickett that he was not authorized to negotiate a settlement for SCE and that SCE was in ‘listen-only’ mode.”¹⁰ Mr. Litzinger’s April 29, 2015 declaration makes clear, “I believed that it was damaging and counterproductive to entertain President Peevey’s

⁴ *Id.*, ¶16. The senior executives briefed were Edison International CEO Ted Craver, Edison International CFO Jim Scilacci, Edison International General Counsel Robert Adler, and SCE President Ron Litzinger.

⁵ *Id.*, ¶17.

⁶ SCE April 29, 2015 Response, Appendix D, p. SCE-CPUC-00000001.

⁷ SCE April 29, 2015 Response, Appendix F, ¶16.

⁸ *Id.*

⁹ *Id.*

¹⁰ SCE April 29, 2015 Response, p. 8, citing Mr. Litzinger’s declaration in Appendix G, ¶¶ 3 and 4.

*ideas while SCE was pursuing restart.”*¹¹ Mr. Litzinger’s April 29, 2015 declaration states that SCE had not designated Mr. Pickett as its representative to discuss settlement, gratuitously adding without explanation, *“and would not.”*¹²

7. Despite the viewpoint on settlement and direction to Mr. Pickett that Mr. Litzinger’s April 29, 2015 declaration asserts, Mr. Pickett appears to have persisted in his efforts.

8. Mr. Pickett’s document, *“Elements of a SONGS Deal,”* faithfully tracks his Hotel Bristol Notes in outlining the substantive terms for a potential SONGS settlement.¹³ Mr. Pickett transmitted *“a typed-up version of my notes from our conversation this morning”*¹⁴ to each of the four other participants in the April 1 meeting at 11:32 a.m., but the remainder of his transmittal email is redacted due to an asserted attorney-client communication privilege. Presumably this claimed privilege is based on Edison International General Counsel Adler’s status as a recipient, as Mr. Pickett’s declaration clarifies that he had ceased being SCE’s General Counsel by March 2013.¹⁵

9. In the days immediately following the April 1 meeting, Mr. Pickett began to formulate a settlement strategy. He sent an email with the identified subject *“Next steps”* to Megan Scott-Kakures and Russell Worden. This Thursday, April 4, 2013 email refers to *“the settlement framework we discussed yesterday”* and identifies tasks to be performed.¹⁶ *“First, we should take my notes and turn it into a simple term sheet we could use to help guide the*

¹¹ *Id.*, Appendix G, ¶4.

¹² *Id.*

¹³ SCE April 29, 2015 Response, Appendix D, pp. SCE-CPUC-00000003 – SCE-CPUC-00000004.

¹⁴ *Id.*, p. SCE-CPUC-00000002.

¹⁵ SCE April 29, 2015 Response, Appendix F, ¶1.

¹⁶ SCE April 29, 2015 Response, Appendix D, p. SCE-CPUC-00000005.

*negotiations.*¹⁷ And a prompt turnaround appears to have been important: *“On timing, I’m in San Francisco tomorrow for a meeting with Peevey on L.A. Basin reliability.*¹⁸ *Ron is going to want to pull a subset of the INMG together sometime next week to discuss this, so if we could have something on paper by Tuesday or so it would be great.*”¹⁹

10. Mr. Pickett’s declaration and his *“Elements of a SONGS Deal”* document remove any doubt that the Warsaw discussion contemplated a total disallowance of the replacement steam generators. His declaration: *“I recall that he [Peevey] made a statement to the effect that the cost of the replacement steam generators (‘RSGs’) should be written off.”*²⁰ The *“Elements of a SONGS Deal”* document: *“Disallow RSG investment entirely (‘out of rate base retroactively’).”*²¹ The *“out of rate base retroactively”* phrasing approximates a line that appears in quotation marks in the Hotel Bristol Notes: *“retroactively out of rate base.”*²² Avoidance of this consequence would bring shareholders an additional \$194 million in the settlement SCE ultimately negotiated.

11. Similarly, Mr. Pickett’s April 4 email to Ms. Scott-Kakures and Mr. Worden reveals the significance he attached to the omission of any discussion of rate recovery for construction-work-in-progress (“CWIP”) during his Warsaw meeting with President Peevey. *“After thinking about it overnight, it seems to me that the obvious place for us to start is to include the non-RSG*

¹⁷ *Id.*

¹⁸ SCE’s May 21, 2015 Response to A4NR’s Amended Motion for Sanctions (p. 17) characterizes any communication from Mr. Pickett at this April 4 meeting on L.A. Basin reliability as unreportable: *“This subject, which addressed SCE’s planning for enhancing the reliability of the grid, was not within the scope of a covered proceeding at that time.”*

¹⁹ *Id.*

²⁰ SCE April 29, 2015 Response, Appendix F, ¶18.

²¹ SCE April 29, 2015 Response, Appendix D, p. SCE-CPUC-00000003.

²² A4NR PFM, Appendix A, Attachment 1, p. 1.

CWIP in the 'SONGS 1 treatment' portion of the investment."²³ As noted in Mr. Pickett's declaration, "I do not recall him mentioning, for example, certain other specific categories of investment of which I was aware, such as the recovery of construction work in progress ..."²⁴ Filling this CWIP void, which would bring shareholders at least an additional \$584 million in the settlement SCE ultimately negotiated, was imperative.

12. At least nine documents were created in the aftermath of Mr. Pickett's requests over the next eight days,²⁵ but SCE has asserted legal privilege to block access to each of them. Six of these nine were sent, or attached to emails sent, by Mr. Worden to Mr. Pickett or Ms. Scott-Kakures.²⁶ SCE's May 21, 2015 Response to A4NR's Amended Motion for Sanctions asserts that this protective shield was created for Worden-related documents some seven months before Mr. Pickett's requests triggered their creation: "On August 30, 2012, SCE counsel Erik Isken²⁷ directed Worden, Scott-Kakures, Hodges and Peters to provide assistance to the Law Department in evaluating legal, regulatory, and other issues associated with the SONGS outages and related legal and regulatory proceedings. **According to Worden** [emphasis added], this draft was prepared pursuant to that direction."²⁸ In my professional judgment, Mr. Worden's self-creation of immunity from discovery of these SONGS-related communications (and attachments thereto) based on non-recipient Isken's unrelated earlier "direction" stretches the "AC/WP" privileges beyond what any California court would recognize.

²³ SCE April 29, 2015 Response, Appendix D, p. SCE-CPUC-00000005.

²⁴ SCE April 29, 2015 Response, Appendix F, ¶18.

²⁵ SCE April 29, 2015 Response, Appendix E, Rpt#1, Rpt#2, Rpt#3, Rpt#4, Rpt#5, Rpt#6, Rpt#7, Rpt#8, and Rpt#9.

²⁶ The other three were authored by Mr. Adler on April 9, 2013, including an email to Henry Weissmann titled "CPUC Cost Recovery - PRIVILEGED AND CONFIDENTIAL" with an attachment labeled "[Title redacted; addresses settlement]." SCE April 29, 2015 Response, Appendix E, Rpt#4, Rpt#5, and Rpt#6.

²⁷ Mr. Isken is not identified as a recipient of any of the six documents at issue.

²⁸ SCE May 21, 2015 Response to A4NR's Amended Motion for Sanctions, p. 19.

13. Mr. Litzinger's April 11, 2013 email to Mr. Craver, Mr. Adler, and Mr. Scilacci indicates his frustration with Mr. Pickett's role but voices no qualms about SCE's apparent decision to "entertain President Peevey's ideas." As Mr. Litzinger explains, "I met Steve face to face this morning and reinforced that there can be no discussions with the CPUC on settlement that is not sanctioned by us. There will only be one spokesperson appointed by us. I noted we are in listen mode only—Steve has yet another 'social dinner' with President Peevey this weekend??"²⁹

14. Mr. Litzinger's April 11, 2013 email suggests his reservations over whether Mr. Pickett had overstepped a totally passive role: "I pressed Steve as to whether his two previous meetings were listen only given that we have heard whispers of leaks from the CPUC of significant SCE presence on the issue. He said he did not engage. He said the CPUC leaks like a sieve to which I commented that only reinforced my no unsanctioned engagement statement... I left meeting uneasy. I am pondering another conversation clearly stating that unauthorized engagement would result in dismissal—but common sense would dictate that without saying it. Any thoughts would be appreciated."³⁰

15. Despite any misgivings he may have had regarding Mr. Pickett's role or whether to "entertain President Peevey's ideas," Mr. Litzinger's April 11, 2013 email describes an exchange about SCE settlement strategy: "For what it is worth, he volunteered independently that we should only engage with TURN at first (he mentioned Matt Friedman [sic]). I used that as an opportunity to seek out the answer to our question on 'TURN without DRA'. Steve said that can be done, but would likely result in a 'protested settlement' with a hearing—DRA of course filing

²⁹ SCE April 29, 2015 Response, Appendix D, p. SCE-CPUC-00000186.

³⁰ *Id.*

the protest. He would recommend considering inviting DRA in later in the process. I took it all under advisement.”³¹

16. A May 29, 2013 email exchange between Michael Hoover and Les Starck, describing Mr. Hoover’s discussions with President Peevey and Carol Brown, indicates that settlement was actively under consideration.

- Mr. Hoover responds to Mr. Starck’s distribution of an SCE press release: *“Peevey was made aware of the letters last Thursday. He is really unhappy with the way we handled this. He views the release of the letters as just another salvo, his real frustration is with how we are dealing with the whole thing. I can fill you in next week.”³²*
- Mr. Starck then replies to Mr. Hoover: *“Boxer has come unhinged... [ellipses in original] she’s done this before to SCE back in the days of the energy crisis. I just heard that she said she would ‘disembowel’ the NRC if they allow restart. What we need is someone with courage at the NRC to stand up to her and do the right thing. We’ll see, but my hope is fading.”³³*
- Mr. Hoover responds: *“We have a small window of opportunity to work with parties to implement a shutdown in exchange for getting our money back. That window will close soon and we will lose a very good opportunity.”³⁴*

³¹ *Id.*

³² *Id.*, p. SCE-CPUC-00000188. A4NR’s Amended Motion for Sanctions (p. 11) pointed out that SCE’s April 29, 2015 Response contains no mention of this *“last Thursday”* contact with President Peevey, which would have taken place May 23, 2013. Notwithstanding the chronological impossibility, SCE’s May 21, 2015 Response to A4NR’s Amended Motion for Sanctions (p. 18) asserts, *“That discussion occurred on May 28, 2014 ...”*

³³ *Id.*, p. SCE-CPUC-00000187.

³⁴ *Id.*

- Mr. Starck replies: *“We need to talk to Pickett ASAP to let him know about your discussions with Peevey. Time is running out. I also have no idea if Ron and Ted are even thinking this way.”*³⁵
- And Mr. Hoover concludes: *“In talking with Carol, she indicated that **Pickett was well prepared in Poland with specifics**³⁶ (emphasis added), but then nothing has happened. Not making a decision is a decision not to move forward. Mike also told me that Pickett is very frustrated...[ellipses in original]”*³⁷

17. The documents discussed herein directly contradict the principal claim of SCE’s April 29, 2015 Response, that **“President Peevey’s Communications Did Not Influence The Settlement** [emphasis in original].”³⁸ Whether or not surprised in Warsaw by President Peevey’s discussion of settlement, Mr. Pickett wrote down his *“interpretation of President Peevey’s statements”*³⁹ and created a written ex parte communication and written material used for or during an oral ex parte communication. SCE immediately recognized the significance of this inside information about *“President Peevey’s ideas”* and used its knowledge in formulating a settlement strategy. SCE’s choice to not report the Warsaw oral and written ex parte communications until after a settlement agreement had been negotiated, reviewed and approved by the Commission, and the deadline for requesting rehearing expired, is irrefutable indication of the materiality of this knowledge to SCE’s self-perceived bargaining advantage.

³⁵ *Id.* SCE’s May 21, 2015 Response to A4NR’s Amended Motion for Sanctions (p. 18) contends that these Hoover-Peevey discussions did not take place until May 28, 2014 and, *“According to Mr. Hoover, this was a one-way communication.”*

³⁶ SCE’s April 29, 2015 Response (p. 2) asserts that Mr. Pickett *“was taken by surprise when President Peevey began speaking in Warsaw about a framework for a possible resolution of the OII.”*

³⁷ *Id.*

³⁸ *Id.*, p. 3.

³⁹ *Id.*, Appendix F, ¶11.

18. Juxtaposed against SCE's unlawful and unethical decision to violate its disclosure obligations, each of the other four principal claims in SCE's April 29, 2015 Response⁴⁰ is both irrelevant and diversionary. The prejudicial impact on the other I.12-10-013 parties, both settling and non-settling, which stemmed from SCE's misconduct -- and the resultant extrinsic fraud and fraud-by-concealment -- is all that matters regarding the integrity of D.14-11-040.

Under penalty of perjury, I declare that the foregoing statements of fact are true and correct to the best of my knowledge and that the statements of opinion expressed above are based on my best professional judgment.

/s/John L. Geesman
May 26, 2015

⁴⁰ "1. SCE Did Not Negotiate A Settlement With President Peevey or Any Other CPUC Decision Maker" ... "2. Warsaw Meeting Was Not A Negotiation" ... "3. Warsaw Meeting Was Mainly A One-Way Communication" ... "5. Post-Settlement, SCE Resisted Peevey Outreach Regarding UC Contribution" SCE April 29, 2015 Response, pp. 2 – 3.