BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Joint Application of Southern California Edison Company (U 338-E) and San Diego Gas & Electric Company (U 902-E) For the 2018 Nuclear Decommissioning Cost Triennial Proceeding.	)	Application 18-03-009 (Filed March 15, 2018)

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S OPENING COMMENTS ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE ROBERT HAGA

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I. INTRODUCTION.

Pursuant to Rule 14.3 of the California Public Utilities Commission ("Commission" or "CPUC") Rules of Practice and Procedure, the Alliance for Nuclear Responsibility ("A4NR") respectfully submits its Opening Comments on the Proposed Decision ("PD") of Administrative Law Judge Robert Haga in the Joint Application of Southern California Edison Company ("SCE") and San Diego Gas & Electric Company ("SDG&E") for the 2018 Nuclear Decommissioning Cost Triennial Proceeding ("NDCTP"). As required by Rule 14.3(c), these comments focus on factual and legal errors in the PD.

The PD errs, factually and as a matter of law, in Finding of Fact 42[1] and Conclusion of Law 8.[2] The factual errors may partially be a matter of drafting imprecision: contrary to Finding of Fact 42, A4NR's testimony and briefing addressed issues that apply to the Decommissioning Cost Estimate ("DCE") of all three SONGS units, not solely SONGS 1. Consequently, Conclusion of Law 8 is overbroad. In addition, both Finding of Fact 42 and Conclusion of Law 8 are inaccurate because A4NR's arguments and proposals address the within-scope reasonableness of the 2017 DCEs. And, significantly, the PD errs legally by overlooking the cost containment responsibilities assigned the Commission by the Nuclear Facility Decommissioning Act of 1985.[3]

[1] Finding of Fact 42 states: "A4NR's arguments regarding various elements of the SONGS 1 decommissioning project plan and schedule – the removal of substructures in 2046, the extent of public access following decommissioning, and site release criteria – involve issues subject to the jurisdiction of other state agencies, and are beyond the scope of this proceeding." The reasonableness of the 2017 SONGS 1 and 2017 SONGS 2&3 DCEs were identified (at p. 9) as in-scope by the December 19, 2018 Joint Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, which also expressly stated, "The parties may present testimony on how the assumptions of timing of removal of the subsurface structures may or may not impact the DCEs in Phase 3."

[2] Conclusion of Law 8 states: "The proposals presented by A4NR have been found to be outside the scope of this proceeding and need not be resolved for purposes of this decision."

[3] Cal. Pub. Util. Code §§ 8321 – 8330.

Cal. Pub. Util. Code § 8323 directs the Commission to shape its NDCTP process to "promote realism in estimating costs, provide periodic review procedures that create maximum incentives for accurate cost estimations, and provide for decommissioning cost controls."

This task is especially challenging because the pass-through nature of decommissioning expenses removes shareholder return as a guiding discipline for the control of costs. The repeated assurance from SCE and SDG&E since 2014 that SONGS decommissioning is fully funded and needs no new revenue requirement from ratepayers does not negate the inherent uncertainties in projecting such large expenditures over extremely lengthy timeframes. The "comprehensive framework"[4] envisioned by the Nuclear Facility Decommissioning Act of 1985, and the desire that "costs of electricity generated by nuclear facilities be fairly distributed among present and future California electric customers so that customers are charged only for costs that are reasonably and prudently incurred,"[5] require periodic intervention by the Commission to confirm that the trajectory for SONGS decommissioning is properly scoped and consistent with the public interest. Reliance on SCE's and SDG&E's proclaimed civic consciousness alone is insufficient.[6]

A4NR does not oppose approval of the Joint Application, but believes that the evidentiary record in this proceeding compels stronger guidance from the Commission to SCE and SDG&E regarding the content of the next NDCTP filing in order to reduce foreseeable upward cost pressures in future DCEs. This is particularly true regarding the ambiguous,

[4] Cal. Pub. Util. Code § 8322(e).
[5] Cal. Pub. Util. Code § 8322(b).
[6] Both Pedro J. Pizarro, President and Chief Executive Officer of Edison International, and Jeffrey W. Martin, Chairman and Chief Executive Officer of Sempra Energy, are signatories to the Business Roundtable's widely publicized August 19, 2019 stakeholder-focused "modern standard for corporate responsibility."

uncalibrated, “as clean as practical” radiation standard embraced by the DCEs approved by the PD. The Commission has direct experience in the Humboldt Bay decommissioning that late adjustment to the radiation cleanup standard carries heavy costs. A4NR recommends the simple clarification that the Commission expects future DCEs to assume the “as clean as practical” standard is the equivalent of the most stringent standard previously approved by the U.S. Nuclear Regulatory Commission (“NRC”) for a decommissioned commercial nuclear power plant.

II. CLEAN-UP STANDARD AMBIGUITY INVITES FUTURE COST INCREASES.

To complement the NRC’s baseline 25-millirem radiation clean-up requirement, SCE-03 committed the SONGS decommissioning to a vague, qualitative “as clean as practical” site release standard.[7] Based upon NRC approval of a more stringent 10-millirem standard in the License Termination Plan for the decommissioned Maine Yankee plant, and the local community-driven intensification of the cleanup requirement endorsed by this Commission for Humboldt Bay in D.14-02-024, it is easily foreseeable that SCE and SDG&E will eventually be forced to define “as clean as practical” to be the equivalent of the most stringent standard previously approved by the NRC. A4NR believes that early recognition of this reality is preferable, and less costly, to stumbling through rancor and controversy into the late-in-the-decommissioning-process adjustment experienced at Humboldt Bay.

SCE’s handling of this issue to date does not inspire confidence. It is not clear that SCE sufficiently thought through its decision to specify for its Decommissioning General Contract

[7] SCE-03, p. 21, footnote 31.

("DGC") "a radiological release criteria [sic] that does not exceed 15 millirem per year."[8] SCE's response to an A4NR data request explained:

> At the time the DCE was prepared, SCE assumed the Navy would impose a release standard lower than the NRC standard. SCE's bid specification to the decommissioning general contract (DGC) bidders was based on an assumed standard of 15 millirem per year. The 2017 DCE was therefore based on a 15 millirem per year standard with the expectation that this standard would be likely to meet the requirements of all stakeholders.[9]

However, the minutes of the June 9, 2016 meeting of the SONGS Executive Committee recorded the following discussion:

> Nino continued with a detailed review of the radiological release criteria being negotiated with the U.S. Navy for return of the site easement. Discussion ensued regarding the varying radiological-release criteria between the standard 12 mrem (currently used by the Navy) and the NRC's 25 mrem. Concerns were raised regarding the cost impact of using one mrem value compared to another and two action items were taken for:
> • Nino Mascolo - Provide an analysis on the release criteria of the plant site easement pertaining to the difference in cost between 12-15 MREM and the potential for 15 MREM to be surpassed
> • Tom Palmisano - Provide a summary of release criteria used at other U.S. decommissioning sites to the Participants for awareness

SCE's response to an A4NR data request indicated that SCE knew as early as August 2015 the basis for expecting a 12 mrem standard to be required by the Navy:

> The Navy's 12 mrem/year release criteria described by Nino Mascolo was established in the Navy's August 20, 2015 letter, provided in response to Question No. 21, in which the Navy directed SCE to show that the Mesa lease parcels 5, 6, and 7 met certain cleanup criteria, including "The Mesa Site (OR PARCELS 5, 6, and 7) achieve a release criteria of no more than 12 mrem/year…." Mr. Mascolo's discussion identified the August 20th letter's Mesa release criteria as a Navy position that possibly could be applied to the SONGS site in the future.[10]

[8] SCE-03, p. B-27.
[9] A4NR-2, p. 2.
[10] *Id.*, p. 6.

A4NR also requested a copy of the analysis which had been assigned to Mr. Mascolo by the SONGS Executive Committee at its June 9, 2016 meeting. SCE's response:

> No formal analysis was prepared. Instead, discussions occurred between the DGC bidders and SCE regarding the difference in costs associated with meeting a 12 mrem criteria versus a 15 mrem criteria. The bidders considered the cost difference between the criteria values to be immaterial. No further inquiries were conducted and the SONGS Executive Committee was informed accordingly.[11]

SCE's response to an A4NR data request regarding the mrem release criteria established at other decommissioned plants (i.e., the list compilation assigned to then-Chief Nuclear Officer Tom Palmisano at the June 9, 2016 meeting of the SONGS Executive Committee) indicated that a 10 mrem/year standard had been set at two plants in the Northeast:

> The lower dose criteria at these plants was **required by the state regulator** where they were located. The NRC criteria was still 25 mrem/yr. How this was handled was different at the different sites. As Maine Yankee put these lower criteria in their LTP, the NRC enforced the lower limits. As Connecticut Yankee did not put the lower dose limits in the LTP and stated the lower values as administrative limits in documents prepared for the NRC, the NRC did not enforce the lower limits.[12] (emphasis added)

SCE's choice of a 15 mrem/year standard in the SONGS DGC, despite knowing of tighter requirements by the Navy and other states, will likely trigger future controversy and upward pressure on costs. General dialogue at the DGC bidders conference about an "immaterial" difference in cost between a 15 vs. 12 mrem/year standard (especially when precedent might ultimately demand 10 mrem) is an inferior protection against future cost increases than could have been provided by a tighter contractual specification. SCE's earlier shortsightedness should not be baked into future DCEs.

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[11] *Id.*, p. 7.

[12] *Id.,* p. 8. SCE is clearly aware that the standard must be included in the License Termination Plan in order to be enforceable by the NRC.

D.14-02-024 provides instructive guidance. There, this Commission approved a $401 million increase in decommissioning costs at the Humboldt Bay Nuclear Power Plant based in part upon meeting a newly intensified cleanup standard recommended by PG&E's Community Advisory Board. As D.14-02-024 observed:

> In 2009, PG&E based its remediation estimates on earlier studies of likely land use and residual radiological contamination levels currently set by the NRC in agreement with the U.S. Environmental Protection Agency (EPA). However, the current federal regulatory framework provides for future EPA involvement at decommissioned NRC licensed sites upon finding residual presence of certain contamination levels (e.g., in groundwater) in excess of EPA limits. The NRC also requires opportunities for various state and local authorities and the public to weigh in on end-state site conditions.
>
> To 'anticipate the direction' expected of it, PG&E states it initiated communications with these governmental entities and helped form a Citizens Advisory Board (CAB). After discussions with stakeholders and review of lessons learned at other remediated facilities, PG&E concluded it was more prudent to assume end-state Residential use and the lower EPA limits in the 2012 DPR.
>
> DRA argues that PG&E is merely speculating that higher standards will apply in the future. However, the Commission acknowledges uncertainty, and finds some merit in PG&E's effort to assess and incorporate an expectation of regulatory and public tendency towards higher standards of site clean-up. As more nuclear facilities begin decommissioning, we anticipate efforts to reduce the confusion and to improve coordination of state and federal requirements. Following the tragic and broad failure of radiological containment at the Fukushima nuclear facilities, we also think that public and regulatory interest is heightened and reasonably likely to lead to lower acceptable limits for residual radiological contamination in the future.[13]

But SCE has harbored a contrary view of radiation hazards. Taking particular exception to the conclusion in the Environmental Impact Report for the SONGS 2&3 Decommissioning Project that "there is an inherent risk of radiological exposure at any facility where hazardous radiological materials are present that can never be fully eliminated; therefore, impacts …

[13] D.14-02-024, pp. 23 – 24, footnotes omitted.

would remain significant and unavoidable,"[14] SCE unsuccessfully sought to replace that language with a considerably different perspective:

> As documented in NRC's comprehensive 'Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities,' NUREG-0586, doses to individual workers and members of the public during decommissioning activities are expected to be well below the regulatory dose standards in 10 CFR Part 20 and Part 50. Therefore, the NRC has made the generic conclusion, applicable to all decommissioning reactors, that the radiological impacts of nuclear plant decommissioning activities are deemed to be 'SMALL.' SMALL is defined by the NRC as 'not detectable' or very minor.
>
> Based on this extensive analysis by the NRC, as well as SCE's compliance with its NRC license and applicable regulations, the impacts attributable to radiological hazards will be less than significant. Accordingly, the Participants request that the FEIR adopt the NRC's conclusion that impacts attributable to radiological hazards would be less than significant.[15]

To reduce potential adverse cost impacts of an eventual tightening of the ambiguous radiation clean-up standard embraced by the current DCEs, the Commission should expect future NDCTP applications to assume that the License Termination Plan filed with the NRC for each of the SONGS units will incorporate a best-in-class radiation clean-up standard that meets the most stringent standard previously approved by the NRC for a decommissioned commercial nuclear power plant.

The SDG&E rebuttal testimony misread A4NR-1 as tying the cost increase at Humboldt Bay to a change in millirem standard rather than a change in end-state use of the site.[16] A4NR-1 made no such distinction, but instead focused on the cost consequence of failure to adequately anticipate a local community-driven tightening regardless of type. SDG&E-09 was

[14] A4NR-1, p. 11, lines 19 – 21, citing SCE's SONGS Units 2 & 3 Decommissioning Project DEIR Comments, August 29, 2018, p. 8, footnote omitted, citing DEIR p. 4.1-35.
[15] *Id.,* p. 11, line 23 – p. 12, line 2, citing SCE's SONGS Units 2 & 3 Decommissioning Project DEIR Comments, August 29, 2018, pp. 8 – 9, footnotes omitted.
[16] SDG&E-09, p. 12, lines 18 – 21.

confident that funds in the current DCEs are sufficient to meet a move from a 15-millirem to a 12-millirem standard[17] (and silent on whether that confidence would extend to the 10-millirem standard enforced by the NRC at Maine Yankee). A4NR believes SDG&E-09 reinforces the wisdom of requiring future SONGS NDCTPs to commit to a best-in-class standard. By the time the site is released by the NRC for unrestricted use, Californians are predictably unlikely to be satisfied by anything less.

III. CONCLUSION.

A portion of the PD's narrative discussion takes a fragmentary SCE observation ("As SCE notes, various elements of the SONGS decommissioning project plan and schedule, as identified by A4NR, are subject to the jurisdiction of other state agencies and processes."[18]) to imply that A4NR seeks to re-litigate issues properly decided elsewhere. Any such inference is incorrect, since (unmentioned by SCE) A4NR's recommendations on those particular issues have already been adopted by the California State Lands Commission ("CSLC") and the California Coastal Commission ("CCC") with SCE's (belated) assent.[19] A4NR's point in these Comments (and its testimony and briefing) is far more fundamental to the jurisdictional responsibilities of this Commission: future DCEs should reflect the CSLC and CCC requirements, as mandated by Cal. Pub. Util. Code § 8323, in order to "promote realism in estimating costs, provide periodic review procedures that create maximum incentives for accurate cost estimations, and provide

[17] *Id.,* p. 13, lines 20 – 23.
[18] PD, pp. 59 – 60. The errant narrative should be corrected as follows: "~~We agree with SCE that the remaining issues raised by A4NR are beyond the scope of this proceeding, and thus, we need not resolve them here.~~ As SCE notes, various elements of the SONGS decommissioning project plan and schedule, as identified by A4NR, are subject to the jurisdiction of other state agencies and processes. Future DCEs should reflect the requirements duly adopted by the appropriate authorities."
[19] A4NR Opening Brief, pp. 7 – 8.

for decommissioning cost controls."

The repeated assurance from SCE and SDG&E since 2014 that SONGS decommissioning is fully funded and needs no new revenue requirement should not sedate this Commission's oversight. Complacent reliance on inattentive estimates from SCE and SDG&E can obliterate the zero-revenue requirement assumption as rapidly as D.14-02-024 added $401 million to decommissioning costs at Humboldt Bay. Small adjustments to the PD can avoid these pitfalls.

Respectfully submitted,

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APPENDIX: Proposed Language Modifications

A4NR recommends the following modifications to the language in the PD:

Findings of Fact:

42. To the extent that ~~A4NR's arguments regarding~~ various elements of the SONGS 1 and 2&3 decommissioning project plans and schedules – the removal of substructures ~~in 2046~~, the extent of public access following decommissioning, ~~and~~ site release criteria, etc. – involve issues subject to the jurisdiction of other ~~state~~ government agencies, ~~and are beyond the scope of this proceeding~~ future DCEs should reflect the requirements duly adopted by the appropriate authorities.

XX. It is reasonable for the Commission to state its expectation that future DCEs will assume the Utilities' proposed "as clean as practical" radiation cleanup standard is the equivalent of the most stringent standard previously approved by the NRC for a decommissioned commercial nuclear power plant, and that such a requirement will be included in the License Termination Plan for each SONGS Unit.

Conclusions of Law:

8. ~~The proposals presented by A4NR have been found to be outside the scope of this proceeding and need not be resolved for purposes of this decision.~~ It is consistent with the federal Atomic Energy Act for the Commission to state its expectation regarding the radiation cleanup standard that the Utilities will include in the License Termination Plan for each SONGS Unit.

Narrative Discussion at pp. 59 – 60:

~~We agree with SCE that the remaining issues raised by A4NR are beyond the scope of this proceeding, and thus, we need not resolve them here.~~ As SCE notes, various elements of the SONGS decommissioning project plan and schedule, as identified by A4NR, are subject to the jurisdiction of other state agencies and processes. Future DCEs should reflect the requirements duly adopted by the appropriate authorities.