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Assemblymember Anthony Rendon
Chair, Assembly Committee on Utilities and Commerce
State Capitol
P.O. Box 942849
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Dear Chair Rendon,

Thank you for your March 19, 2015 letter. I remain committed to working with you and the Committee on the issues you've raised. You have asked me to revisit the Commission's decision last November to approve a settlement on the cost responsibility of the San Onofre Nuclear Generating Station and its permanent shutdown, and to see if I still have qualms about that decision. Additionally, you have asked the Commission to compel Southern California Edison Company to produce all emails related to the San Onofre Nuclear Generating Station, the investigation of the steam generators, and the settlement leading to the resolution of the San Onofre Nuclear Generating Station and its permanent shutdown (Settlement).

In response, I am pursuing three avenues of inquiry:

1) I have conducted a review into my own decision making process leading to the November 20, 2014 Decision made by the Commission approving the Amended and Restated Settlement Agreement. As a Commissioner, I assessed whether I could reach the same conclusion about the decision based solely on the written record that has been available to all parties. That is the methodology that I used in developing my vote last November. This reliance on an evidentiary record developed through a public process that is open for all to view – transparent – is our primary source of information for formal Commission decisions[1].

[1] I want to reinforce points that I made at the Committee's oversight hearing on Tuesday, March 17th: Our use of the term *transparency* has a different context at the CPUC than I used as a local government official or most other public settings. When we at the CPUC say transparent, we mean, generally, that everyone can see the same full record of evidence provided by our staff and the formally recognized parties to our quasi-judicial proceedings, whether that is text, video, written briefs or transcripts of cross-examinations or public workshops and all-party meetings. There are important exceptions. For example, the transcripts and testimony offered in our Public Participation Hearings aren't part of the evidentiary record, and don't have equal bearing in our considerations.

The Commission accepts – and as a matter of policy often encourages - settlements as a means of resolving difficult issues and avoiding harm or cost to ratepayers from long protracted litigation. If we formally adopt the conclusions of settlements, we must analyze those settlements on their own merits. Other judicial decision making bodies, including the state and federal court systems, also allow settlements as an expedient tool to move contentious multi-party litigation to a timely conclusion.

The Commission has formally adopted standards on how the Commission reviews settlements that are brought before it in Rule 12 of the Commission's Rules of Practice and Procedure. These rules, which were reviewed and approved by the State's Office of Administrative Law, provide due process, notice and opportunity to the parties and ensure that only settlements that are lawful and in the public interest are adopted.

The Settlement was first brought to the CPUC by a formal filing on April 3, 2014. After an Assigned Commissioner and ALJs' Ruling issued, an amended Settlement was filed on September 24, 2014. The Settling Parties are: The Utility Reform Network (TURN), The Office of Ratepayer Advocates (ORA), Friends of the Earth, the Coalition of California Utility Employees (CUE), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). I can confirm that the Assigned Commissioner, the Administrative Law Judges, and the advisory staff of the CPUC were not involved in the settlement negotiations. In the words of the Settling Parties, the Settling Parties themselves negotiated the terms of the Settlement "in a hard-fought process over many months,"[2] and the Commission found that the Settling Parties satisfied the procedural requirements for settlements under Commission Rule 12.

After the April 2014 Settlement Agreement was submitted to the CPUC, the Assigned Commissioner and Administrative Law Judges in the proceeding issued a ruling ordering written testimony about the Settlement, written comments, an additional evidentiary hearing, and a community meeting. In this time and before the Commission took a final vote on the agreement there were multiple opportunities for public input beyond the settling parties:

- Evidentiary hearings on materially contested factual issues in the April 2014 Settlement (May 14, 2014),

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Further, as Commissioners, we are allowed in many settings, to accept meetings with parties admitted to our formal proceedings. In some proceedings our rules call for the party who sought a meeting to provide notice to all the other parties about such ex parte meetings, and in the interests of *fairness*, Commissioners must provide an equal opportunity for others to rebut or add to information shared by participants in initial noticed ex parte meetings. In some stages or types of proceedings, there are different requirements about meetings or notice of meetings with parties. In the San Onofre investigation proceeding, which was determined to be a rate-setting proceeding, meetings were allowed with notice and equal time provisions required for other parties.

[2] *Joint Motion of Southern California Edison Company (U 338-E), San Diego Gas & Electric Company (U 902-E), The Utility Reform Network, The Office of Ratepayer Advocates, Friends of the Earth, and the Coalition of California Utility Employees for Adoption of Settlement Agreement* (April 3, 2014), p. 8.

- Community meeting (Costa Mesa, June 16, 2014),
- Oral arguments on the proposed decision (October 31, 2014),
- Three rounds of written comments that resulted in 34 sets of comments from parties that became part of the record, and
- Two rounds of comments on the proposed decision proposing approval of the Amended Settlement Agreement.

The Commission approved the final decision D.14-11-040 on the modified Settlement Agreement on November 20, 2014.

I work hard at diligence in observing the CPUC's rules, and base my decisions only on what is in the public evidentiary record of the proceeding. The proposed decision on the future and rate recovery of the San Onofre generating facility is one of many hard decisions - with significant impacts to ratepayers, contending parties, and the environment - that I've had to make as a Commissioner. I regularly ask myself, is there anything that I've missed? Is there anything that I didn't fully understand? Did the Assigned Commissioner or the Administrative Law Judges ask the correct questions in order to get all pertinent testimony from the parties to the proceeding, and thus to build the record? Like other judicial and quasi-judicial bodies, we make the best decisions possible based on the best information that is available after strenuous efforts to obtain that evidence.

After having conducted an assessment of my decision making process leading up to the November 2014 vote on the revised San Onofre Settlement, I have concluded that the Commission's decision was based on a settlement process that was appropriate under the Commission's rules and was in the ratepayers' interests, and was supported by the record developed in the proceeding. The Settlement avoided years of additional uncertainty, offered ratepayers relief from ongoing costs much more immediately than an extended and uncertain litigation, was based on evidence offered in the record that I reviewed, and, when taken as a whole, was a good outcome.

In support of this review, I reviewed the *Proposed Decision on Phase 1 Related to 2012 SONGS-Related Expenses and Expenditures* (November 19, 2013), have re-read my cursory notes taken at a formally noticed public Community Information Meeting held in Costa Mesa on June 16, 2014 (which was helpful to my thinking about an early proposed settlement), the *Amended Settlement* submitted to the Commission by SCE, SDG&E, TURN, ORA, Friends of the Earth and CUE on September 24, 2014, and also re-read and the *Decision Approving Settlement Agreement As Amended and Restated by Settling Parties* that frames the Commission's action on November 20, 2014.

The accounting jargon used in this proceeding can make it difficult for the public on first or second read to understand clearly the meaning and impact of what is in the amended

Settlement that the Commission did adopt last November. My summary of key concepts related to the sharing of costs in the decision follows[3]:

a. SDG&E and SCE's ratepayers will pay an estimated $517.2 million for 2012 replacement power costs for the lost power generation from the San Onofre nuclear plant. Replacement power costs for 2013 and 2014 will be determined as part of a Commission process. Some of the short term power costs are higher than the utilities might obtain through long term contracts, but consumers benefited from continuous and reliable electric service. As long as the transactions for purchasing this electricity are prudent, federal law would make it very difficult to deny cost recovery for replacement power.

b. The utilities who owned the San Onofre Nuclear Generating Station will pay $760 million, the costs of the replacement steam generator equipment, except during the period that the plant was operating, from 2011 to January 2012.

c. SCE and SDG&E ratepayers will pay $970.6 million for the costs of maintenance of the plant not related to the steam generators, including: safeguarding the nuclear fuel that continues to be stored at the San Onofre Nuclear Generating Station; and, the 2012-13 engineering and safety assessments of the potential to restart San Onofre and continue operations while the Nuclear Regulatory Commission was assessing whether the plant could be safely restarted. Going forward, there is a process at the Commission to evaluate future maintenance costs, with most of these costs associated safeguarding the nuclear fuel. The federal government does not have an approved repository for storing nuclear fuel associated with nuclear power plants. This requires storage of spent and other nuclear fuels on-site at nuclear plants, even decommissioned plants, until the federal government licenses a storage site.

d. Utilities will pay $99 million (a portion of the cost of trying to repair the steam generators), the estimated costs of shutting down the steam generators. A significant portion of these expenditures were associated with engineering studies conducted by the utilities after the shutdown of the San Onofre Nuclear Generating Station, when they were trying to figure out if they could re-start the plant and satisfy NRC requirements.

e. The utilities made investments in other portions of the plant in accordance with past CPUC decisions to meet California's energy needs. Typically, the utility would be able allowed to recover that cost in rates over time, plus earn a rate of return on the book value of the investments. Currently, SCE's return on equity is set at 10.45%, and

[3] The numbers referenced here are laid out on p.33 (§5.1.1), as a table containing a breakdown of the estimates of the Present Value Revenue Requirement of the Settlement and the litigation positions of TURN, DRA, and the utilities, in D.14-11-040 – *Decision Approving Settlement Agreement As Amended and Restated By Settling Parties.*

SDG&E's is set at 10.3%. The decision requires the utilities to accept $419 million of that cost, and is in effect, refinancing the public's ownership in another $1 billion in lost returns on plant infrastructure. In addition, the utilities will only get reimbursed for capital costs, plus the cost of borrowing and other expenses, which is now set at 3 percent. That cost to ratepayers is roughly $1,319.4 million, to be collected in rates over the next ten years.

f. SDG&E and SCE's ratepayers will pay $477.3 million until 2022 years for unused nuclear fuel, but may recover up to 95% of that amount if the utilities can find buyers legally authorized by the federal government to purchase such material.

Under the terms of the decision, utility costs are about $1.278 billion. Outside of replacement power, ratepayer costs are about $2.767 billion. However, if the utilities are able to sell unused nuclear fuel to licensed buyers, then the ratepayer share will drop further.

The decision also includes additional ratepayer benefits. Even though the utilities are responsible of almost 100% of the cost of the failed steam generators, shareholder will receive 50% of any money collected through litigation with Mitsubishi Heavy Industries and a much smaller portion of recoveries from the nuclear risk insurer; the greater part of insurance proceeds will be allocated to ratepayers. . If the utilities refinance their outstanding debt, any savings will be shared 50/50 with ratepayers and shareholders. And the utilities that owned and operated the San Onofre nuclear plant must use $25 million of shareholder money to fund a 5-year R&D program run by the University of California to spur immediate and practical methodologies and processes to reduce emissions at existing and future California power plants tasked to replace the lost San Onofre generation.

2) I am asking Commissioner Sandoval to assume the role of Assigned Commissioner and preside over the pending matters in the San Onofre nuclear power plant proceeding. The decision adopting the Settlement was issued last November. The proceeding remains open, however, to determine if certain conduct rules (Rule 1.1) were violated.[4] Two of the parties to the proceeding, both opposed to the Settlement, made formal filings following the decision. These two formal filings are also pending in the proceeding.

The first, an Application for Rehearing, was filed in December. As is our standard practice, this rehearing application is being handled by rehearing attorneys in our Legal Division. The Commission will be conducting a thorough review of the specific allegations of legal error made in the Application for Rehearing. The second, a formal motion seeking sanctions against SCE for

[4] Rule 1.1 of the Commission's Rules of Practice and Procedure states: "Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law."

Rule 1.1 violations (improper communications with decision-makers), was filed in February by the Alliance for Nuclear Responsibility. In this context, it is important to note that the Commission has not yet ruled on the motion. I expect Assigned Commissioner Sandoval and the Administrative Law Judges will conduct a thorough analysis of the above motion requesting sanctions. We may also choose to conduct some type of public, on-the-record hearing, and review and comment by the parties to the Settlement. Such a process could help to affirm or disaffirm that: 1) the settlement was based on evidence in the record; and 2) the evidence was developed through a reason able and fair process.

3) We appreciate your willingness to work with us on your request that the Commission compel Southern California Edison to turn over all internal and external emails relative to San Onofre, the investigation of the steam generators at San Onofre, and the potential settlement or eventual settlement of the San Onofre decommissioning with the CPUC. As you know, California Public Utilities Code Section 583[5] sets restrictions on public release of documents provided by the utilities to the Commission which affect our ability to collect and share documents with the Assembly. There may also be other statutory confidentiality restrictions and privileges that apply under the California Public Records Act and other statutes and rules. All of these legal restrictions can create delays when dealing with a request to produce confidential documents. With that in mind, we would like to work with you and the Committee to develop a coordinated strategy, including a schedule, for the production of Edison San Onofre-related emails.

Two different prosecuting agencies have opened three different investigations into various communications and actions in the PG&E Gas Transmission and Storage rate case. At this point, I do not know if their investigations extend to other matters at the CPUC, including the San Onofre proceeding. If so, I trust that their efforts will identify any wrongdoing here. We at the Commission must ensure that our efforts don't impede the investigative efforts of the prosecutors, or inadvertently compromise their investigative intentions.

Sincerely,

Michael Picker
President, California Public Utilities Commission

[5] California Public Utilities Code Section 583 provides: "No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor."