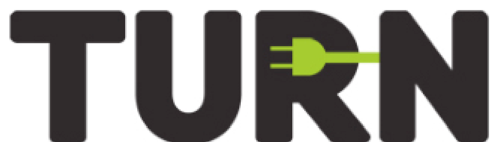
BEFORE THE PUBLIC UTILITIES COMMISSION OF

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	Investigation 12-10-013 (Filed October 25, 2012)
And Related Matters	Application 13-01-016 Application 13-03-005 Application 13-03-013 Application 13-03-014

RESPONSE OF THE UTILITY REFORM NETWORK TO THE AMENDED PETITION FOR MODIFICATION OF DECISION 14-11-040 BY THE ALLIANCE FOR NUCLEAR RESPONSIBILITY



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RESPONSE OF THE UTILITY REFORM NETWORK TO THE AMENDED PETITION FOR MODIFICATION OF DECISION 14-11-040 BY THE ALLIANCE FOR NUCLEAR RESPONSIBILITY

Pursuant to Rule 16.4(f) of the Commission Rules of Practice and Procedure, The Utility Reform Network (TURN) hereby submits this response to the amended Petition for Modification (PFM) of Decision 14-11-040 by the Alliance for Nuclear Responsibility (A4NR).[1] After giving significant consideration to the consequences of such an action, TURN supports the relief sought by the PFM and believes that the Commission should reopen the SONGS investigation to address the public perception that the outcome was a product of intervention by former President Michael Peevey and decide the allocation of costs related to the shutdown facility through litigation rather than via settlement.

In its petition, A4NR argues that recent disclosures regarding a series of oral and written communications between Southern California Edison (SCE) executives and Commission decisionmakers, including former President Michael Peevey, have brought to light "new facts or circumstances which create a strong expectation that [the Commission] would have made a different decision in a prior order."[2] These communications, which occurred before, during and after settlement negotiations, were disclosed by SCE in its April 29, 2015 response to an April 14 ruling by Administrative Law Judges Melanie M. Darling and Kevin Dudney.

A4NR asserts that the failure of SCE to disclose its extensive communications with former President Peevey represents fraud by concealment that unfairly disadvantaged TURN and the Office of Ratepayer Advocates in the settlement negotiations. A4NR argues that, had SCE filed *ex parte* notices disclosing these

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[1] Because the amended petition for modification was filed on May 26, 2015, responses to both the initial and amended petition are due 30 days after the filing of the amended petition.
[2] A4NR PFM, page 1, *citing* D.99-05-013 and D.97-04-049.

communications, “both ORA and TURN would likely have negotiated a better settlement”.[3] As a remedy, A4NR proposes that the Commission set aside approval of the amended settlement agreement, revive the Phase 1 Proposed Decision, and prepare a Proposed Decision in Phase 2 based on the previously submitted briefs. A4NR further proposes that parties be directed to submit written recommendations for “how best to conclude I.12-10-013”.[4]

TURN agrees that recent disclosures detailing extensive communications between SCE and CPUC decisionmakers during the pendency of this proceeding are very troubling. TURN was a good faith participant in the settlement negotiations, and was not aware of the Warsaw note, the private meeting, or any agreement between Mr. Peevey and SCE at any time before or during the extended settlement negotiations that led to the proposed settlement. Had SCE disclosed these communications in a timely manner, this information would have had an impact on settlement negotiations although it is not clear whether the outcome for ratepayers would have been materially different.[5]

As a general matter, TURN takes very seriously its obligations to honor commitments made in a settlement agreement. Over the past several decades, TURN has demonstrated a strong track record of participating in the development of settlements adopted by the Commission and supporting those settlements under all reasonable circumstances. The SONGS settlement agreement explicitly obligates all signatories to support Commission approval,

[3] A4NR PFM, page 8.
[4] A4NR PFM, page 9.
[5] TURN does not agree with A4NR’s assessment of the differences between the Warsaw note and the proposed or amended settlement. An analysis performed by TURN and the Office of Ratepayer Advocates finds that the approved settlement reduces costs to customers by between $780 million and $1.06 billion compared to the terms outlined in the Warsaw note. However, TURN does not believe that there is merit to an extended (and likely unresolvable) debate over the precise nature of any agreement reached by Mr. Peevey and Mr. Pickett in Warsaw or the exact rate impacts that would have occurred under the outline in the Warsaw note compared to those resulting from the far more comprehensive and detailed settlement.

defend the agreement in its entirety and oppose any modifications.[6] The settlement agreement also states that failure to honor these obligations by a settling party authorizes any other settling party to pursue remedies including enforcement at the Commission.[7] These are common terms in settlements submitted for Commission approval that allow parties to make concessions with confidence that other parties will not use the settlement process merely to obtain a result that can be improved upon through subsequent litigation. For these reasons, TURN is extremely reluctant to renounce any settlement to which it is a signatory or to later advocate for changes in material terms.

TURN's decision to sign the settlement was based on its own independently developed litigation positions, a review of the positions put forth by all active parties, and an assessment of potential outcomes based on past Commission decisions relating to imprudence, the treatment of purchased power costs, and the premature shutdown of ratebased facilities. These are the normal criteria by which TURN (and any rational party) typically decides to enter into a settlement. In assessing these criteria and making the decision to settle in this proceeding, TURN coordinated closely with the Office of Ratepayer Advocates. Based on these criteria, the settlement represented a favorable outcome for ratepayers although it falls short of the litigation positions advocated by TURN and ORA.

However, TURN is concerned that recent revelations of extensive private conversations and dealmaking between SCE and Mr. Peevey create the public perception that the settlement process was fundamentally and irreparably tainted and drove outcomes that are unfair to ratepayers. Moreover, ongoing federal and state investigations that caused the disclosure of the Warsaw note may lead to criminal indictments. In light of these extraordinary circumstances, the Commission must take steps to restore public confidence in the legitimacy of

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[6] Amended settlement, Section 5.1.
[7] Amended settlement, Section 5.5.

its process relating to SONGS. The most direct way to restore public confidence on these matters is to reopen the proceeding and determine the allocation of SONGS-related costs without any possible involvement by Mr. Peevey and based exclusively on testimony, evidentiary hearings and briefs.

If the Commission grants the PFM, it should move promptly to resolve contested issues of fact and law in order to bring closure to a proceeding that began almost three years ago. As recommended by A4NR, the Commission can immediately place the Phase 1 Proposed Decision on the Commission agenda for a vote. The positions taken by parties in Phase 1 and 1A were put forth in testimony, subjected to cross-examination during two rounds of evidentiary hearings, and fully briefed. With respect to Phase 2, the Commission can proceed to issue a proposed decision based on the prepared testimony, evidentiary hearings and full briefing already done by active parties. Though the testimony, hearings and briefing in both phases occurred in 2013, the facts and the law have not changed since that time. The existing record provides a sufficient basis to support the adoption of final decisions in these two phases.

While a Phase 2 decision is being prepared, the Commission should initiate Phase 3 and establish a schedule for testimony, hearings, briefing and the issuance of a proposed decision. TURN also recommends that the Commission grant ORA's motion for a ban on *ex parte* communications by SCE for the remainder of the investigation.

It is not clear how the litigated outcomes in a reopened proceeding would compare to the approved settlement. The settlement reflects a compromise of positions and could not be relied upon by any party, or the Commission, to determine the reasonableness of a litigated outcome. What is clear is that the resolution of disputes through an open and formal litigation process is the best

way to eliminate any lingering perception that private communications between SCE and the Commission served as the basis for the ultimate outcome.

If the Commission grants the PFM, sets aside the settlement, and reopens the investigation, TURN is ready to litigate the contested factual and legal issues in pursuit of the best possible outcome for consumers.

Respectfully submitted,

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