DRA

Division of Ratepayer Advocates
California Public Utilities Commission

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Michael R. Peevey, President
Timothy Alan Simon, Commissioner
Michel P. Florio, Commissioner
Catherine J.K. Sandoval, Commissioner
Mark J. Ferron, Commissioner
CALIFORNIA PUBLIC UTILITIES COMMISSION
505 Van Ness Avenue
San Francisco, CA 94102

Re: Removal from Rates of Costs Associated with San Onofre Generating Station (SONGS)

Dear President Peevey and Commissioners:

I write to ask you to remove SONGS from Southern California Edison Company's (SCE) and San Diego Gas & Electric Company's (SDG&E) rate base now, instead of waiting several more months and allowing hundreds of millions of dollars in needless costs to be borne by customers. The only germane fact that bears on the decision to remove SONGS from rate base now is whether SONGS Units 2 and 3 are "used and useful" assets. They are not because neither unit is generating electricity or providing other ongoing benefits to customers (i.e. voltage support, capacity, etc.). You must therefore find that SONGS does not qualify for rate base treatment now because it is not in commercial operation and hasn't been for several months. The Commission already has ample evidence that SONGS Unit 2 will not be online anytime soon and that Unit 3 may never return to service. But regardless of when the units may or may not return to service, the time is now ripe for the Commission to act on this ratemaking issue.

It is unfortunate that a resource as large as SONGS has been taken out of service with no warning, prompting concern about the need to find replacement resources. To address that need, President Peevey's call for the formation of a task force is a responsible step to deal with the possible energy shortage. But the task force is not responsible for ratemaking issues and will not consider whether customers should continue paying the entities that own SONGS a return on equity for the plant that is out of service. Only the Commission may make that decision, and it should address the issue right away.

Taking action now to remove SONGS from rate base is a separate matter from an investigation into the causes and responsibilities for the SONGS outage. As you know, Public Utilities Code Section 455.5[1] requires the jurisdictional utilities to notify the Commission whenever major generation or production facilities are not operational for nine months or more, and requires the Commission to open an investigation at that time. But Section 455.5 is not intended to be a free pass for utilities to earn a return on nonfunctioning hardware for nine months. Nor does Section 455.5 limit the Commission's authority to act sooner, and indeed the Commission has a responsibility to act sooner when the facts before it demonstrate that a major part of a jurisdictional utility's plant is out of service.

Section 454.8 requires the Commission to allow jurisdictional utilities to recover the cost of plant it deems "used and useful." It would be an absurd outcome if the Commission did not therefore remove a Corporation's plant from rate base once it did not qualify as "used and useful."[2] The clear legislative intent of Section 454.8 is to allow recovery for useful plant. In the case of SONGS, the Commission made clear what conditions needed to be met before SCE could include SONGS 2 in rate base.[3] In its 1982 decision denying a rehearing request by SCE, the Commission followed its staff recommendation that SONGS 2 should not be included in rate base until it was in commercial operation. The Commission did not think it reasonable for ratepayers to bear the full cost of the plant without receiving commensurate benefits of generation and reliable service.[4] Accordingly, the plant was only allowed in rate base when it was reliably generating power.[5]

In a related case, the California Supreme Court held that Public Utilities Code Section 454.8 applies as soon as the Commission determines that the new plant "is used and useful." In that case "Diablo Canyon Unit 1 must be deemed used and useful since it is in commercial operation, generating power with substantial fuel savings, under a certificate of public convenience and necessity."[6] It seems very obvious that a fundamental prerequisite for a power generator to be considered "used and useful" is that it actually be generating power. SONGS does not meet this test. Furthermore, the Commission has been on notice since January of 2012 of SONGS' nonfunctional status.

The cost to ratepayers if the Commission does not act soon is significant. In its recent July 31 10Q filing, Edison International reported that "SCE's 2012 annual revenue requirement request for its direct operating and maintenance costs, depreciation and return on its investment in San Onofre Unit 2, Unit 3 and related common plant is approximately $650 million." That translates to about $54 million per month that SCE is charging its customers for a plant that is no

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[1] All code section references are to the California Public Utilities Code.

[2] Interpretation of statute should be practical, not technical, and should result in wise policy rather than mischief or absurdity. Valley Vista Services, Inc. v. City of Monterey Park, 118 Cal. App. 4th 881, 13 Cal. Rptr. 3d 433 (2d Dist. 2004).

[3] Order modifying ALJ's ruling concerning the rate base effect of SONGS 2 on SoCal Edison Co. and SDG&E Co. rate bases and denying rehearing. 1982 Cal. PUC LEXIS 1283 (Cal. PUC 1982)

[4] Id. Page 20.

[5] Id. Page 22.

[6] Toward Util. Rate Normalization v. Public Utils. Com, 44 Cal. 3d 870 (Cal. 1988)

longer "used and useful." Furthermore, on July 31, 2012 the Associated Press reported that Edison International Chairman Ted Craver "left open the possibility that the heavily damaged generators in the Unit 3 reactor might be scrapped. It's also possible the plant will never return to its full output of electricity, unless the four generators are replaced."[7]

Unit 2 of SONGS has been shut down since January 9, 2012. On January 31, 2012, SCE shut down Unit 3 "... after steam generator tube leak [was] identified..." SONGS has thus been completely out of service since January and, according to SCE's briefing to CPUC staff on July 23, 2012, will remain out of service until at least November 2012 (Unit 2) and December 2012 (Unit 3). These dates appear overly optimistic based on more recent company disclosures. Since January 2012, customers have been, and still are, paying for a return on investment and operational and maintenance expenses for units that are not operating. SCE's customers are paying an 8.74% return on rate base, which incorporates an 11.5% return on equity, for this plant as if it were in service and producing energy. SDG&E is collecting a similar return from its customers.

DRA therefore requests that President Peevey order SCE and SDG&E to immediately file Advice Letters to remove from rates the revenues authorized to recover all costs – capital investment related and expenses associated with SONGS, to be effective the date of the decision on the Advice Letters, and to continue for as long as the units are out of service.[8] When either Unit 2 or Unit 3 recommences commercial operation, then both utilities can request that their SONGS revenue requirement be put back in rates.

Sincerely,

Joseph P. Como
Acting Director

[7] http://hosted.ap.org/dynamic/stories/U/US_NUCLEAR_PLANT_PROBLEMS?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT

[8] There are several procedural paths by which this could be done. One would be to issue Assigned Commissioner Rulings in the pending General Rate Cases for SCE and SDG&E.

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