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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

ADMINISTRATIVE LAW JUDGES' RULING DIRECTING SOUTHERN CALIFORNIA EDISON COMPANY TO PROVIDE ADDITIONAL INFORMATION RELATED TO LATE-FILED NOTICES OF *EX PARTE* COMMUNICATIONS

1. Introduction

1.1. Background

On October 25, 2012, the Commission issued an order instituting an investigation on its own motion into the rates, operations, practices, services and facilities of Southern California Edison Company (SCE) and San Diego Gas and Electric Company associated with the San Onofre Nuclear Generating Station Units 2 and 3 (collectively, SONGS). Several proceedings were consolidated with

the investigation and they were characterized as “ratesetting” pursuant to the Commission’s Rules of Practice and Procedure (Rules).¹

On November 25, 2014, the Commission issued Decision (D.) 14-11-040, which adopted The Amended and Restated Settlement Agreement, dated September 23, 2014, in the Order Instituting Investigation (OII), Investigation (I.) 12-10-013. The statutory deadline for completion of this OII proceeding has been extended twice. (*See* D.15-01-037 and D.15-03-043). Thus, the proceeding remains open “for consideration and potential prosecution of possible Rule 1.1 violations based on conduct of parties and/or their representatives during the course of these proceedings.” (*See* D.14-11-040, Ordering Paragraph 7.)

1.2. Late Filed *Ex Parte* Notice of *Ex Parte* Communication

On February 9, 2015, SCE filed “Southern California Edison Company’s (U338E) Late-Filed Notice of *Ex Parte* Communication” (Late *Ex Parte* Notice) in this OII proceeding.

The Late *Ex Parte* Notice states “ [o]n or about March 26, 2013, former SCE Executive Vice President of External Relations, Stephen Pickett, met with then-President Michael Peevey at the Bristol Hotel in Warsaw, Poland in connection with an industry event” and that the two discussed “the status of SCE’s efforts to restart San Onofre Nuclear Generating Station (SONGS) Unit 2” and “a framework for a possible resolution of the Order Instituting Investigation

¹ *See* caption.

(OII).”² Further, the notice states that “Mr. Pickett took notes during the meeting, which Mr. Peevey kept; SCE does not have a copy of those notes.”³

The Late *Ex Parte* Notice, continues: “Mr. Pickett does not recall exactly what he communicated to Mr. Peevey, it now appears that he may have crossed into a substantive communication.”⁴ SCE reported this communication as an *Ex Parte* Communication, but expressed doubt as to whether it qualifies as a reportable ex parte communication.

1.3. Request for Sanctions

On February 10, 2015, the Alliance for Nuclear Responsibility (AFNR) filed a motion which “request[ed] the Commission to investigate the extent of sanctions it should order against [SCE] for violations of Rule 1.1 and, its predicate, Rule 8.4” AFNR specifically notes that SCE filed the Late Ex Parte Notice nearly two years after the communication occurred. The motion has not yet been ruled upon.

1.4. California Attorney General’s Release of Two-Page Document

On April 10, 2015, the California Attorney General provided the Commission a two-page document which appeared to be notes from the meeting between Mr. Pickett and Mr. Peevey at the Hotel Bristol in Warsaw, Poland on March 26, 2013 (Notes). Indeed in a press release⁵ the same day, SCE stated that

² Late *Ex Parte* Notice at 1.

³ *Ibid.*

⁴ *Ibid.*

⁵ See attachment A.

the Notes were “drafted by then SCE executive Stephen Pickett, with annotations by Commission President Michael Peevey.”

Within hours of obtaining the Notes, the Commission promptly produced them via an e-mail to the service list of the OII. In addition, multiple parties had previously requested copies of the Notes via California Public Records Act requests. Accordingly, also on April 10, 2015, the Commission responded to these requests, and produced the Notes.

On April 13, 2015, SCE filed and served a “Supplement” to its Late-Filed *Ex Parte* Notice which attached the Notes and asserted that SCE did not have the Notes in its possession prior to April 10, 2015.

2. The Commission’s Rules

Rule 1.1 of the Commission’s Rules, titled “Ethics,” states “[a]ny 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. . . never to mislead the Commission or its staff by an artifice or false statement of fact or law.”

Rule 8.4 states: *Ex-parte* communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person.

Rule 8.4 continues “[n]otice of *ex parte* communications shall be filed within three working days of the communication.” “The notice shall include the following information: . . .(c) A description of the interested person's, but not the decision maker's (or Commissioner's personal advisor's), communication.”

The Commission may seek additional information from a party regarding a late-filed or undisclosed *ex parte* communication for the purpose of evaluating

possible sanctions, including whether the breach of Rule 8.4, under the totality of circumstances, is also a violation of Rule 1.1.

3. SCE Must Provide Additional Information to the Commission and Parties to I.12-10-013

The Late-filed *Ex Parte* Notice offered little information about the content of the meeting between Commission President Peevey and SCE's Executive Vice President. The California Attorney General recently released the Notes to the Commission, which subsequently released the Notes to the parties in I.12-10-013. This ruling directs SCE to produce the following information and documents, including written communications (e.g., e-mail) and documents pertaining to oral communications (including references to written communications) involving possible settlement of the consolidated proceedings comprising the OII, to the Commission and the service list for I.12-10-013 no later than April 29, 2015. If SCE asserts any privilege as grounds to withhold responsive documents or information, then SCE shall provide a privilege log to the service list by April 29, 2015.

1. SCE shall produce all documents pertaining to oral and written communications about potential settlement of the SONGS OII between any SCE employee and CPUC decisionmaker(s) between March 1, 2013 and November 31, 2014 which reported, discussed, referred to, or otherwise contained a description of such communications.
2. SCE shall produce all written communications internal to SCE which reported, discussed, referred to, or otherwise contained, a description of oral or written communications about settlement with CPUC decisionmaker(s), identified pursuant to Question 1 above.

3. SCE shall promptly file notices of any undisclosed communication identified in Question 1 above or any other oral or written *ex parte* communication relating to the substantial issues described in the OII and the Scoping memos of various phases of the consolidated proceedings.

No party is barred from utilizing any of the responsive information and documents provided by SCE in response to this ruling, in support of any Petition for Modification (PFM) of the Decision, if the PFM is otherwise compliant with Rule 16.4.

IT IS RULED that:

1. Southern California Edison Company (SCE) must file and serve their response to this request by April 29, 2015.
2. Within five business days of the date SCE serves its responses to this Ruling, Alliance for Nuclear Responsibility, as Moving Party, may file an amended Motion for Sanctions to respond to, or include, any new information which may be provided by SCE.

Dated April 14, 2015, at San Francisco, California.

/s/ MELANIE M. DARLING
Melanie M. Darling
Administrative Law Judge

/s/ KEVIN DUDNEY
Kevin Dudney
Administrative Law Judge

ATTACHMENT A

Southern California Edison Statement on San Onofre
Nuclear Plant Settlement

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Southern California Edison Statement on San Onofre Nuclear Plant Settlement

ROSEMEAD, Calif., April 10, 2015 — Notes filed today in federal court relate to a notice Southern California Edison filed in February with the [California Public Utilities Commission](#) (CPUC) regarding a conversation with a CPUC commissioner in 2013. The notes underscore numerous differences between the conversation in 2013 and the final settlement of the San Onofre nuclear plant investigation.

The notes were drafted by then SCE executive Stephen Pickett, with annotations by CPUC President Michael Peevey, who requested the meeting to get an update on efforts to restart San Onofre. As SCE explained in the CPUC notice, on March 26, 2013, Mr. Peevey initiated a communication in which he expressed his thoughts on the structure of a possible resolution of the Order Instituting Investigation (OII) for the San Onofre nuclear plant. Mr. Peevey indicated he would consider such a resolution acceptable but would nonetheless require agreement among at least some of the parties to the Investigation.

It's important to note the settlement was reached a year later after many months of give-and-take among SCE, San Diego Gas & Electric, the Utility Reform Network and the Office of Ratepayer Advocates. Mr. Pickett did not participate in the settlement negotiations.

The settlement was subject to extensive review, hearings, and comment in a public process. And the CPUC did not accept the settlement as proposed. Instead, Commissioner Florio, who was assigned to oversee the proceeding, and two Administrative Law Judges issued a ruling requesting modifications to the settlement, which the settling parties later accepted. The settlement was accepted by a unanimous vote the CPUC only after additional public comment on these changes,

The final settlement approved by the parties and adopted by the CPUC is different in several important ways from the framework in the notes:

- The notes call for GHG research contribution of \$80 million; the original settlement did not address and the final provides for \$25 million.
- The notes call for disallowance of replacement steam generators (RSG), apparently from their installation; settlement and amended settlement disallow only from Feb. 1, 2012.
- The notes call for full recovery of non-RSG investment with debt return (approximately 5.5 percent); settlement and amended settlement allow with lower return (approximately 2.6 percent).

- The notes call for all proceeds from a NEIL insurance to ratepayers; settlement allowed shareholders to keep 17.5 percent; amended settlement reduces shareholder total to 5 percent.
- Notes reflect different ideas for splitting Mitsubishi Heavy Industry arbitration proceeds; settlement called for different split; amended settlement provides for 50/50 sharing, which is different from both approaches.
- The notes address decommissioning costs; these are not addressed in settlement or amended settlement. It's important to note that in March 2013 SCE was pursuing federal regulatory approval to restart San Onofre Unit 2.
- The notes permit recovery of authorized operations and maintenance costs to shutdown, plus 6 months; settlement permits recovery of recorded O&M except 2012 inspection and repair.

SCE announced in June 2013 that it would [retire San Onofre Units 2 and 3](#), and begin preparations to decommission the facility. SCE has established core principles of safety, stewardship and engagement to guide decommissioning. For more information about SCE, visit www.songscommunity.com

About Southern California Edison

An Edison International (NYSE:EIX) company, Southern California Edison is one of the nation's largest electric utilities, serving a population of nearly 14 million via 4.9 million customer accounts in a 50,000-square-mile service area within Central, Coastal and Southern California.

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(End of Attachment A)