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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

JOINT RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE REOPENING RECORD, IMPOSING *EX PARTE* CONTACT BAN, CONSOLIDATING ADVICE LETTERS, AND SETTING BRIEFING SCHEDULE

Summary

This ruling reopens the record to review the 2014 Settlement Agreement against our standards for approving settlements as set forth in Rule 12.1(d) of the Commission's Rules of Practice and Procedure, in light of the Commission's December 2015 Decision fining Southern California Edison Company for failing to disclose *ex parte* communications relevant to this proceeding. A procedural schedule is set out below.

1. Background

On November 25, 2014, the Commission issued Decision (D.) 14-11-040 which approved a Settlement Agreement among Southern California Edison

Company (Edison), San Diego Gas & Electric Company (SDG&E), Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), Friends of the Earth, and Coalition of California Utility Employees. The Settlement Agreement provided for resolution of rate recovery issues related to the premature shutdown of San Onofre Nuclear Generating Station (SONGS), following a steam generator tube leak on January 31, 2012.

The primary result of the settlement was ratepayer refunds and credits of approximately \$1.45 billion. Edison and SDG&E stopped further collection of the Steam Generator Replacement Project costs in rates, returned all such costs collected after January 31, 2012 to ratepayers, and accepted a rate of return of 3% on other prematurely retired SONGS assets. After deducting litigation costs, the ratepayers and shareholders will share 50%/50% in all recovery from the pending multi-billion dollar arbitration claim against Mitsubishi regarding the Steam Generator Replacement Project.

The Settlement Agreement resolved all issues in the Order Instituting Investigation which included an investigation into the SONGS shutdown as well as the Commission's deferred general rate reviews of 2012 SONGS-related expenses for each utility¹ and the reasonableness review of each utility's recorded costs for replacing four steam generators at SONGS.²

On February 9, 2015, Edison late-filed a Notice of Ex Parte Communication regarding a meeting that occurred on or about March 26, 2013 between Edison's

¹ Application 13-01-016 (Edison).

² Application 13-03-005; The replacement of the four steam generators was approved by the Commission in Decision 05-12-040 which ordered a reasonableness review of the utilities' expenses related to the replacement project after completion.

then-Executive Vice President Stephen Pickett and the Commission's then-president, Michael Peevey, at an industry conference in Warsaw, Poland regarding ratemaking treatment for SONGS post-shutdown costs.

On August 5, 2015, based on Edison's admissions, the then-assigned Administrative Law Judge (ALJ) ruled that Edison committed ten separate violations of Rule 8.4 by failing to report oral and written communications between Edison and Commission decisionmakers which met the definition of *ex parte* communication as set forth in the Commission's Rules of Practice and Procedure (Rules). The Ruling also ordered Edison to show cause why it should not be held in contempt of the Commission and sanctioned for ten violations of Rule 8.4 as well as Rule 1.1, the Commission's Ethics Rule.

On December 8, 2015, the Commission issued Decision 15-12-016 which affirmed eight violations of Rule 8.4 of the Commission's Rules by Edison stemming from its failure to report, before or after, *ex parte* communications which occurred between Edison and a Commissioner. That decision also found that Edison twice violated Rule 1.1, the Commission's Ethics Rule, as a result of the acts and omissions of Edison and its employees which misled the Commission, showed disrespect for the Commission's Rules, and undermined public confidence in the agency. The Commission imposed a fine of \$16,740,000 for the violations, and ordered Edison to create and maintain a website tracking all non-public individual communications related to these consolidated proceedings by SCE representatives with Commissioners, their advisors, or other Commission decisionmakers.

The Alliance for Nuclear Responsibility on April 27, 2015, as amended on May 26, 2015, and ORA on August 11, 2015, both filed Petitions for Modification of D.14-11-040 alleging that had Edison properly and timely filed the *ex parte*

notices, the terms of the Settlement Agreement would have been more favorable to ratepayers.

On June 24, 2015, TURN filed its response to Alliance for Nuclear Responsibility's Petition for Modification. TURN's response described the issues created by the series of events recounted above and concluded that the "recent revelations of extensive private conversations and deal making between Edison and Mr. Peevey create the public perception that the settlement process was fundamentally and irreparably tainted and drove outcomes that are unfair to ratepayers. . . . and that 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."³

2. Discussion

We agree that the record must be reopened and the Settlement Agreement should be reviewed in light of the intervening *ex parte* disclosures and Commission decision imposing sanctions as a predicate to considering further procedural actions. However, we are also mindful of TURN's and ORA's estimate that the actual Settlement Agreement obtained between \$780 million and \$1.06 billion more for ratepayers than the terms of the *ex parte* discussions. As a result of the approved Settlement Agreement, for example, ratepayers are receiving nearly \$400 million from the settled insurance claim with Nuclear Electric Insurance Limited. Moreover, a litigated outcome is uncertain.⁴

³ TURN Response at 2-4.

⁴ The power to set rates for public utility and common carrier goods and services is one of the Commission's most important duties. Cal. Const. art. XII §§ 4, 6 (authority to fix rates); Pursuant

Footnote continued on next page

Therefore, we have decided to reopen the record and review the Settlement Agreement against our standards for approving settlement agreements as set forth in Rule 12.1(d) of the Commission's Rules: "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." The parties should prepare their best assessment of whether the Settlement Agreement is reasonable in light of the record, consistent with the law, and in the public interest. Then, in reply briefs, each party will be able to comment and critique the other presentations.

To enable the parties to the Settlement Agreement to participate freely in developing the record, we will temporarily suspend those parties' obligations to comply with sections 5.1 and 5.8 of the Settlement Agreement. Accordingly, parties to the Settlement Agreement are not required to support the Settlement Agreement, but each party must provide clear and logical factual and legal support for its assessment of the Settlement Agreement.

In their reply briefs, parties may make recommendations for any further procedural steps they believe to be warranted based on the presentations.

to Pub. Util. Code § 451 all rates and charges collected by a public utility must be "just and reasonable," and a public utility may not change any rate "except upon a showing before the commission and a finding by the commission that the new rate is justified." (§ 454.) The Commission requires that the public utility demonstrate with admissible evidence that the costs it seeks to include in revenue requirement are reasonable and prudent.

EVENT	DATE
Edison File and Serve Summary of Settlement Agreement, which shall include a Status Report on Implementation of Settlement Agreement, specify and quantify all accounting and ratemaking actions taken to date, planned actions for 2016, and planned actions required for future years.	June 2, 2016
All Parties File and Serve Briefs assessing whether Settlement Agreement meets Commission standards for approving settlements.	July 7, 2016
All Parties File and Serve Reply Briefs and Procedural Recommendations.	July 21, 2016

3. Ex Parte Ban

Effective immediately, any and all *ex parte* communications with any decisionmaker or Commissioner advisors regarding issues in this reopened proceeding are prohibited. Further, all communications with any Commissioner or Commissioner advisors regarding procedural matters related to this docket are also prohibited.

4. Consolidate Re-submitted Advice Letters Regarding Greenhouse Gas Research and Reduction Program

Advice Letters from Edison and SDG&E implementing the Green House Gas Research and Reduction Program portion of the Settlement Agreement are currently pending re-submission to the Commission’s Energy Division. Energy Division rejected the initial Advice Letters on March 11, 2016, because the Advice Letters failed to: (1) include payment of administrative costs by utility shareholders and, (2) address how the utilities intended to negotiate proceeds from intellectual property that might arise from the directed research.

No later than five days after submitting the Advice Letters, Edison and SDG&E must file with the Commission's Docket Office and serve a compliance filing including the re-submitted Advice Letters to all parties in this proceeding. As provided in Rule 7.4 of the Commission's Rules of Practice and Procedure, these Advice Letters involve questions of fact and law related to this proceeding. Therefore, the re-submitted Advice Letters, upon filing and service as a compliance filing in this proceeding, shall be consolidated into this proceeding for resolution through a Commission decision.

In their briefs scheduled above, the parties should address whether the Green House Gas Research and Reduction Program portion of the Settlement Agreement is consistent with the Commission's standards for approving settlement agreements. The parties should specifically address, among other things, the *ex parte* Notice (late-filed) submitted by the University of California on December 15, 2015.

The parties should comment on the Green House Gas Research and Reduction Program portion of the Settlement Agreement as a standalone issue; that is, whether this program violates any of the standards found in Rule 12.1(d). To the extent any party contends that the Green House Gas Research and Reduction Program portion of the Settlement Agreement fails to meet the Commission's standards for approving a settlement agreement, but that the overall Agreement does meet the Rule 12.1(d) standards, that party should also propose a remedy.

Therefore, **IT IS RULED** that:

1. The record in these consolidated proceedings is reopened.

2. Parties to the Settlement Agreement are temporarily relieved of their obligations to comply with sections 5.1 and 5.8 of the Settlement Agreement during the pendency of this reopened proceeding.

3. Edison shall file and serve a Summary of Settlement Agreement, including a status report on implementation of the Settlement Agreement, specify and quantify all accounting and ratemaking actions taken to date, planned actions for 2016, and planned actions required for future years, as scheduled above.

4. The parties shall file and serve Initial and Reply Briefs assessing whether the Settlement Agreement meets the Commission's standard for approving such agreements in Rule 12.1(d) as scheduled above. All briefs filed must provide clear and logical factual and legal support for the filer's assessment of the Settlement Agreement, and include proposed remedies consistent with the Commission's authority. Reply briefs may also contain any recommendations for further procedural actions.

5. No later than five days after submitting the Advice Letters, Edison and SDG&E shall file with the Commission Docket's office and serve on all parties to this proceeding a compliance filing including the re-submitted Advice Letters regarding the Greenhouse Gas Research and Reduction Program. Upon such filing and service, the Advice Letters are consolidated into this proceeding for resolution through a Commission decision.

6. The parties shall include in their Initial and Reply Briefs a separate analysis of the Greenhouse Gas Research and Reduction Program portion of the Settlement Agreement.

7. Effective immediately, any and all ex parte communications with any decisionmaker or Commissioner advisor regarding substantive issues in this reopened proceeding are prohibited.

8. Effective immediately, any and all communications with any Commissioner or their advisors regarding procedural issues in this reopened proceeding are prohibited. Such procedural communications may be directed to the assigned Administrative Law Judge.

Dated May 9, 2016, at San Francisco, California.

/s/ CATHERINE J.K. SANDOVAL

Catherine J.K. Sandoval
Assigned Commissioner

/s/ MARIBETH A. BUSHEY

Maribeth A. Bushey
Administrative Law Judge