BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authorization: (1) to replace San Onofre Nuclear Generating Station Unit Nos. 2 & 3 (SONGS 2 & 3) steam generators; (2) establish ratemaking for cost recovery; and (3) address other related steam generator replacement issues.	)	Application 04-02-026

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Dated: May 10, 2004

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Pursuant to Rule 45(c) of the California Public Utilities' ("CPUC" or "Commission"). Rules of Practice and Procedure, San Diego Gas & Electric Company ("SDG&E") submits it Response to Southern California Edison Company's ("SCE" or "Edison") Motion for Order to Show Cause Why It Should Not Participate In The San Onofre Nuclear Generating Station ("SONGS") Steam Generator Replacement Project ("SGRP") ("Show Cause Motion" or "Motion").

SCE requests the Commission to establish a schedule to decide this motion on or before September 15, 2004. As it has stated repeatedly, SCE alleges it must have this relief because it needs interim authorization from the CPUC "to preserve the option of the SGRP" in the 2009-2010 time period by executing replacement steam generator ("RSG") fabrication contracts at a potential cost of up to $50 million of contractual commitment costs, other support costs, and cancellation charges. SDG&E's disagreement with SCE's

contention that this Phase 1 decision is necessary by September has earlier been described in SDG&E's Protest and Opening Brief and need not again be repeated.

SCE now, for the first time, asserts that it requires a decision by September 15th why SDG&E should not participate in the SGRP at its 20% ownership share based on its argument that "SDG&E's refusal to participate threatens to preclude the timely execution of the RSG fabrication contracts." Presumably its statement respecting "SDG&E's refusal to participate" is in reference to SDG&E's protest of Edison's application; its First Amended Complaint for Declaratory Order filed in Superior Court asking for a declaration that an operating impairment exists under the Operating Agreement; and its insistence that the SGRP and, if agreed by the parties, the SONGS Operating Impairment issues be arbitrated pursuant to the Operating Agreement. For the reasons described below, SCE's claims are utterly misplaced and are an only too obvious effort to subvert the carefully crafted terms of the SONGS Operating Agreement.

I.

THE COMMISSION SHOULD SUMMARILY REJECT SCE'S SHOW CAUSE MOTION

A. SCE's conveniently ignores terms in the Operating Agreement that allow it to enter into SGR fabrication contracts and make reasonable expenditures despite the existence of disputes among co-owners when it asserts that SDG&E's alleged refusal to participate in the SGRP threatens to preclude the timely execution of these contracts.

SCE's arguments relative to the Commission's jurisdiction over long-term resource planning as it relates to the power available from SONGS 2 & 3 is completely misplaced. SDG&E does not dispute this point. Indeed, it is clear that the Commission has jurisdiction over long-term resource planning issues for its jurisdictional utilities, and the SONGS power is obviously a factor to be considered for SDG&E and SCE in

developing and revising their long-term resource plans. The fundamental point the Commission should recognize, however, is that SCE's proposed SGRP presents a threshold contractual interpretation issue. As SDG&E has explained, an "Operating Impairment" exists under the Operating Agreement, thus triggering Section 16 of that Agreement in which SDG&E has the right not to participate in paying for the proposed project in exchange for a reduction in SDG&E's ownership interest in SONGS 2 & 3.[1] SDG&E has appropriately filed a court action and served a notice of arbitration to resolve these matters. The Commission should therefore defer action on SCE's Application until the arbitration and court action are completed.

As described below, there is no imperative for the Commission to take action before the superior court and arbitration proceedings have concluded. As SDG&E has previously explained, there is still adequate time for the contract disputes to be resolved and SDG&E's long-term resource planning can reflect both full and reduced availability of SONGS power in the future.

Edison's argument, however, that SDG&E's actions to date threaten to preclude the timely execution of RSG fabrication contracts is utterly misplaced. It is nothing more than a pretense to cover Edison's conspicuous efforts to circumvent the intent and contractual provisions of the Operating Agreement and to hijack the deliberative processes contemplated by this agreement that were specifically designed to deal with massive expenditures such as the SGRP.

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[1] Tellingly, SCE in footnote 2 to its Reply to Protests states that SDG&E's contention that an "Operating Impairment" as that term is used in the Operating Agreement "ignores the narrow criteria that define such a classification" but does not acknowledge that this "narrow criteria" includes "any event or circumstance" that has the "reasonably anticipated effect of reducing" the reliability of SONGS Units 2 and 3. In its Application, SCE states that as a result of steam generator degradation, there is a 25 percent probability that Unit 2 and a 15 percent probability that Unit 3 will not be able to operate beyond the "Fuel Cycle 16 Refueling and Maintenance Outage," which, according to SCE, could occur as early as 2009.

Edison, not surprisingly, fails to explain how SDG&E's actions can "threaten to preclude the timely execution" of these contracts since Section 6.2.6 of the Operating Agreement defines the obligations of the parties during a dispute. This provision puts to rest Edison's spurious argument. This section provides that "[d]uring disputes, the Operating Agent shall continue to take such reasonable actions and make such reasonable expenditures which in its judgment are necessary for the continued safe and reliable operation and maintenance of, and the making of Capital Improvements for ... SONGS 2 & 3 ..." It further provides that the "Operating Agent shall be authorized, but not obligated, to proceed with Restoration Work in accordance with this Section 6.2.6." Little more needs to be said about the disputes that clearly exist among the co-owners under the Operating Agreement concerning the SGRP and whether an Operating Impairment exists. These disputes trigger the application of Section 6.2.6, which allows SCE at its discretion to proceed at any time with SGR fabrication contracting and other SGRP activities.

No better illustration of the fallacy of Edison's position can be provided than the existing dispute surrounding approval of the 2004 SONGS 2 & 3 Operating and Maintenance Budget and the SONGS 2 & 3 Capital Budget. SONGS has not shut down as a result of those budgets being in dispute. In fact, regardless of that dispute because SCE is able to continue to do all things in its judgment that are necessary for the continued safe and reliable operation and maintenance of, and the making of capital improvements for, SONGS 2 & 3. This is precisely why the co-owners agreed to the terms found in Section 6.2.6 of the Operating Agreement that allow the Operating Agent to make commitments and spend money during the existence of a dispute. This same

principle applies to the execution of the SGR fabrication contracts and other financial commitments it describes in its application.

If the Commission nonetheless allows SCE to proceed on the timeline Edison has suggested with its SGR fabrication contracts and other commitments, it must place the cancelled or abandoned plant cost recovery risk fully on Edison. This is appropriate since SCE proceeded with its application without the benefit of co-owner approval as is contemplated by the Operating Agreement. In addition, SDG&E questions the cost-effectiveness of this project from its customers' perspective. In these circumstances, it would be inappropriate for the Commission to expose SDG&E to any disallowance risk associated with SCE's abandonment of this project based on the Commission's final decision.

For the foregoing reasons, the Commission should deny Southern California Edison Company's Show Cause.

Respectfully submitted,

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Dated: May 10, 2004

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Diego; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 101 Ash Street, San Diego, California 92101.

I am readily familiar with the business practice of San Diego Gas & Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On May 10, 2004, I served a true copy of: **RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) TO SOUTHERN CALIFIORNIA EDISION COMPANY'S MOTION FOR ORDER TO SHOW CAUSE WHY IT SHOULD NOT PARTCIPATE IN THE SONGS 2 & 3 STEAM GENERATOR REPLACEMENT PROJECT** by e-mail, and by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of San Diego Gas & Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to:

California Public Utilities Commission Docket Office
505 Van Ness Ave
San Francisco, CA 94101-3214

All parties on the official service list for A.04-02-026 (via e-mail)

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 10, 2004.

/s/ Brandon Weisman

BRANDON WEISMAN