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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 Units 2 & 3 Steam Generators; (2) Establish Ratemaking for Cost Recovery; and (3) Address Other Related Steam Generator Replacement Issues.	Application 04-02-026 (Filed February 27, 2004)

REPLY OF SOUTHERN CALIFORNIA EDISON COMPANY (U-338E) IN SUPPORT OF MOTION FOR AN ORDER THAT SAN DIEGO GAS & ELECTRIC COMPANY SHOW CAUSE WHY IT SHOULD NOT PARTICIPATE IN THE SONGS 2 & 3 STEAM GENERATOR REPLACEMENT PROJECT

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Dated: **May 17, 2004**

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Pursuant to Rule 45(g) and with the permission of assigned Administrative Law Judge (ALJ) Jeffrey O'Donnell,[1] Southern California Edison Company (SCE) submits this Reply to San Diego Gas & Electric Company's (SDG&E's) Response, dated May 10, 2004, to SCE's Motion for an order directing SDG&E to show cause why it should not participate at its 20% ownership share in the San Onofre Nuclear Generating Station Unit Nos. 2 & 3 (SONGS 2 & 3) steam generator replacement project (SGRP).

I.

DISCUSSION

According to SDG&E, the California Public Utilities Commission (Commission) should "step aside" and allow the future of SONGS 2 & 3 – representing a significant fraction of Southern California's available generation – to

1 SCE received permission to file this Reply from ALJ O'Donnell on May 12, 2004 via telephone.

be decided by courts and arbitrators through proceedings that SDG&E has recently initiated. According to SDG&E's demand for arbitration, a privately-selected *arbitrator* should decide the issue of whether steam generator replacement at SONGS 2&3 should proceed. We disagree. At the end of the day, it will be up to the Commission to decide whether replacing steam generators at SONGS 2 & 3 is cost-effective for SCE and SDG&E, and if so, whether SDG&E should participate in paying the cost of SGRP and retain its ownership share of SONGS 2& 3. Because these issues are of critical importance to California and the ratepayers of SCE and SDG&E, they are appropriately addressed by the Commission at this time. Contrary to SDG&E's suggestion, they are not merely "contractual" disputes among the SONGS 2 & 3 co-owners to be decided by an arbitrator or a court without reference to or consideration of the public interest.

SDG&E's primary argument – that SGRP constitutes an "Operating Impairment" (OI) –itself underscores the logic of obtaining the Commission's views on SGRP. As an initial matter, the SGRP does not constitute an OI under the terms of the Operating Agreement. Assuming, however, that the Superior Court of San Diego County (where SDG&E seeks to litigate this issue) agrees with SDG&E, the questions whether SGRP should proceed as proposed by SCE's Application, and whether SDG&E participates, will still be decided by this Commission. That is, even were a court to determine that SGRP constitutes an OI (which it does not), any dilution of SDG&E's ownership share in SONGS 2 & 3 would be subject to this Commission's ultimate review and approval. Public Utilities Code § 851; Operating Agreement § 16.8.1.[2]

Thus, contrary to SDG&E's assertion, SGRP poses no "threshold contractual interpretation issue." SDG&E Response to Motion, at 3. Rather, the Public

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[2] SDG&E expressly concedes the Commission's jurisdiction in this regard. *See* SDG&E's Response to SCE's Motion, at 2-3.

Utilities Code and the Operating Agreement themselves provide that the current dispute between SCE and SDG&E *cannot be resolved* without the Commission's threshold approval. SDG&E does not dispute this fundamental point. By addressing these issues now, rather than later (as suggested by SDG&E), the Commission can both preserve the ability to perform SGRP during the Fuel Cycle 16 RFOs, and avoid the futile litigation and arbitration exercises now set in motion by SDG&E. It makes no sense to postpone this Commission's consideration of SGRP so that an inconclusive result can first be obtained from a court and/or an arbitrator.[3]

SDG&E also argues that it should not be required to explain to the Commission at this time why it does not wish to participate in SGRP at its current ownership share. SDG&E's refusal to provide a factual basis for its opposition to SCE's motion is perplexing. If SDG&E is certain that SGRP is not cost-effective for its ratepayers, why does it protest, rather than embrace, the opportunity to explain its position to the Commission at this time?[4] Granting the OSC would require SDG&E to justify its position with facts, not simply rhetoric.

II.

CONCLUSION

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[3] SDG&E also argues that SCE's motion should be denied because SCE is authorized under section 6.2.6 of the Operating Agreement to make expenditures at SONGS 2 & 3 pending resolution of the co-owners' dispute. This point is irrelevant both (1) because the co-owners' voted to reject Capital and Operation and Maintenance budgets that included costs for SGRP and SCE accordingly decided not to charge the co-owners for such costs at this time, and (2) even were SCE to charge the co-owners such expenses, SDG&E likely would pay under "protest" pursuant to section 15.10 of the Operating Agreement. Thus, section 6.2.6 does not address the question of SDG&E's participation in SGRP.

[4] In asserting that the continued operation of SONGS 2 & 3 is not cost-effective for SDG&E ratepayers, SDG&E apparently assigns little value to SONGS 2 & 3 capacity. If that is the case, then SDG&E should also be ordered to explain how Otay Mesa and Palomar are cost-effective for its ratepayers, given that neither is likely to be more cost-effective than SGRP at SONGS 2 & 3.

SCE has made a reasonable request to the Commission: order SDG&E to demonstrate why it should not participate in SGRP at its current 20% ownership share. Although SDG&E concedes the Commission must make the ultimate decision, it asks that the Commission stay its hand while the co-owners pursue judicial and arbitral proceedings that, by definition, cannot conclusively resolve the co-owners' dispute regarding SGRP. Although it opposes participation in SGRP, it nevertheless refuses to explain why. In fact, only the Commission can conclusively

and finally speak to the ultimate issues of the reasonableness of SGRP and who shall pay for it. For these reasons, SDG&E should be required to make its case to the Commission.

Respectfully submitted,

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Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

May 17, 2004

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of REPLY OF SOUTHERN CALIFORNIA EDISON COMPANY (U-338E) IN SUPPORT OF MOTION FOR AN ORDER THAT SAN DIEGO GAS & ELECTRIC COMPANY SHOW CAUSE WHY IT SHOULD NOT PARTICIPATE IN THE SONGS 2 & 3 STEAM GENERATOR REPLACEMENT PROJECT on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

- ☑ Placing the copies in properly addressed sealed envelopes and depositing such envelopes in the United States mail with first-class postage prepaid (Via First Class Mail):
  - ☑ To all parties, or
  - ☐ To those parties without e-mail addresses or whose e-mails are returned as undeliverable;
- ☐ Placing the copies in sealed envelopes and causing such envelopes to be delivered by hand or by overnight courier to the offices of the Commission or the other addressee(s);
- ☑ Transmitting the copies via e-mail to all parties who have provided an address.

Executed this **17th day of May, 2004**, at Rosemead, California.

Lizette Vidrio

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