

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

**REPLY BRIEF
OF THE OFFICE OF RATEPAYER ADVOCATES**

I. INTRODUCTION

Pursuant to the *Joint Ruling of Assigned Commissioner and Administrative Law Judge Reopening Record, Imposing Ex Parte Contact Ban, Consolidating Advice Letters, and Setting Briefing Schedule*, dated May 9, 2016 ("Joint Ruling"), the Office of Ratepayer Advocates ("ORA") hereby submits its Reply Brief.

ORA disagrees with the assumption of Southern California Edison Company ("SCE") that ORA would not have achieved a more favorable outcome for ratepayers in settlement negotiations had ORA been informed of SCE's *ex parte* meetings. Further, ORA disagrees with SCE's resultant argument that D.15-12-016 is a complete "remedy" in response to SCE's actions.

Pursuant to the Joint Ruling, ORA also recommends certain procedural actions to enact ORA's proposed remedies.

II. SCE’S FAILURE TO REPORT ITS *EX PARTE* CONTACTS ADVERSELY IMPACTED THE SETTLEMENT DISCUSSIONS, WHICH CALLS FOR REMEDIES BEYOND THE PUNITIVE MEASURES ENACTED IN D.15-12-016

A. SCE’s Failure to Report its *Ex Parte* Contacts Adversely Impacted the Settlement Discussions

SCE argues that its failure to report its *ex parte* meetings had no impact on the settlement talks, even opining that: “any suggestion that TURN and ORA could have negotiated a better settlement had they known about the Warsaw meeting is unsupported and illogical.”¹ In its Opening Brief, ORA explained the material impact of SCE’s actions on the settlement process.² SCE had an affirmative duty to timely disclose its *ex parte* contacts, failed to do so, and thereby tilted the playing field in favor of SCE.³

SCE’s argument goes against common sense. Information has value, as does unequal access to decision-makers. SCE’s withholding of *ex parte* information conferred an unfair advantage. SCE’s argument does not dispel the unfair advantage that it had throughout the settlement process.

B. D.15-12-016 is not a Complete “Remedy”

Relying on the fragile premise that it has done no harm to ORA’s bargaining process, SCE contends that the penalty it received in D.15-12-016 is a “complete remedy” for its violations.⁴ Yet, the penalty established in D.15-12-016 was a fine payable to the General Fund. General Fund fines are punitive in nature, with monies being deposited for use by the California state government, while the proposed ratepayer refunds are remedial in nature, with monies being turned over to ratepayers via a bill credit. SCE’s fines in this proceeding do not remedy the quantifiable loss suffered by ratepayers as a result of SCE’s actions.

¹ SCE Initial Brief at 76.

² ORA Opening Brief at 4-9.

³ ORA Opening Brief at 5-6.

⁴ SCE Initial Brief at 6.

III. FURTHER PROCEDURAL ACTIONS

ORA's proposed remedies are simple to apply and do not require significant procedural steps. First, the Commission should order that \$383 million be refunded by SCE to its ratepayers.⁵ Such refunds could be enacted through a one-time bill credit to SCE's ratepayers.

Second, regarding the \$25 million currently allocated to the Greenhouse Gas Research and Reduction Program, ORA notes that both SCE and San Diego Gas & Electric Company ("SDG&E") leave "it to the Commission's discretion to determine whether to allow that provision to remain in place."⁶ Considering these settling parties' assent to the Commission's discretion in this regard, along with TURN's support for a ratepayer refund, the Commission should order a bill credit to SDG&E and SCE's ratepayers, in proportion to those companies' respective shareholder contributions. The funds that have already been contributed to the program could be promptly disbursed to ratepayers, while the remaining annual contributions could be disbursed on an annual basis, or as a net present value lump sum.

IV. CONCLUSION

SCE's argument that it has been sufficiently punished in D.15-12-016 should be rejected because that decision does not rectify the harm done to ratepayers by SCE's actions. As explained in ORA's Opening Brief, in order for the Settlement Agreement to meet the Commission's standards for approving settlement agreements set forth in Rule 12.1(d), \$383 million should be refunded by SCE to its ratepayers. Further, the \$25 million in shareholder funds allocated for the Greenhouse Gas Research and Reduction Program should also be transferred to ratepayers. ORA's proposed remedies can be accomplished through the procedural means described in this brief.

⁵ See ORA Opening Brief at 3-9.

⁶ SCE Initial Briefs at 79; SDG&E Initial Brief at 38.

Respectfully submitted,

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