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4/23/04

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Application of Southern California Edison)	
Company (U 338-E) for Authorization:)	Application 04-02-026
(1) to Replace San Onofre Nuclear)	(Filed February 27, 2004)
Generating Station Units 2 & 3 Steam)	
Generators; (2) Establish Ratemaking for)	
Cost Recovery; and (3) Address Other)	
Related Steam Generator Replacement)	
Issues.)	

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

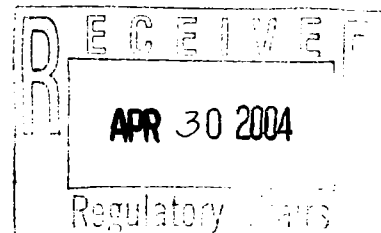
DOUGLAS K. PORTER
CAROL A. SCHMID-FRAZEE

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-1337
Facsimile: (626) 302-1935
E-mail: carol.schmidfrazee@sce.com

MUNGER, TOLLES & OLSON LLP
JOHN W. SPIEGEL
CHARLES D. SIEGAL

355 South Grand Avenue
35th Floor
Los Angeles, California 90071
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
E-mail: siegalcd@mto.com

Dated: **April 23, 2004**



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Southern California Edison Company (SCE) hereby requests that the California Public Utilities Commission (Commission) under Rule 45¹ issue an order directing San Diego Gas & Electric Company (SDG&E), its officers and employees to show cause as to why it should not participate in the San Onofre Nuclear Generating Station Unit Nos. 2 & 3 (SONGS 2 & 3) steam generator replacement project (SGRP).

I.

FACTUAL SUMMARY

SONGS 2 & 3 are owned 75.05% by SCE and 20% by SDG&E. SCE is the operating agent for SONGS 2 & 3. On February 27, 2004, SCE filed its Application requesting that the Commission find it reasonable for SCE to replace the original steam generators at SONGS 2 & 3. The Application provided extensive testimony that: (1) SGRP would be cost-effective; (2) SGRP would provide resource diversity; 3)

¹ Rule 45 of California Public Utilities Commission's Rules of Practice and Procedure.

failure to complete SGRP would increase an anticipated capacity shortage; and (4) SGRP provides vital stability to South Orange County and North San Diego County.

The Application also asks for interim authorization to permit SCE to establish a memorandum account, by September 2004, for rate recovery of up to \$50 million of Replacement Steam Generator (RSG) contractual commitment costs, other support costs, and cancellation charges (if any), related to RSG fabrication for SONGS 2 & 3.² Interim authorization is critical to preserving the potential for SGRP at SONGS 2 & 3 during the Fuel Cycle 16 Refueling and Maintenance Outage (RFOs) pending the Commission's consideration of SCE's Application. Without interim authorization, SCE would be unable to enter into contracts to fabricate RSGs to enable it to perform SGRP during the Fuel Cycle 16 RFOs.

On April 7, 2004, SDG&E submitted a protest to SCE's Application claiming that "the Commission should postpone its consideration of the Application until the co-owners have had an opportunity to decide their participation in the project."³ On April 14, 2004, SDG&E filed a complaint for declaratory relief against SCE in San Diego Superior Court. That complaint sets forth an alleged dispute concerning the rights and responsibilities of the SONGS 2 & 3 co-owners (co-owners) concerning SGRP. Specifically, SDG&E alleges that an "Operating Impairment" exists, thereby "triggering the procedures in Section 16 of the Operating Agreement in which SDG&E has the right not to participate in paying for [SCE's] proposed project in exchange for a reduction in SDG&E's ownership interest in SONGS Units 2 and 3." On the same day, SDG&E served the co-owners with a notice of demand for arbitration concerning a dispute over the proposed 2004 SONGS 2 & 3 Capital & Operation and Maintenance Budgets.

² Application at p. 2.

³ SDG&E Protest at 2.

By this Motion, SCE requests that the Commission order SDG&E and its officers, directors and employees to show cause why it should not participate in SONGS 2 & 3 SGRP at its 20% ownership share in the project. SCE requests the Commission to establish a schedule to decide this motion on or before September 15, 2004.

II.

APPLICABLE LAW

The Commission has jurisdiction over the resource needs of SCE and SDG&E and how those needs should be filled, including power to settle disputes between SDG&E and SCE regarding SGRP. "The Commission's legislative mandate is to ensure that all utility customers receive reliable service at just and reasonable rates, as specifically stated in Public Utilities Code § 451, with [Public Utilities Code] § 701 giving the Commission power to undertake all necessary actions to properly regulate and supervise California's investor-owned utilities." *In re Rulemaking*, Decision ("D") 04-01-050, 2004 WL 188191, *3 (Cal. P.U.C. Jan. 22, 2004). Section 451 specifically requires that "[e]very public utility shall furnish and maintain such adequate, efficient, just and reasonable ... instrumentalities, equipment, and facilities as are necessary to promote the safety ... comfort and convenience of its patrons ... and the public." PUC § 451. The SONGS 2 & 3 SGRP Application presents the Commission with a question of long term resource planning for the State, SCE, and SDG&E. It presents to the Commission the issue whether SONGS 2 & 3 will be necessary to meet SCE and SDG&E capacity needs forecast for 2009 and beyond, and, if so, whether SDG&E should join SCE in furnishing the equipment and facilities – i.e., RSGs – needed to allow that continued operation. Sections 451 and 701, therefore, specifically authorize the Commission to intervene and require SDG&E to show cause why it should not participate in SGRP at its 20% ownership share in SONGS 2 & 3.

Even without the authority over long term resource planning specifically granted by PUC section 451, the Commission would have inherent power to determine SDG&E's participation in SGRP. By itself, PUC section 701 gives the Commission power to "supervise and regulate every public utility in the State and ... do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."⁴ The Commission itself recognizes that its jurisdiction over issues affecting electric generating facilities like SONGS 2 & 3 is very broad. "With respect to electric power plants, the Public Utilities Commission's primary responsibility is to assure the provision of adequate, reliable service at the lowest reasonable rates." *In re PG&E Co.* (1980) 4 Cal. PUC.2d 139, 1980 WL 128935, at * 2 (Order denying petition to set aside submissions).

The Commission's jurisdiction over the SGRP Application is beyond dispute. SCE's Application for SGRP presents the Commission with an important question of California energy policy at the heart of the Commission's mandate: Should SONGS 2 & 3, the second largest electric generating facility in California, providing approximately 4% of the state's generating capacity, continue in operation beyond the life of its original steam generators? In order to protect its jurisdiction and reach this important question, the Commission should take action allowing SCE to preserve the option of SGRP. As explained in the Reply to Protests, the Commission can do this by granting the interim authorization sought in the Application. SDG&E's refusal to participate threatens to preclude the timely execution of the RSG fabrication contracts. Therefore, the Commission should exercise its inherent powers under Public Utilities Code section 701 and resolve the issue of SDG&E's participation in SGRP, so that RSG fabrication contracts can be executed in time to preserve the potential for SGRP to proceed during the Fuel Cycle 16 RFOs.

⁴ PUC § 701.

III.
CONCLUSION

SCE asks the Commission to issue an order directing SDG&E to show cause as to why it should not participate in SONGS 2 & 3 SGRP on or before September 15, 2004, and to consider SDG&E's participation in SGRP concurrently with SCE's Application.

Respectfully submitted,

DOUGLAS K. PORTER
CAROL A. SCHMID-FRAZEE
WILLIAM M. MESSNER

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-1337
Facsimile: (626) 302-1935
E-mail: carol.schmidfrazee@sce.com

MUNGER, TOLLES & OLSON LLP
JOHN W. SPIEGEL
CHARLES D. SIEGAL

355 South Grand Avenue
35th Floor
Los Angeles, California 90071
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
E-mail: siegalcd@mto.com

April 23, 2004


By: Carol A. Schmid-Frazee

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY
SOUTHERN CALIFORNIA EDISON COMPANY

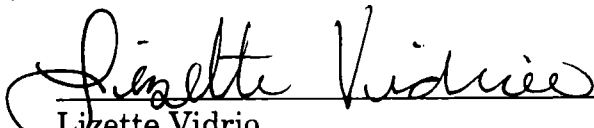
CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U-338E) FOR ORDER THAT SAN DIEGO GAS & ELECTRIC COMPANY, ITS OFFICERS AND EMPLOYEES 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 **23rd day of April, 2004**, at Rosemead, California.



Lizette Vidrio
Case Analyst
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770