

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA

In Attendance: COMMISSIONER MICHAEL R. PEEVEY  
COMMISSIONER MICHEL PETER FLORIO

ADMINISTRATIVE LAW JUDGES MELANIE M. DARLING and  
KEVIN DUDNEY, co-presiding

) EVIDENTIARY  
) HEARING  
)  
Order Instituting Investigation on )  
the Commission's Own Motion into the )  
Rates, Operations, Practices, )  
Services and Facilities of Southern ) Investigation  
California Edison Company and San ) 12-10-013  
Diego Gas and Electric Company )  
Associated with the San Onofre ) Application  
Nuclear Generating Station Units 2 ) 13-03-005  
and 3. )  
) Application  
) 13-03-013  
)  
And Related Matters. ) Application  
) 13-03-014  
)  
) Application  
) 13-01-016  
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SAN FRANCISCO, CALIFORNIA

14 MAY, 2014 - 1:30 P.M.

\* \* \* \* \*

ADMINISTRATIVE LAW JUDGE DARLING: Good afternoon. My name is Melanie Darling and I am the administrative law judge that will be presiding today. To my right on the dais is Commission President Michael Peevey, the assigned commissioner Mike Florio, and the co-assigned administrative law judge Kevin Dudney.

Before we begin, a couple of safety points. Restrooms are outside in the lobby to the left. And in the event of an emergency, if we need to evacuate the building, please proceed calmly towards the closest exits. There are four exits in this room; two on the back and one on either side of the stage. The courtyards outside is where you would exit the building. And these courtyards are the designated emergency destination where you would wait further instructions.

Proceeding, today's date is May 14, 2014, and this is the scheduled time and place for the hearing on the proposed settlement of the Commission's investigation into the rates, operations, practices,

1 services and facilities of Southern  
2 California Edison Company and San Diego Gas &  
3 Electric Company associated with  
4 the San Onofre Nuclear Generation Station  
5 Units 2 and 3, which we will refer to as  
6 SONGS.

7 The proceeding I.12-10-013 was  
8 opened pursuant to Public Utilities Code  
9 Section 455.5 after an extended outage at  
10 SONGS commencing January 31, 2012 following  
11 discovery of a leak in one of the new steam  
12 generators in Unit 3.

13 The Commission has added in other  
14 SONGS-related proceedings, including review  
15 of recorded SONGS expenditures for 2012 and  
16 2013, calculation of the replacement power  
17 costs, and review of the original costs of  
18 the replacement steam generators.

19 Edison is the operator of SONGS but  
20 as co-owners, both Edison and SDG&E have  
21 recorded and reported their expenses  
22 associated with the operations at SONGS after  
23 the January 31, 2012 shutdown.

24 During the course of this  
25 proceeding, thousands of pages of testimony  
26 and other evidence have been reviewed. We  
27 conducted more than three weeks of  
28 evidentiary hearings and examined dozens of

1 witnesses.

2 Phase 3, which was to examine  
3 the replacement steam generator expenses and  
4 associated issues, has not yet been set for  
5 hearing.

6 On April 3, 2014, six parties --  
7 Edison, SDG&E, the Office of Ratepayer  
8 Advocates, The Utility Reform Network,  
9 Friends of the Earth, and the California  
10 Coalition of Utility Employees -- submitted  
11 a motion asking the Commission to adopt  
12 a settlement of all issues in this  
13 proceeding.

14 Prior to filing the motion the  
15 Settling Parties convened a settlement  
16 conference with notice to all parties as  
17 required by our Rules of Practice and  
18 Procedure.

19 Based on the opening comments,  
20 other parties have since expressed general  
21 support for the settlement agreement.  
22 California Large Energy Consumers  
23 Association, the Alliance for Retail Energy  
24 Markets filed jointly with the Direct Access  
25 Coalition, Joint Minority parties and World  
26 Business Academy.

27 MR. AGUIRRE: Excuse me. I have to  
28 object. Your recitation that there was

1 compliance with Rule 12, I take exception to  
2 that. Factually, that is incorrect.  
3 The parties were not invited to participate.

4 ALJ DARLING: Mr. Aguirre --

5 MR. AGUIRRE: I just want to put my  
6 objection -- if you're going to make  
7 a record, I want to object when you do so.  
8 Thank you.

9 ALJ DARLING: I will give you -- you  
10 may have your comments when it's your turn to  
11 speak, Mr. Aguirre.

12 MR. AGUIRRE: I'm objecting to your  
13 statement on the record at the appropriate  
14 time.

15 When you make an objectionable  
16 statement, I have a right to object.

17 And I interpose the objection. You  
18 incorrectly stated that there was --  
19 the settlement was in compliance with  
20 Rule 12.

21 ALJ DARLING: All right, moving on. It  
22 is not an all-party settlement. Parties  
23 opposing the settlement are the Alliance for  
24 Nuclear Responsibility, Women's Energy  
25 Matters, the Coalition to Decommission  
26 San Onofre, and Ruth Henricks. Therefore,  
27 pursuant to the Commission's Rule 12.3  
28 the purpose of this hearing is to examine

1 the material issues of fact related to the  
2 settlement agreement and the motion.

3 For those of you watching our web  
4 cast from the affected communities in  
5 Southern California, there will be  
6 a community information meeting about  
7 the settlement proposal scheduled on June 16  
8 from 4 to 7 p.m. at the Costa Mesa Community  
9 Center. You cordially invited to attend and  
10 to hear presentations about the proposal and  
11 to have an opportunity to comment or ask  
12 a question. Please contact the Public  
13 Advisor's Office for any additional  
14 information. It is also listed, the details,  
15 in the Commission's calendar.

16 I'll take this opportunity to  
17 remind the parties of their obligation to  
18 exhibit professional and courteous conduct  
19 during the course of this hearing as set  
20 forth in Rule 1.1 which reads as follows:  
21 Any person who signs a pleading or brief,  
22 enters an appearance, offers testimony at  
23 a hearing or transacts business with the  
24 Commission by such act represents that he or  
25 she is authorized to do so, and agrees to  
26 comply with the laws of this state to  
27 maintain the respect due to the Commission,  
28 members of the Commission, and its



1 administrative law judges, and never to  
2 mislead the Commission or its staff by an  
3 artifice or false statement of fact or law.

4           Because the hearing is web cast and  
5 there are multiple witnesses from the  
6 Settling Parties, please remember to speak  
7 loudly and clearly into the microphones. And  
8 only one person may speak at time. Do not  
9 speak over the witness, judges, or the  
10 Commissioners.

11           We will begin with the Settling  
12 Parties making a presentation of  
13 the settlement agreement.

14           Are there any questions about the  
15 order?

16           MR. AGUIRRE: Yes, I have -- I wanted  
17 to put on the record specifically --

18           ALJ DARLING: Do you have any  
19 questions?

20           MR. AGUIRRE: You said I would have an  
21 opportunity to make a record about what you  
22 said.

23           ALJ DARLING: Yes. When I call on you  
24 later. Right now, do you have any questions  
25 about the order?

26           MR. AGUIRRE: Normally what we do in a  
27 proceeding is when there's an objection to  
28 something that's said, you do it then to

1 preserve your rights. You don't wait until  
2 way -- hours and hours later. So this --

3 ALJ DARLING: This will not be hours  
4 and hours later, Mr. Aguirre. You may have  
5 your turn when I call on you.

6 Unless you have a question, anyone  
7 has a question about the agenda order, we  
8 will proceed to the Settling Parties.

9 MR. AGUIRRE: I have a question.  
10 What was the basis of your statement that  
11 this was in -- this settlement was in  
12 compliance with Rule 12.1.b? What was the  
13 basis of that?

14 ALJ DARLING: What I said was that  
15 a notice was served on the parties and that  
16 is in the docket. The notice is there.  
17 The certificate of service is there. End of  
18 story. We're moving on.

19 MR. AGUIRRE: Okay.

20 ALJ DARLING: All right.

21 MR. AGUIRRE: I want the objection to  
22 be noted that you are not allowing me to make  
23 an objection in a timely fashion.

24 ALJ DARLING: You may make whatever  
25 note you'd like. And now it's time for  
26 someone else's statement, Mr. Aguirre; okay?  
27 You'll have your turn.

28 So, I think what we first need to

1 do is to swear the witnesses on the panel in.

2           Would you all please rise and raise  
3 your right hand.

4           CYNTHIA FANG, called as a witness by  
5 San Diego Gas & Electric Company,  
6 having been sworn, testified as  
7 follows:

8           ROBERT M. SCHLAX, called as a  
9 witness by San Diego Gas & Electric  
10 Company, having been sworn, testified  
11 as follows:

12           RON LITZINGER, called as a witness  
13 by Southern California Edison Company,  
14 having been sworn, testified as  
15 follows:

16           ROBERT M. POCTA, called as a witness  
17 by Office of Ratepayer Advocates,  
18 having been sworn, testified as  
19 follows:

20           WILLIAM MARCUS, called as a witness  
21 by The Utility Reform Network, having  
22 been sworn, testified as follows:

23           (Witnesses answered in the  
24 affirmative)

25           ALJ DARLING: All right. Please be  
26 seated.

27           And Mr. Mr. Weissmann, is there  
28 a preexisting process that you devised here?

          MR. WEISSMANN: Good afternoon, your  
Honor.

          Good afternoon, your Honor and  
Commissioners. Henry Weissmann for Southern

1 California Edison.

2 The way we proposed to proceed is  
3 for Mr. Litzinger, the president of Southern  
4 California Edison, to make some remarks  
5 presenting the settlement agreement. He  
6 will then be followed by Mr. Pocta for ORA,  
7 and subsequently Mr. Marcus for TURN.

8 ALJ DARLING: All right, thank you.

9 Mr. Litzinger.

10 STATEMENT OF MR. LITZINGER

11 MR. LITZINGER: Good afternoon. I'm  
12 Ron Litzinger, president of Southern  
13 California Edison. On behalf of the Settling  
14 Parties, I'm here to present the proposed  
15 settlement agreement. The Settling Parties  
16 are Edison, the Office of Ratepayer  
17 Advocates, The Utility Reform Network, and  
18 San Diego Gas & Electric. Also joining in  
19 the settlement are Friends of the Earth and  
20 the Coalition of Utility Employees.

21 I would like to spend a few minutes  
22 summarizing the major terms of  
23 the settlement. Then I will turn it over  
24 to the witness for other Settling Parties who  
25 can add their perspectives on the settlement.  
26 At that point, we would all be pleased to  
27 answer any questions.

28 Let me begin by addressing

1 the disallowances and other rate related  
2 provisions of the settlement.

3 First, the settlement would  
4 disallow any rate recovery for  
5 the replacement steam generators starting on  
6 February 1st, 2012, the day after the outages  
7 began. All amounts the utilities have  
8 collected since that date for the replacement  
9 steam generators would be refunded and  
10 the balance would not be recoverable in  
11 rates.

12 Second, the remaining investment in  
13 SONGS would be removed from rate base on  
14 the same day, February 1st, 2012, and would  
15 be amortized over ten years at a reduced rate  
16 of return. In 2014, the rate of return would  
17 be 2.62 percent for Edison compared to our  
18 authorized return of 7.9 percent.

19 In the case of nuclear fuel, we  
20 would recover an even lower rate of return  
21 equal to the commercial paper rate. To the  
22 extent we are able to sell nuclear fuel and  
23 other materials and supplies at SONGS, that  
24 will reduce the amount recovered in rates.  
25 The settlement gives the utilities an  
26 incentive to make such sales and we are going  
27 to pursue them.

28 With regard to operations and

1 maintenance costs incurred in 2012 and 2013,  
2 the settlement would limit rate recovery to  
3 the amount provisionally authorized in our  
4 last general rate case. In 2012, Edison  
5 recorded base O&M was approximately equal to  
6 the amount provisionally authorized in  
7 the GRC. This means that under  
8 the settlement, Edison would be prevented  
9 from recovering approximately \$100 million in  
10 incremental costs it incurred to inspect and  
11 repair the replacement steam generators in  
12 response to the outages.

13 In 2013, as the outages continued  
14 and we then announced in June the decision to  
15 permanently shut down the plant, SCE was able  
16 to reduce its O&M costs so that our recorded  
17 O&M costs were below the amount provisionally  
18 authorized in the general rate case. Under  
19 the settlement, SCE would refund that  
20 difference to ratepayers.

21 In addition, we have pending before  
22 the Commission an advice letter requesting  
23 authority to obtain funds from the Nuclear  
24 Decommissioning Trust to pay for the O&M  
25 costs after June 7 of 2013. The settlement  
26 does not affect or prejudge the Commission's  
27 consideration of that advice letter but it  
28 does provide that if the Commission permits

1 us to obtain funds from the trust, we will  
2 refund the corresponding amounts previously  
3 collected in rates.

4 In exchange for writing off  
5 the investment in the steam generators from  
6 the start of the outage and for removing the  
7 remaining investments from rate base on that  
8 date, the settlement would permit utilities  
9 to recover the amounts they have spent to  
10 purchase power for our customers in  
11 the market to replace the lost output at  
12 SONGS.

13 I've said a few times that the  
14 amounts would be refunded to ratepayers. The  
15 settlement agreement includes detailed  
16 provisions on how ratepayers would receive  
17 the benefits of the settlement. For amounts  
18 we have already collected in rates and that  
19 we would be required to refund under  
20 the settlement, the refund will be made  
21 through a reduction in the amount we would  
22 otherwise need to charge our customers for  
23 the purchased power costs which are tracked  
24 in our ERRRA account.

25 Finally, the settlement includes  
26 important provisions that address how  
27 litigation recoveries would be shared. We  
28 are pursuing two sets of claims. First, we

1 have filed claims with our insurer, Nuclear  
2 Electric Insurance Limited or NEIL. Second,  
3 we have initiated an arbitration against  
4 Mitsubishi, the designer and manufacturer of  
5 the steam generators that failed. The  
6 settlement provides that we can't -- cannot  
7 recover the legal fees and other costs of  
8 the litigation in rates. Instead, we would  
9 net out those costs from any recoveries we  
10 obtain from NEIL or Mitsubishi. The net  
11 proceeds would then be shared between  
12 utilities and their customers. In the case  
13 of NEIL, ratepayers would receive 82.5  
14 percent of all net recoveries. In the case  
15 of Mitsubishi, the sharing depends on  
16 the amount recovered. For the first hundred  
17 million in net recoveries for Edison --  
18 the corresponding figure for San Diego is  
19 25 million -- ratepayers would receive  
20 15 percent. For the next 800 million in net  
21 recoveries for Edison, 200 million; in  
22 the case of San Diego Gas & Electric,  
23 ratepayers would receive one-third. And for  
24 any net recoveries above the amounts -- above  
25 those amounts, ratepayers would receive  
26 75 percent. ]

27 As with any settlement, no party  
28 got everything it wanted in this deal. As



1 some of the other panelists will address, the  
2 settlement is actually much closer to the  
3 positions TURN and ORA took in this  
4 proceeding than to the positions that the  
5 utilities took.

6 In any case, we believe the  
7 settlement is a fair and reasonable  
8 compromise and is in the public interest. It  
9 would avoid protracted proceeding to review  
10 the prudence of our conduct in connection  
11 with the steam generator replacement project  
12 and the response to the outages, a proceeding  
13 that would involve an enormous commitment of  
14 resources that instead should be focused on  
15 obtaining recoveries from NEIL and  
16 Mitsubishi. We therefore ask for your  
17 support of the settlement.

18 ALJ DARLING: Okay. Next speaker.

19 STATEMENT OF MR. POCTA

20 MR. POCTA: Good afternoon,  
21 commissioners, advisors, ALJs, and other  
22 participants. I'm Mark Pocta, Program  
23 Manager with the Office of Ratepayer  
24 Advocates. On behalf of the Settling Parties  
25 I'm going to provide ORA's perspective of the  
26 settlement agreement.

27 I'll focus on three primary aspects  
28 the settlement agreement: the incremental

1 inspection repair cost, the ratemaking  
2 treatment of the utilities' investment in the  
3 replacement steam generators, and the  
4 ratemaking treatment of the remaining  
5 investment in the SONGS facility.

6           The first issue pertains to the  
7 incremental inspection repair cost. SCE is  
8 permitted to retain its authorized operation  
9 and maintenance costs for 2012 and through  
10 this will not obtain recovery of  
11 approximately 100 million in incremental  
12 inspection repair cost incurred by them in  
13 2012.

14           The second issue is the ratemaking  
15 treatment for the replacement steam  
16 generators. As described by Mr. Litzinger,  
17 the settlement will disallow any rate  
18 recovery associated with the replacement  
19 steam generators effective February 1st,  
20 2012. This ratemaking adjustment is both  
21 substantial and unprecedented. The  
22 undepreciated investment associated with the  
23 utilities' investment in replacement steam  
24 generators is disallowed effective the date  
25 when the plant went out of service.

26           There are no qualifications or other  
27 aspects pertaining to this matter. There are  
28 no issues regarding the timing of the matter

1 as to when the investment was removed from  
2 rates. It is not the date that the utilities  
3 decided to permanently cease operation of the  
4 SONGS plant. It is not nine months after the  
5 date the facilities stopped operating or any  
6 potential spectrum of dates in between. It's  
7 effective the date the outage began and the  
8 plant ceased generating electricity for  
9 customers.

10 This means that, one, the utilities  
11 will recover none of its undepreciated book  
12 value in the replacement steam generator  
13 investment, and two, it's effective when  
14 SONGS facility stopped operating. Ratepayers  
15 don't pay for replacement steam generators  
16 when they weren't operating.

17 As identified in the settlement  
18 agreement, ratepayers are not responsible for  
19 any cost after February 1st, 2012, associated  
20 with SCE's share of the net book value of 597  
21 million in the replacement steam generators.  
22 And SDG&E's share amounted to 160 million.  
23 This is the most optimal result from ORA's  
24 perspective that it could achieve in  
25 litigation and equivalent to achieving a  
26 hundred percent of its litigation position on  
27 this issue for ratepayers.

28 The third issue is the ratemaking

1 treatment pertaining to the remaining  
2 investment in the SONGS facility or what is  
3 referred to in the settlement as base plant.  
4 This remaining investment in base plant is  
5 removed the date after the outage began,  
6 again, February 1st, 2012. The undepreciated  
7 amount of base plant will be amortized in  
8 rates over a ten-year time period at an  
9 extremely low rate. The settlement details  
10 involving base plant are associated with the  
11 timing when it's removed from plant, the time  
12 period of amortization, and the return or  
13 carrying cost of the regulatory asset being  
14 amortized.

15           Once again, the settlement utilizes  
16 a method and rate of amortization which is  
17 exceptionally beneficial to ratepayers. This  
18 is important in terms of evaluating the  
19 settlement agreement. First, the  
20 amortization of base plant commences again  
21 February 1st, 2012. Therefore, the utilities  
22 stop earning a full return of its investment  
23 in SONGS base plant on that date, the date  
24 the facility stopped operating. Again, not  
25 nine months later. It's not the date the  
26 facility was deemed officially nonoperational  
27 by SCE nor any time in between. It's the  
28 date that the outage began.

1           To reiterate, the date the utilities  
2 stopped getting electricity from the SONGS  
3 facility is the date that SCE and San Diego  
4 Gas and Electric stopped earning a full  
5 return on SONGS base plant.

6           A review of many past cases reveals  
7 there's typically a lag between the time in  
8 which a generating facility ceases commercial  
9 operation when the utilities continue to earn  
10 full return on investment and the date when  
11 the facility is removed from ratebase by the  
12 Commission and the utilities no longer earn a  
13 full return.

14           For example, a recent case involved  
15 Mohave Generating Facility. That facility  
16 ceased commercial operation in 2005 and  
17 continued to earn a return for another six  
18 years. Going back many years to a case which  
19 many parties have cited, the Humboldt Nuclear  
20 Power Plant was not removed from ratebase  
21 according to that decision until 1979, three  
22 years after the plant stopped operating.

23           Therefore, the timing of when the  
24 amortization period commences is a very  
25 important factor on the impact on ratepayers.  
26 The settlement terms on this issue are the  
27 most optimal for ratepayers that could be  
28 achieved through litigation.

1           The next deal -- detail pertains to  
2 the SONGS base plant and the return on it.  
3 Utilities earn a return or carrying cost that  
4 is well below its authorized rate of return.  
5 For the period starting in 2013 the return on  
6 base plant is equal to 2.62 percent for SCE  
7 and 2.35 percent for SDG&E, which is well  
8 below the authorized returns of 7.9 percent  
9 for SCE and 7.79 percent for San Diego Gas  
10 and Electric.

11           What makes this aspect of the  
12 settlement beneficial to ratepayers is  
13 essentially the utilities are earning no  
14 return on the capital investment associated  
15 with shareholder equity. This comprises  
16 about 50 percent of the total investment.  
17 Thus, the utilities are essentially only  
18 earning a debt return associated with the  
19 portion of the investment that is associated  
20 with debt and 50 percent of the adopted  
21 preferred stock return associated with that  
22 small portion of preferred stock investment,  
23 and once again, essentially zero return, and  
24 that's how you get a very low rate of return  
25 on the regulatory aspect. Asset. Excuse me.

26           The final aspect of base plant issue  
27 is the amortization period. The amortization  
28 period is ten years, 2012 through 2022. And

1 at first glance one may question the wisdom  
2 of ratepayers paying costs associated with  
3 SONGS for such a lengthy timeframe. The  
4 Commission has used various amortization  
5 periods in the past. For example, the  
6 amortization period for electromechanical  
7 meters replaced by smart meters adopted by  
8 the Commission was six years for both PG&E  
9 and SCE.

10           Given the cost of base plant, which  
11 is fairly substantial, the ten-year period  
12 used for the SONGS base plant given the  
13 impact on ratepayers is very reasonable. The  
14 idea is to mitigate or cushion the impact on  
15 customers. In fact, the ten-year  
16 amortization at the low return is comparable  
17 to a shorter amortization with no return  
18 depending on how one would value ratepayers'  
19 time value of money. Your value of the time  
20 value of money at 2.5 percent or more to  
21 ratepayers, essentially, by amortizing it  
22 over a longer period of time, they're getting  
23 value for that longer amortization period.

24           Therefore, to fully appreciate the  
25 full value of the ten-year amortization  
26 period one must combine it with the very low  
27 return utilities would earn on the SONGS base  
28 plant in contrast to that shorter

1 amortization period. And I've already stated  
2 what that amor -- rates are. And we feel the  
3 low rates combined with the ten-year  
4 amortization timeframe is an optimal  
5 resolution of the issue for ratepayers.

6 The full ratepayer impact of the  
7 settlement can be evaluated by comparing the  
8 settlement provisions to the litigation  
9 positions of SCE and SDG&E, which is  
10 illustrated in the settlement agreement, and  
11 that benefit is significant. The settlement  
12 agreement is approximately \$1.1 billion less  
13 than the SCE litigation position and \$300  
14 million below the SDG&E litigation position.

15 So final item I'd like to touch on  
16 is Section 6.1 of the settlement agreement.  
17 There are very complex accounting and  
18 ratemaking aspects and implementation issues  
19 that are associated with the settlement  
20 agreement. ORA takes its responsibility  
21 under Section 6.1 very seriously and intends  
22 to review, validate, and verify the figures  
23 and amounts used by SCE and SDG&E to  
24 implement the revenue requirement accounting  
25 procedures and charges authorized in the  
26 settlement agreement.

27 And thank you very much for your  
28 patience in considering ORA's comments on the



1 settlement agreement. Thank you.

2 ALJ DARLING: All right. Thank you,  
3 Mr. Pocta.

4 There's about six minutes left.

5 STATEMENT OF MR. MARCUS

6 MR. MARCUS: Okay. I'm going to be --  
7 this is Bill Marcus, the consultant for JBS  
8 Energy, Incorporated, and I'm working for  
9 TURN. I'm going to be brief, particularly,  
10 other folks have said a lot of what I was  
11 going to say.

12 The settlement is quite close to our  
13 original litigation position and that of ORA.  
14 We and ORA had a present value of revenue  
15 requirements in the vicinity of \$2 billion  
16 rounded to the nearest hundred million.  
17 Edison was at 3.7. The settlement for Edison  
18 is at 2.5. San Diego is similar. They came  
19 in at \$1 billion. The DRA and ORA and TURN  
20 positions were around 600 million. The  
21 settlement is at 700 million.

22 So I think there has been a fairly  
23 large amount of progress here. In terms of  
24 our positions, there were some small changes  
25 to the date of recovery of the plant that  
26 were favorable to us. The February 1st date  
27 is favorable. The recovery of materials and  
28 supplies, CWIP, and nuclear fuel over ten

1 years is actually more favorable than our  
2 litigation position. On the other hand,  
3 because of the February 1st settlement date  
4 we agreed that replacement power would not be  
5 deducted because we were trying to be  
6 consistent between the treatment of plant and  
7 the treatment of replacement power.

8           The use of this ten-year  
9 amortization period with a low rate of return  
10 actually results in a lower present value of  
11 cost to ratepayers by significant amounts of  
12 money and greater near-term rate refunds than  
13 if we had given them no rate of return and an  
14 amortization period of five or six years. I  
15 ran some numbers to that effect, and the  
16 Settling Parties also took a look at those  
17 issues. So that is a key benefit.

18           Another key benefit is to reduce the  
19 rate burden as quickly as possible through  
20 refunds to ERRA which will keep the ERRA  
21 rates down and lower rates in 2015 and  
22 beyond. That's important to us because  
23 otherwise if we were in a protracted period  
24 of litigation, these refunds might not show  
25 up and rates might be going up for reasons  
26 unrelated to SONGS without the benefit of the  
27 refunds, and the rates for SONGS might even  
28 be higher. So, okay.

1           The settlement is thus in a range of  
2 expected outcomes given the litigation risk.  
3 It moved towards our position. It provides  
4 for certainty regarding the disposition of  
5 recoveries from insurance and from  
6 Mitsubishi, assures that ratepayers receive  
7 some money from any recovery and that we  
8 receive large amounts of money if Mitsubishi  
9 in litigation results in a significant  
10 recovery above the cost of the disallowed  
11 steam generator. And it places the interests  
12 of both shareholders and ratepayers in  
13 alignment by sharing it in favor -- so  
14 they're aligned in favor of maximizing  
15 recovery.

16           So we support the settlement and  
17 urge the Commission to approve it.

18           ALJ DARLING: Thank you, Mr. Marcus.

19           And the final witness, Mr. Schlax.  
20 Two minutes.

21           MR. SCHLAX: I have no comments to add.  
22 Everything has been well covered.

23           ALJ DARLING: Okay.

24           I believe that we have some  
25 exhibits, Judge Dudney.

26           ALJ DUDNEY: Good afternoon everyone.  
27 Mr. Weissmann, would you like to introduce  
28 the Edison and joint Settling Parties'

1 exhibits.

2 MR. AGUIRRE: Excuse me. Have those  
3 exhibits already been provided to the  
4 commissioners and to the ALJ?

5 ALJ DARLING: Yes.

6 MR. AGUIRRE: So they were provided to  
7 you, but they weren't provided to the other  
8 parties?

9 MR. WEISSMANN: They have previously  
10 been served.

11 MR. AGUIRRE: No. I'm not asking about  
12 whether they've been previously served. I'm  
13 just asking, were exhibits provided to the  
14 commissioners and to the ALJ without them  
15 being previously -- or without them being  
16 contemporaneously provided to the opposing  
17 parties? Simple question.

18 MR. WEISSMANN: They're certainly  
19 available here, Counsel, if you'd like a  
20 copy. We have served them well in advance of  
21 today's hearing.

22 MR. AGUIRRE: Excuse me. If these are  
23 marked as exhibits, that is -- the way I was  
24 trained as a trial attorney is no one gives  
25 the decisionmakers exhibits without providing  
26 them contemporaneously actually before to the  
27 opposing parties.

28 MR. WEISSMANN: They were provided

1 before.

2 ALJ DARLING: They were provided  
3 before. Your objection is overruled.  
4 Proceed, Mr. --

5 MR. AGUIRRE: May I see what's been  
6 provided to the Commission to see if they  
7 were provided to me?

8 ALJ DARLING: Mr. Weissmann --

9 MR. WEISSMANN: Certainly. They're  
10 available to you.

11 MR. AGUIRRE: May I see what you've  
12 been provided? That's what I'm asking.

13 ALJ DARLING: Mr. Aguirre, you need to  
14 remember that one person speaks at a time.  
15 You have raised an objection. I will give  
16 you two minutes off record to see what has  
17 been distributed. All right.

18 Starting now we're off the record.

19 (Off the record) ]

20 ALJ DARLING: Back on the record.

21 And I will say one thing which is  
22 that this is the testimony which was  
23 previously provided to the service list which  
24 includes the administrative law judges, you  
25 Mr. Aguirre, and all the other parties of the  
26 responses to the testimony requests set out  
27 in the settlement ruling which went out in  
28 April. This testimony was filed and served

1 on May 1st. It is consistent with the  
2 testimony which was served according to my  
3 review.

4 Now, Mr. Weissmann, I'm going to  
5 turn this back to Judge Dudney to proceed  
6 with marking these exhibits.

7 ALJ DUDNEY: Mr. Weissmann, go ahead.

8 MR. WEISSMANN: Thank you. First in  
9 order, we would like to mark for  
10 identification the testimony of the joint  
11 Settling Parties as noted as Joint Settling  
12 Parties 01. This is the joint testimony  
13 provided in response to the questions posed  
14 by the ALJ's ruling of April 24th,  
15 Questions 5, 8 through 11, 13, and 15  
16 through 18. The witnesses are identified on  
17 the face page of the exhibit. Ron Litzinger  
18 for Edison, Robert Schlax and Cynthia Fang  
19 for SDG&E, Robert Pocta for ORA, and William  
20 Marcus for TURN.

21 ALJ DUDNEY: Very good. Exhibit Joint  
22 Settling Parties 01 is marked for  
23 identification.

24 (Exhibit No. Joint Settling  
25 Parties 01 was marked for  
identification.)

26 MR. WEISSMANN: Next in order is what's  
27 been identified as SCE-54. This is Edison's  
28 testimony in response to certain other

1 questions in the April 24th ruling, namely,  
2 Questions 1 through 4, 6 through 7, 12, 14,  
3 and 19 through 20. The witnesses are  
4 identified on the face page and also in the  
5 table of contents as Richard Fisher and Doug  
6 Snow. I might indicate Mssrs. Fisher and  
7 Snow are present today and available to  
8 answer questions about that testimony.

9 Next in order is SCE-55. These are  
10 errata to Edison's testimony on certain of  
11 what's been marked as SCE-54. And the  
12 witness sponsoring SCE-55 is Doug Snow.

13 Next in order is SCE-56. This is an  
14 exhibit sponsored by Mr. Snow. This contains  
15 a one-page table that sets forth the  
16 estimated present value revenue requirements  
17 associated with the parties' litigation  
18 positions as well as the settlement.

19 And, finally, SCE-57 is further  
20 errata to SCE-54 Question No. 7 sponsored by  
21 Mr. Snow.

22 ALJ DUDNEY: Thank you, Mr. Weissmann.

23 Exhibit SCE-54, Exhibit SCE-55,  
24 Exhibit SCE-56, and Exhibit SCE-57 are marked  
25 for identification.

26 (Exhibits Nos. SCE-54, SCE-55,  
27 SCE-56, and SCE-57 were marked for  
identification.)

28 MR. AGUIRRE: May I make inquiry if

1 these witnesses are here today to provide  
2 testimony for cross-examination?

3 MR. WEISSMANN: They are available,  
4 yes.

5 MR. AGUIRRE: They are available.

6 ALJ DUDNEY: Mr. Weissmann, does that  
7 conclude Edison's exhibits?

8 MR. WEISSMANN: It does, your Honor.

9 ALJ DUDNEY: Thank you.

10 Mr. Walsh, please introduce the  
11 San Diego exhibits.

12 MR. WALSH: What has been marked as  
13 SDGE Exhibit 22 is the testimony of  
14 Mr. Robert Schlax. Mr. Schlax is available  
15 today for cross-examination. This addresses  
16 certain questions that had been asked by the  
17 administrative law judge pertaining to SDG&E.

18 In addition, there is an exhibit  
19 that I have marked SDGE-23. This is a  
20 one-page document that updates the SDG&E net  
21 present value revenue requirements  
22 calculation showing the litigation positions  
23 of the parties and the settlement net present  
24 value as applicable to SDG&E.

25 ALJ DUDNEY: Thank you, Mr. Walsh.

26 Exhibits SDGE-22 and SDGE-23 are  
27 marked for identification.

28 (Exhibits Nos. SDGE-22 and SDGE-23  
were marked for identification.)



1

ALJ DUDNEY: Thank you.

2

3

ALJ DARLING: All right. At this time, before we proceed to the cross-examination, I would like to ask President Peevey do you have any questions for the panel at this time?

4

5

6

7

8

COMMISSIONER PEEVEY: Not at this moment.

9

10

ALJ DARLING: Commissioner Florio?

11

COMMISSIONER FLORIO: Not at this time.

12

ALJ DARLING: Judge Dudney?

13

ALJ DUDNEY: Yes, I do have a few questions.

14

15

Mr. Weissmann, I'll note that I will go ahead and address some of my questions to Mr. Litzinger, but some of them come from testimonies sponsored by Mr. Fisher and Mr. Snow. To the extent that Mr. Litzinger wishes to defer to those witnesses, that's fine. We will swear them in at that time.

16

17

18

19

20

21

22

MR. WEISSMANN: Very good.

23

EXAMINATION

24

BY ALJ DUDNEY:

25

Q Mr. Litzinger, I would like you to turn to Exhibit SCE-54. And let's look at I believe it's Question 4.

26

27

28

ALJ DARLING: Are you there,

1 Mr. Litzinger?

2 WITNESS LITZINGER: Yes.

3 ALJ DUDNEY: Q Mr. Litzinger, in  
4 Question 4, the table, wanted to ask what  
5 costs were included in rates before the  
6 replacement steam generators came online?

7 WITNESS LITZINGER: A I'm going to  
8 defer that to the witnesses that prepared  
9 this exhibit.

10 ALJ DUDNEY: Sure.

11 ALJ DARLING: Let's go off the record  
12 and bring up which witness. Would that be  
13 Mr. Snow?

14 Off the record.

15 (Off the record)

16 ALJ DUDNEY: All right. Mr. Snow,  
17 please stand and raise your right hand.

18 DOUGLAS SNOW, called as a witness by  
19 Southern California Edison, having been  
sworn, testified as follows:

20 ALJ DUDNEY: Thank you, Mr. Snow.

21 EXAMINATION

22 BY ALJ DUDNEY:

23 Q Again, on Exhibit SCE-54, the  
24 response to Question 4, there's a table. In  
25 that table, could you describe to me what  
26 types of costs were included in rates before  
27 the replacement steam generators came online?

28 A So it's the amounts that are shown

1 on line two for 2006 through 2009. The steam  
2 generators came online in 2010.

3 Q And --

4 A So this was 20 percent of the  
5 removal of the generators that was adopted in  
6 the '05 decision that had us before with  
7 putting in the new generators.

8 Q Very good. Footnote 2 on this  
9 table mentions that these costs were offset  
10 by reductions to rate base.

11 Is that offset included in the  
12 figures further down in the table? Or is  
13 this shown elsewhere in the testimony?

14 A That would be included.

15 Q Okay. So these figures are net of  
16 that deduction?

17 A Right, because we had recovered  
18 that from customers before.

19 Q Thank you. All right. Now, in  
20 this same exhibit I would like you to turn to  
21 Question 6. I'm also going to ask you to  
22 compare the response for Question 6 to the  
23 response to Question 7. And I believe the  
24 most up-to-date copy of the response to  
25 Question 7 is in SCE-55.

26 A Correct.

27 Q Generally, what I'm interested in  
28 with this comparison is that the revenue

1 requirement and net book value as shown in  
2 the response to Question 7 are higher than  
3 the counterpart numbers in the response to  
4 Question 6. My question is could you explain  
5 those differences? Would you like a moment  
6 off the record?

7 MR. AGUIRRE: Could I ask the ALJ to  
8 say that one more time so I could follow you  
9 quicker?

10 ALJ DUDNEY: Sure. My question is  
11 comparing the Edison responses to ALJ  
12 Question 6 and Question 7, generally, the net  
13 book value and revenue requirement shown in  
14 the response to Question 7 are higher than  
15 the corresponding numbers in Question 6.

16 MR. AGUIRRE: Thank you very much.

17 THE WITNESS: I think primarily the  
18 main difference is that the numbers that are  
19 shown in Question No. 6 were authorized.  
20 Those were estimated in the 2012 GRC. The  
21 amounts that are shown in Question 7 are  
22 actual numbers.

23 ALJ DARLING: That actual number is  
24 based on the terms of the proposed settlement  
25 agreement?

26 THE WITNESS: That's correct. At the  
27 end of each of those years.

28 ALJ DUDNEY: Q Okay. Mr. Snow --

1           A    And once before, they're averages  
2 also.  On the response to Question 6, those  
3 are average balances.

4           Q    Averaged over the calendar year?

5           A    That's correct.

6           Q    Quickly on the point about those  
7 being average versus end-of-year figures,  
8 could you qualitatively describe what impact  
9 that would have?

10           ALJ DARLING:  For example, depreciation  
11 totals in the response to Question 6 about  
12 140 million.  Under the proposed --  
13 description in the impact of the settlement  
14 agreement, depreciation total 189.  There are  
15 other dissimilarities that he is addressing.

16           THE WITNESS:  I think the depreciation  
17 is because it is going to be amortized over  
18 ten years.

19           ALJ DUDNEY:  Q   Following up on that  
20 point, in the response to Question 6, do I  
21 correctly understand that some SONGS assets  
22 as it was understood at the time of the 2012  
23 rate case would have been depreciated over a  
24 longer period?

25           A    That's correct.

26           Q    And so that's responsible for the  
27 bulk of the increase in revenue?

28           A    I would say that's true.

1           Q    Thank you.  And then do I correctly  
2 understand another difference between these  
3 two tables is the treatment of construction  
4 work in progress or CWIP?  To expand on that,  
5 as I read the footnote for Question 7, I  
6 understand that CWIP is included in that  
7 response.

8           A    You're correct.

9           Q    Is that correct?  And can you tell  
10 me how large of a change that is in the net  
11 book value?

12          A    I can't.  Maybe Mr. Fisher can, but  
13 we can certainly get that for you.

14          Q    All right.  Thank you, Mr. Snow.  
15                I have one last question.  I  
16 believe this is also in your testimony, yes.  
17 Exhibit SCE-56, the updated present value  
18 revenue requirement.

19          A    Okay.

20          Q    Looking at the nuclear fuel line, I  
21 notice that for all three of the parties'  
22 litigation positions, the nuclear fuel  
23 component was higher than it is under the  
24 settlement.

25                Can you explain the difference  
26 there?

27          A    Can I have a minute?

28          ALJ DUDNEY:  Yes.  Off the record.

1 (Off the record) ]

2 ALJ DUDNEY: On the record.

3 While we were off the record,  
4 Mr. Marcus indicated that he would be able to  
5 answer my question.

6 Q Go ahead, Mr. Marcus.

7 WITNESS MARCUS: A Yes. I think  
8 the settlement agreement had a ten-year  
9 amortization of nuclear fuel costs. And  
10 I know that my testimony had a five-year  
11 amortization on it. So that may be -- that  
12 is likely to be the difference here.

13 ALJ DUDNEY: All right. Thank you,  
14 Mr. Marcus.

15 Q Mr. Snow, does that sound correct  
16 to you?

17 WITNESS SNOW: A It does.

18 Now there could be that our  
19 number's only from February forward.

20 I don't know if your number  
21 included all of 24 or not.

22 WITNESS MARCUS: A That's possible.

23 ALJ DUDNEY: Thank you both.

24 Mr. Snow, that concludes my  
25 questions for you.

26 Q Mr. Schlax, if I could, I would  
27 essentially ask the same questions to you  
28 that I did to Mr. Snow.

1           Am I correct in understanding that  
2 Mr. Snow's response to my questions about  
3 the difference between question 6 and  
4 question 7 would also apply to  
5 the corresponding differences in the San  
6 Diego testimony?

7           WITNESS SCHLAX: A Yes, that is  
8 correct, that in question 7 our numbers again  
9 do include the CWIP in our gross investment  
10 in plant whereas in response to -- table in  
11 question 6 does not.

12           And then as far as the revenue  
13 requirement, it would be table 7 represents  
14 the shorter amortization period.

15           ALJ DUDNEY: Thank you, Mr. Schlax.  
16 That is all the questions I have at this  
17 time.

18           ALJ DARLING: Okay. Mr. Weissmann, do  
19 you want to move your exhibits into  
20 the record?

21           MR. WEISSMANN: Thank you, your Honor.  
22 At this time, we would move the admission of  
23 the exhibits previously marked.

24           ALJ DARLING: Any objections?

25                   (No response)

26           ALJ DARLING: Hearing none, these  
27 exhibits are moved into the record.

28                   (Exhibit Nos. SCE-54 through SCE-57  
                  were received into evidence.)



1

2 ALJ DARLING: All right, Mr. Schlax.  
3 Or Mr. Walsh.

4 MR. WALSH: Your Honor, at this time  
5 I move that the SDG&E Exhibits 22 and 23 be  
6 moved into the record.

7 ALJ DARLING: Any objections?

8 (No response)

9 ALJ DARLING: Hearing none, these  
10 exhibits are moved into the record.

11 (Exhibit Nos. SDG&E-22 and SDG&E-23  
12 were received into evidence.)

13 ALJ DARLING: All right. At this time  
14 we will begin -- settling parties will have  
15 an opportunity to cross-examine the witnesses  
16 on the settling panel. We will take  
17 the non-settling parts in the order which  
18 they requested time.

19 MR. AGUIRRE: Excuse me, your Honor.  
20 You allowed the other side to decide how they  
21 wanted to present their case. Now you're  
22 making a different rule. You're not treating  
23 the parties similarly. You are now dictating  
24 who's going to go and under what  
25 circumstances? Could I ask you to not do  
26 that, please.

27 And I would like to renew my  
28 objection which you said you would allow me

1 to do. You said it wouldn't be long time.  
2 Would this be an appropriate time for me to  
3 renew my objection?

4 ALJ DARLING: I think you put your  
5 objection on the record.

6 MR. AGUIRRE: No.

7 ALJ DARLING: Do you have new  
8 information --

9 MR. AGUIRRE: Yes.

10 ALJ DARLING: -- or law to back your  
11 motion?

12 MR. AGUIRRE: Yes, I do.

13 Your Honor, I am going to be moving  
14 to disqualify you under Rule 9.4 for bias and  
15 prejudice because you have now stated --  
16 inaccurately stated for the record, and you  
17 stated false and untrue that there was  
18 compliance with Rule 12(b) because 12(b)  
19 requires that prior to signing any  
20 settlement, the settling parties shall  
21 convene at least one conference with notice  
22 and opportunity to participate provided to  
23 all parties for the purpose of discussing  
24 settlements in the proceeding.

25 No such conference is before your  
26 Honor. There is nothing in the record that  
27 justified you making the statement that you  
28 did.

1           In addition, both Mr. Florio and  
2 Mr. Peevey issued press releases on March  
3 the 27th in which they indicated that, quote,  
4 the parties had reached an agreement. That  
5 was false and untrue and misleading and was  
6 coordinated with the media blitzkrieg to tell  
7 the public that this settlement had been --  
8 now, here's my question.

9           ALJ DARLING: All right.

10          MR. AGUIRRE: No. I need to finish.

11          ALJ DARLING: No. You don't need to  
12 finish.

13          MR. AGUIRRE: Do we need to have you --  
14 do you want to consider whether you should  
15 suspend the hearing and allow for this motion  
16 for your disqualification to be determined  
17 and thereby avoid having to come back should  
18 the motion be granted or do you want to go  
19 ahead, having heard on the record the motion  
20 that -- I'm not bringing the motion now, but  
21 I'm informing you that I will be bringing the  
22 motion based on bias and prejudice because  
23 you prejudged the Rule 12 issue in this case  
24 which is one of the bases for our opposing  
25 because it was -- the settlement process did  
26 not comply with Rule 12.

27          ALJ DARLING: All right, Mr. Aguirre.  
28 Now it's my turn.

1                   First of all, you misstate my  
2 remarks. I know what I said because I read  
3 it. And what I said was that prior to filing  
4 the motion, the settling parties convened  
5 a settlement conference with notice to all  
6 parties.

7                   MR. AGUIRRE: No. Not true.

8                   ALJ DARLING: Period.

9                   MR. AGUIRRE: That's not true.

10                  ALJ DARLING: Excuse me.

11                  MR. AGUIRRE: That's not true.

12                  ALJ DARLING: Mr. Aguirre, you need  
13 to --

14                  MR. AGUIRRE: What's in the record to  
15 justify --

16                  ALJ DARLING: Mr. Aguirre, could you  
17 not speak over the judge? Period. Period.

18                  MR. AGUIRRE: Okay. What's in  
19 the record that justifies you saying that?

20                  ALJ DARLING: No. Mr. Aguirre, I need  
21 to you stop.

22                  MR. AGUIRRE: Okay.

23                  ALJ DARLING: If you are not able to  
24 stop, we'll have to adjourn the hearing. Or  
25 take a break because you read to conform with  
26 Rule 1.1. You have, one, misstated what  
27 I staid. Two, you're free to argue whatever  
28 you'd like in your comments. Three, you're

1 free to file whatever motions you are -- but  
2 that are out of scope of this hearing. If  
3 you wish to make some arguments about  
4 the state of mind of the judges or  
5 the president of the Commission or  
6 Commissioner Florio, this is not the forum  
7 for that.

8 MR. AGUIRRE: What --

9 ALJ DARLING: So your objection --

10 MR. AGUIRRE: I'm asking for  
11 clarification.

12 ALJ DARLING: No.

13 MR. AGUIRRE: What is the record that  
14 justified you saying that there was  
15 a conference?

16 That's all I'm asking. You made  
17 a factual assertion.

18 ALJ DARLING: Yes, I did.

19 MR. AGUIRRE: What is in the record  
20 that justifies you saying that?

21 ALJ DARLING: I've answered the  
22 question once. I'll answer it one more time  
23 then we're moving on.

24 MR. AGUIRRE: Okay. What is it that's  
25 in record?

26 ALJ DARLING: There was a notice that  
27 was filed and it's on the docket card in this  
28 proceeding that shows certificate of service

1 to the service list. All right. Period.

2 MR. AGUIRRE: That's -- from there  
3 you --

4 ALJ DARLING: Period.

5 MR. AGUIRRE: -- concluded that that  
6 was a conference?

7 ALJ DARLING: I con- -- what I said was  
8 that they served notice on all parties.

9 MR. AGUIRRE: No. You said there was  
10 a conference.

11 ALJ DARLING: No.

12 MR. AGUIRRE: You just said it twice.

13 ALJ DARLING: I'm not going to get into  
14 an argument with you, Mr. Aguirre, about  
15 this.

16 You noted your objection on the  
17 record. You're free to argue what you want.  
18 If you have other concerns about the state of  
19 mind about the judges or the commissioners,  
20 this is not the forum for that.

21 MR. AGUIRRE: Go ahead. If you want to  
22 proceed on this record, go ahead. But you  
23 prejudged it and you are acting in the face  
24 of bias.

25 ALJ DARLING: Mr. Aguirre, when I tell  
26 you that you are done, you're done. So now,  
27 Ms. Merriman [sic].

28 MS. MERRIGAN: It's Merrigan, actually.

1 ALJ DARLING: Merrigan.

2 MS. MERRIGAN: Jean Merrigan with  
3 Women's Energy Matters. So I have a few  
4 questions for the panel and then Dorah Shuey  
5 with Women's Energy Matters has a few more  
6 questions.

7 ALJ DARLING: All right. And you've  
8 asked for 20 minutes.

9 MS. MERRIGAN: Yes.

10 ALJ DARLING: You may proceed.

11 CROSS-EXAMINATION

12 BY MS. MERRIGAN:

13 Q So I'll start with you,  
14 Mr. Litzinger.

15 I'd like to ask -- get clear about  
16 some of the provisions about litigation costs  
17 in the agreement. So looking at section  
18 4.11, I just have a series of questions here.

19 I want to -- who's paying --  
20 I want -- who's paying for the costs as they  
21 accrue?

22 WITNESS LITZINGER: A The utilities  
23 will be paying the litigation costs as they  
24 accrue and they will be netted out against  
25 any settlement. If there is no settlement,  
26 utilities would be responsible for those  
27 costs.

28 Q Okay. So there is no ratepayer

1 involvement in paying the litigation costs  
2 except that it will be deducted from  
3 the recovery?

4 A That is correct. Other than  
5 the netting, there would be no  
6 responsibility.

7 Q Okay. And could you look at 4.11,  
8 paragraph 4.11(e)?

9 And if you want to read it --  
10 I don't know if we should read it into the  
11 record or people have it as a reference.

12 ALJ DARLING: This is the section from  
13 the settlement agreement?

14 MS. MERRIGAN: Yes. It's:

15 In consideration of the Utilities  
16 retaining SONGS Litigation  
17 Recoveries to the extent of  
18 the SONGS Litigation Costs,  
19 the Utilities shall remove all  
20 SONGS Litigation Costs booked in  
21 the memorandum accounts described  
22 in Section 4.11(a) of this  
23 Agreement from the recorded costs  
24 used to develop future general  
25 rate case forecasts.

26 And then it says:

27 Nothing in this Agreement shall  
28 preclude the Settling Parties from



1 making any arguments in either  
2 Utility's general rate cases  
3 regarding costs used to develop  
4 general rate case forecasts.

5 So what does that paragraph mean?

6 WITNESS LITZINGER: A Primarily means  
7 that we will not be able to put those  
8 litigation costs into our rate case for  
9 recovery, consistent with what we said  
10 before.

11 Q Okay. I just want to be real clear  
12 about it. But I guess I'm not -- I know --  
13 I'm not -- the part about not precluding  
14 the Settling Parties, is that any of  
15 the Settling Parties?

16 Or, do you have something to say,  
17 Mr. Marcus?

18 WITNESS MARCUS: A I might be able to  
19 help you here.

20 Q Sure.

21 A I think that sentence was put in  
22 because we did not want -- we wanted these  
23 costs to be left out for ratemaking purposes  
24 in general rate cases. But we also did not  
25 want to limit parties' ability to make any  
26 other arguments about litigation costs  
27 unrelated to this when we came to a general  
28 rate case. So it's more of a -- it's more of

1 a protection of everybody's rights about what  
2 goes into a future general rate case.

3 Q So it's real clear that ratepayers  
4 will not be paying any of the rate of  
5 the litigation costs; is that right?

6 A That certainly was our intent not.

7 Q And you all agree with that?

8 (No audible response).

9 And then I just want to clarify all  
10 this.

11 The definition of the SONGS  
12 litigation costs, all litigation costs  
13 recorded since January 31 including but not  
14 limited to fees paid to outside attorneys and  
15 experts associated with pursuing and  
16 preparing to pursue SONGS litigation  
17 recoveries, what is an example of an expert?

18 WITNESS LITZINGER: A An expert, when  
19 we proceed in a litigation with someone like  
20 a Mitsubishi Heavy Industries where we're  
21 going to be talking about very complicated  
22 technical design issues, there is no doubt  
23 that MHI will come forward with their  
24 external independent experts and we would  
25 want to counter with our own.

26 Q I just wanted to make sure. Could  
27 that include -- that there's no way to sneak  
28 in like the inspection and repair costs that

1 were done in 2012 as far as somehow that  
2 would go into the litigation costs because  
3 that was necessary for the experts?

4 A No. Those costs have been  
5 excluded. They've already been invoiced and  
6 paid. This would be new experts coming into  
7 the litigation at that time based on those  
8 invoices.

9 Q Okay, thanks.

10 And what's the current total cost  
11 of SONGS litigation costs, the current  
12 amount?

13 A I'm unaware of the amount. We'd  
14 have to get back to you on that.

15 Q Does anybody here have it?

16 I think -- is it around 32 million  
17 or -- Mr. Weissmann?

18 WITNESS LITZINGER: I would have to  
19 respond later.

20 MR. WEISSMANN: There was a data  
21 request on this that WEM propounded and to  
22 which we responded. These amounts are  
23 recorded in our monthly SONGSOMA report.

24 MS. MERRIGAN: Q Currently at about 32  
25 million; is that right?

26 MR. WEISSMANN: I don't have the number  
27 but it's in the SONGSOMA report, so whatever  
28 that adds up to.

1 MS. MERRIGAN: Q And with the NEIL  
2 claim, in pursuing the NEIL claim the  
3 utilities maintain the plant was shut down  
4 due to an accident as defined by the NEIL  
5 policy?

6 WITNESS LITZINGER: A That is the  
7 basis of our claim, yes.

8 Q Okay. And are there negligence  
9 provisions in the policy?

10 A There are numerous exclusions.  
11 I do not believe simple negligence is one of  
12 them.

13 Q I wanted to ask some question of  
14 TURN and ORA.

15 In the general recitals,  
16 the procedural history of this proceeding.

17 ALJ DARLING: Are you referring to the  
18 motion?

19 MS. MERRIGAN: No.

20 ALJ DARLING: Or the settlement  
21 agreement?

22 MS. MERRIGAN: -- itself. There's  
23 general recitals.

24 Q And if you'd look at general  
25 paragraph 3.12 -- if I can find it -- it  
26 basically states that -- what this proceeding  
27 was set out to do; is that correct?

28 WITNESS POCTA: A Yes, I think that's

1 correct.

2 Q And it was to look into the causes  
3 of the outages, the utilities' responses, and  
4 the resulting effects on the provision of  
5 safe and reliable service.

6 And then 3.15, 3.15(d) or actually  
7 (c). 3.15(c). What's that one about?

8 A States:

9 In Phase 3, the Commission will  
10 examine "causes of the [steam  
11 generator] damage and allocation  
12 of responsibility, whether claimed  
13 SGRP expenses are reasonable,  
14 including review of  
15 utility-proposed repair and/or  
16 replacement cost proposals using  
17 cost-effectiveness analysis and  
18 other factors."

19 ALJ DARLING: Mr. Pocta, could I ask  
20 you to speak up more directly into the  
21 microphone, because it is being web cast.

22 WITNESS POCTA: Sure.

23 ALJ DARLING: Thank you.

24 MS. MERRIGAN: Q Okay. So there  
25 was -- the proceeding set out to, this  
26 proceeding opened with the promise that there  
27 would be an investigation into the causes and  
28 responsibility of the SONGS outages; is that

1 correct?

2 WITNESS MARCUS: A I wouldn't call it  
3 a promise. I would call it a procedural  
4 schedule that had that phase in it.

5 Q Okay. Well, that's something.

6 Well, okay. Now the agreement, is  
7 it a correct reading of the proposed  
8 agreement that every time ratepayers were  
9 entitled to a reasonableness review of the  
10 SGRP, the utilities have conceded money in  
11 exchange for ending the reasonableness  
12 review?

13 ALJ DARLING: Is that a question?

14 MS. MERRIGAN: Yeah. Yeah.

15 Q Is that -- I mean, that's --  
16 I spent a lot of time with this agreement and  
17 like that began to dawn on me: Oh, that's  
18 why they can get rid of Phase 3 because they  
19 dispensed --

20 I'm sorry.

21 ALJ DARLING: Ms. Merrigan, you need to  
22 confine yourself to a question.

23 MS. MERRIGAN: Okay.

24 ALJ DARLING: This not the opportunity  
25 to make your agreement.

26 MS. MERRIGAN: Okay.

27 ALJ DARLING: Can you reframe your  
28 inquiry?

1 MS. MERRIGAN: Is it a correct reading  
2 of the proposed agreement that every time  
3 ratepayers were entitled to a reasonableness  
4 review of the SGRP, the utilities have  
5 conceded money in exchange for ending  
6 the reasonableness review?

7 WITNESS MARCUS: A I would not put it  
8 that way.

9 I believe that the agreement  
10 essentially adopted our litigation position  
11 that there would be no costs for the steam  
12 generator after February 1, 2012, which  
13 essentially is a proxy for a finding of some  
14 type of imprudence. Whether the problem is  
15 caused by Mitsubishi or caused by Edison,  
16 frankly ratepayers don't care. Ratepayers --

17 Q Okay.

18 A -- have basically gotten that money  
19 out.

20 MR. AGUIRRE: I'm going to object and  
21 move to strike as no foundation for him  
22 testifying to what ratepayers have done or  
23 not done. That's a third party for whom he  
24 has no personal knowledge.

25 ALJ DARLING: Reply comment?

26 Mr. Marcus?

27 WITNESS MARCUS: I believe that  
28 the organizations representing -- I will

1 change my comment to say the organizations  
2 representing ratepayers among the settling  
3 parties got that \$597 million removed as part  
4 of the settlement which would have been  
5 likely to occur had there been a finding of  
6 imprudence.

7 ALJ DARLING: Objection overruled.

8 MR. AGUIRRE: Well, he changed his  
9 answer.

10 ALJ DARLING: Yes, based on the changed  
11 answer.

12 MR. AGUIRRE: That's not -- you don't  
13 object -- you don't overrule the objection.  
14 Factually he changed his answer. Now  
15 the objection has been dealt with. Come on.

16 ALJ DARLING: Let's move on.

17 MS. MERRIGAN: Q So you're one of  
18 the coauthors of the response to question 17  
19 as well from ORA?

20 It's -- I guess what I'm getting at  
21 is response to Question 17 states that  
22 there's aligned interest between ratepayer  
23 and shareholder interests now, and I think  
24 were you just stating that.

25 But in that -- isn't what happened  
26 is that ratepayers -- by the terms of this  
27 agreement, it hasn't happened yet because  
28 this hasn't been approved yet. But by



1 the terms of the agreement, ratepayers give  
2 up their right to an investigation of what  
3 happened with the steam generator replacement  
4 project and they are asked to align  
5 themselves with the utilities in their  
6 prosecution of the arbitration against  
7 Mitsubishi so they give up -- is that what's  
8 happened by the agreement?

9 WITNESS MARCUS: A Question 17  
10 specifically speaks to litigation costs. And  
11 what -- and it was written narrowly with  
12 respect to litigation costs.

13 Q Okay. But they are on board with  
14 the Mitsubishi and with the litigation; is  
15 that right?

16 A What do you mean "on board"?

17 Q You guys think it's in their  
18 interest to -- in ratepayers' interest to be  
19 aligned with the utility there?

20 A I think what we are saying here is  
21 if there is going to be litigation, there are  
22 shares to ratepayers, there are shares to  
23 shareholders, they are net of the amount of  
24 money paid to attorneys and experts;  
25 therefore, all parties have an interest, have  
26 the same interest, which is maximizing the  
27 net recovery from either Mitsubishi or from  
28 the NEIL insurance policy. Because Edison

1 gets the money. We get some money. It's  
2 different, depending on the size of  
3 the allowance. But that's the alignment that  
4 we were talking about here.

5 Q Okay. And is it true that -- it  
6 seems like the agreement asked the CPUC to  
7 give up any oversight of the litigation. Is  
8 that the litigation, that 4.11(f)?

9 ALJ DARLING: Is that directed to  
10 Mr. Marcus?

11 MS. MERRIGAN: Q Well, maybe -- how  
12 about Mr. --

13 WITNESS POCTA: Pocta.

14 MS. MERRIGAN: -- Pocta.

15 WITNESS POCTA: A Thank you.

16 Q It's:

17 The CPUC shall not review  
18 the reasonableness or prudence of  
19 the Utilities' litigation,  
20 settlement, compromise, or other  
21 resolution of such claims, and  
22 shall not impose any ratemaking  
23 adjustment in respect of such  
24 claims except as expressly  
25 provided in [the] Agreement.

26 My question is, does this paragraph  
27 mean that if the third party litigation  
28 proves negligence on the utilities' part,

1 the CPUC has no further ability to hold the  
2 utility accountable?

3 WITNESS POCTA: A This provision, if  
4 you read the top part, is asserting that  
5 utilities shall notify the PUC of any such  
6 settlement compromise or other resolution of  
7 their claims against NEIL, and the PUC would  
8 not be reviewing the reasonableness or  
9 prudence of the litigation compromise or  
10 resolution.

11 So essentially, we feel that the  
12 sharing mechanism that's been set forth in  
13 the settlement and the incentives are such  
14 that utilities are provided the incentive to  
15 maximize the amount of settlement and  
16 compromise and resolution associated with  
17 their claims against NEIL and MHI, and thus  
18 by the provision of this settlement, CPUC  
19 reviewing the reasonableness of those  
20 settlements is not necessary.

21 Q So they're not allowed to review  
22 the reasonableness of the lit- -- I mean --

23 A That's what the --

24 Q -- kind of written out?

25 A -- our settlement agreement is  
26 recommending that because the incentives are  
27 such that it provides SCE and San Diego --

28 Q In exchange --

1 A -- with the incentive --

2 Q I'm sorry.

3 A -- to maximize the --

4 Q Being kind of rude.

5 A -- the basically the -- such  
6 resolution of those settlements.

7 ALJ DARLING: Ms. Merrigan, you have  
8 about three minutes.

9 MS. MERRIGAN: Okay. Dorah.

10 MS. SHUEY: Thank okay.

11 CROSS-EXAMINATION

12 BY MS. SHUEY:

13 Q This question is directed to  
14 Mr. Litzinger.

15 General resolution -- and this is  
16 regarding the possible settlement, the awards  
17 for Mitsubishi.

18 General recital 3.23 states that  
19 SCE has determined that Mitsubishi made  
20 errors in designing and manufacturing the  
21 replacement steam generators. But doesn't  
22 this recital leave out the fact that the NRC  
23 cited Southern Cal Edison for a violation of  
24 federal regulations because SCE failed to  
25 verify or check the adequacy of the design?

26 WITNESS LITZINGER: A Our position is  
27 that Mitsubishi Heavy Industries failed in  
28 their design, and we are pursuing

1 the litigation on those claims.

2 The NRC did issue a notice of  
3 violation and that notice of violation said  
4 that Southern California Edison was -- if you  
5 give me one second --

6 Q I have it right here.

7 ALJ DARLING: No. Allow the witness --

8 THE WITNESS: No. I got it.

9 ALJ DARLING: To answer the question.

10 WITNESS LITZINGER: In that they  
11 pointed out that there were opportunities to  
12 discover the design error. They were  
13 actually silent as to which party.

14 They noted that MHI was our vendor  
15 and that there were numerous occasions where  
16 we questioned the results, but that we were  
17 ultimately responsible and that MHI had hired  
18 consultants and failed to follow-up on issues  
19 raised by their consultants. We feel that  
20 that is helpful for us in our litigation.

21 With regards to our response to the  
22 notice of violation, we recognized -- we  
23 made -- in our response, we stated that we  
24 are permitted to delegate to our supplier.  
25 It can't be expected that a purchaser of  
26 a complicated piece of machinery like that  
27 would know everything, and we delegated  
28 the quality assurance to that. But the NRC

1 rules are clear that the licensee is  
2 ultimately responsible. We acknowledged  
3 that, that we were ultimately responsible and  
4 took that and then the -- well, we reserved  
5 our rights to dispute other matters in  
6 the future with regards to the violation.

7 All we acknowledged was that  
8 the licensee is ultimately responsible, which  
9 for most situations at the NRC will be  
10 the finding.

11 Q Thank you.

12 ALJ DARLING: And --

13 MS. SHUEY: I think I have another  
14 minute.

15 ALJ DARLING: All right, one minute.

16 MS. SHUEY: Okay.

17 Q And my next question is directed to  
18 I believe it's Mr. Pocta; is that correct?

19 WITNESS POCTA: A That's correct.

20 Q With ORA.

21 Going back to general recital 3.12,  
22 this is the same, following up on what Jean  
23 was saying. And it's the one that states  
24 that the PUC will be investigating the causes  
25 of the outages.

26 And so I know that ORA is an  
27 independent advocating body for ratepayers.  
28 And how does it fit into these, your legal

1 duties as a ratepayer advocate to join in  
2 the settlement that closes off Phase 3 and  
3 Phase 4?

4 WITNESS POCTA: A I'm not --

5 MS. MERRIGAN: Is there somebody else  
6 who could answer?

7 WITNESS POCTA: A I'm not a legal  
8 expert. If you want me to answer that in  
9 some other manner --

10 MS. SHUEY: Q I'm sorry. By legal, I  
11 simply meant that since you're a government  
12 body, that you have some regulations that  
13 were about your formation. I'm not asking  
14 you to give an opinion as a legal expert.

15 A Well, we advocate on behalf of  
16 ratepayers to obtain the lowest rate possible  
17 consistent with safe and reliable service.  
18 So basically we feel that the settlement does  
19 that. It resolves this case in a fair and  
20 equitable manner to ratepayers.

21 And as I stated earlier with regard  
22 to the replacement steam generators,  
23 essentially -- well, not essentially.  
24 The settlement agreement would adopt ORA's  
25 litigation position. It's a best case result  
26 with regard to the replacement steam  
27 generators.

28 So addressing the prudence issue at

1 that point isn't going to achieve anything  
2 further with regard to getting the lowest  
3 possible rate for ratepayers. We have  
4 achieved that in the settlement with regard  
5 to replacement steam generator issue.

6 Q Okay. Since I know also it was  
7 mentioned I believe by Mr. Marcus that  
8 providing a speeder refund is an issue, could  
9 there be a bifurcation allowing for the known  
10 refund now with the disallowances and then  
11 if Phase 3 and Phase 4 do go on, there can be  
12 adjustments made regarding the ratepayer  
13 refund?

14 WITNESS MARCUS: A I think the  
15 Commission can theoretically do that.

16 I would not support that because  
17 I believe that the settlement achieves  
18 a significant amount of judicial economy.  
19 And I also think that there are potential  
20 litigation outcomes where we might have to  
21 give some of the money back that is in  
22 the settlement. ]

23 I consider them to be part of  
24 the -- part of what we had to look at when we  
25 settled the case is that there could be --  
26 you know -- there are litigation outcomes  
27 that might be better for us, but there are  
28 also litigation outcomes that might be worse.



1 MS. SHUEY: Thank you. That's all.

2 ALJ DARLING: All right. Thank you  
3 very much.

4 Mr. Geesman.

5 MR. AGUIRRE: Could I just ask, you  
6 said there was an order. Mr. Geesman said 15  
7 minutes. Theirs was 20 minutes. What order  
8 are you following? Mine is 40. What order  
9 are you following?

10 ALJ DARLING: As I stated on the record  
11 earlier, we are taking it in the order that  
12 the Nonsettling Parties requested.

13 MR. AGUIRRE: One requested 15 minutes.  
14 One requested 20. You took the 20 first and  
15 now you're taking the 15 second.

16 ALJ DARLING: The chronologic --

17 ALJ DUDNEY: The order that the  
18 requests were received.

19 MR. AGUIRRE: Oh, the order the  
20 requests were received. Okay.

21 ALJ DARLING: Mr. Geesman.

22 MR. GEESMAN: Thank you, your Honor.  
23 John Geesman on behalf of the Alliance For  
24 Nuclear Responsibility.

25 I'm sorry, gentlemen. You're  
26 positioned where you need to look over your  
27 shoulders. I'm not that much to look at.

28 COMMISSIONER PEEVEY: If you turn the

1 mic, turn it up a little bit.

2 MR. GEESMAN: I think the microphone is  
3 on.

4 ALJ DARLING: That's much better.

5 MR. GEESMAN: I'll lean down.

6 CROSS-EXAMINATION

7 BY MR. GEESMAN:

8 Q Mr. Litzinger, if I could start  
9 with you. I'd look to go to the settlement  
10 agreement itself, Section 2.13 and the  
11 definition of CWIP.

12 WITNESS LITZINGER: A Okay.

13 Q That first sentence, I'm looking at  
14 the parenthetical reference to retirement  
15 work in progress. Now, could you describe  
16 for me what retirement work in progress is?

17 A I think that would probably be best  
18 answered by Mr. Snow.

19 Q Okay.

20 A Or I've just been instructed Mr.  
21 Fisher would be the better responder.

22 ALJ DARLING: All right.

23 MR. GEESMAN: Either would be fine.

24 ALJ DARLING: Okay. I'll need to swear  
25 Mr. Fisher in.

26 Mr. Fisher, please stand, raise your  
27 right hand.

28 RICHARD FISHER, called as a witness  
by Southern California Edison Company,

1           having been sworn, testified as  
2           follows:

3           ALJ DARLING: Thank you. Please be  
4           seated.

5           WITNESS FISHER: I'm sorry, Mr.  
6           Geesman. Can you repeat the question?

7                           CROSS-EXAMINATION

8           BY MR. GEESMAN:

9           Q     Yes. I'm at Section 2.13 of the  
10           settlement agreement, the definition of CWIP.  
11           And it's the first sentence of that multipart  
12           definition, the reference that's in  
13           parentheses to retirement work in progress.  
14           Could you explain what retirement work in  
15           progress is.

16           WITNESS FISHER: A   Sure. Retirement  
17           work in progress has to do with the costs  
18           incurred when permanently retiring an asset.  
19           So that would include cost of removal,  
20           disposal, or otherwise permanent abandonment  
21           of the asset as well as net of any gross  
22           salvage received.

23           Q     And that's ordinarily recorded  
24           directly in your depreciation account, is it  
25           not?

26           A     Once the -- correct. It -- once  
27           the work order is closed and the work is  
28           finished, they'll settle to the accumulated

1 depreciation for that asset, but in the  
2 meantime it sits in a retirement work in  
3 progress account, but it is on the  
4 accumulated depreciation general ledger.

5 Q So when it goes into accumulated  
6 depreciation, it reduces ratebase?

7 A Well, that will depend on whether  
8 it is a cost of removal or salvage. So a  
9 removal cost will actually increase ratebase.  
10 It decreases your accumulated depreciation.  
11 And gross salvage has the opposite effect.

12 Q Okay. So is this definition of  
13 CWIP which includes retirement work in  
14 progress the way CWIP is approached in your  
15 FERC system of accounts?

16 A No.

17 Q You're combining both additions and  
18 subtractions to ratebase in this definition,  
19 are you not?

20 A That is correct.

21 MR. GEESMAN: Thank you very much.

22 CYNTHIA FANG,

23 ROBERT SCHLAX,

24 RON LITZINGER,

25 and ROBERT M. POCTA

26 resumed the stand and testified further as  
27 follows:

28

1 CROSS-EXAMINATION (resumed)

2 BY MR. GEESMAN:

3 Q Mr. Pocta, my question for you  
4 relates to the NEIL insurance claim. And  
5 specifically have you done an assessment of  
6 the likely size of recovery under the  
7 replacement power policy provided by NEIL?

8 WITNESS POCTA: A When you say  
9 "assessment," could you be more clear what  
10 you mean by "assessment"?

11 Q Well, have you evaluated the  
12 likelihood and likely amount of a recovery  
13 under the NEIL policies for replacement power  
14 costs?

15 A I would just say that we discussed  
16 it internally, that we have not submitted  
17 testimony on it. We have not gone beyond  
18 informally discussing it. That's it.

19 Q And does that imply that you don't  
20 have a specific number that you'd be prepared  
21 to share with me today?

22 A That's correct. I wouldn't have a  
23 number where we assessed this specifically.

24 Q And with respect to the accidental  
25 damage policies provided by NEIL, have you  
26 made an assessment of the likelihood of  
27 recovery or the prospective amount to be  
28 recovered under those policies?

1           A    Again, similar to the first  
2 question, we -- analysts reviewed those  
3 policies. We discussed them internally, but  
4 again, we didn't come to any specific  
5 resolution or determination as to the amount  
6 or potential amount that -- of recovery that  
7 SCE or SDG&E might or might not expect. It  
8 was merely internal discussions.

9           Q    Thank you.

10           Mr. Marcus.

11           WITNESS MARCUS:   A   Yes.

12           Q    Same question with respect to NEIL  
13 return, and I'd like you to address both the  
14 replacement power costs and the accidental  
15 damages policy.

16           A    I can say that the level of  
17 replacement power costs is going to be no  
18 higher than the numbers that are provided  
19 in -- than the numbers that unpacked yielded  
20 SCE 56's replacement power cost, which is 389  
21 million net present value, to unpack that.  
22 That would be the maximum amount we're  
23 talking about.

24                   As to the probability of  
25 occurrence, we did not handicap that or look  
26 at that in any detail, nor did we look at the  
27 probability of occurrence to handicap the  
28 accidental loss policy.

1           Q    And with respect to the accidental  
2 loss policy, did it make any difference that  
3 Edison has yet to file a proof of loss?

4           A    I think -- we understood that was  
5 the case, but there's a whole process  
6 involved in filing these. What we wanted to  
7 make sure was that a number for whatever the  
8 loss was was preponderately on the ratepayer  
9 side of the ledger since it was paying for  
10 replacement power that ratepayers paid for.  
11 And numbers are negotiated, but that was  
12 why -- that was what our concern was.

13          Q    But on the accidental loss policy,  
14 the property damages policy, were you able to  
15 arrive at a likely number to associate with  
16 potential recovery there?

17          A    No.

18          MR. GEESMAN: Thank you very much.

19                That's all I have, your Honor.

20          ALJ DARLING: Okay. Mr. Aguirre will  
21 be next, but I'm going to call a ten-minute  
22 break.

23          MR. AGUIRRE: We have some exhibits,  
24 though, we'd like to provide to you. My  
25 exhibits have been previously provided to the  
26 parties, which is the normal course, and now  
27 I'm providing them to you after they have  
28 been given a notice of what I'm providing to

1 you, which is the normal way that it is  
2 supposed to proceed.

3 ALJ DARLING: Were they provided five  
4 days before the hearing, which is what was  
5 required by the settlement ruling?

6 MR. AGUIRRE: Well, you have to look at  
7 them.

8 ALJ DARLING: I'm asking you, did you  
9 provide these five days prior --

10 MR. AGUIRRE: In the same way that they  
11 provided them, yes. The same way they  
12 provided them. It's all from their records.

13 ALJ DARLING: No. My question is  
14 whether they were provided five --

15 MR. AGUIRRE: The answer to your  
16 question is as I've just indicated.

17 ALJ DARLING: It's a yes or no  
18 question, Mr. Aguirre.

19 MR. AGUIRRE: The question is that you  
20 have to look at the documents. They have all  
21 the documents.

22 ALJ DARLING: I don't have to look --

23 MR. AGUIRRE: They were provided to  
24 them. They were provided to them more than  
25 five days before, yes.

26 ALJ DARLING: They were?

27 MR. AGUIRRE: Yes.

28 ALJ DARLING: I haven't seen this one.



1           MR. AGUIRRE: Well, that's because what  
2 you do is you show the other parties first.  
3 These are all just from the data requests of  
4 that sort. But normally what we do is we  
5 provide the documents to the parties first  
6 and then we provide them to the  
7 commissioners, not the other way around,  
8 which is the procedure I have followed this  
9 morning.

10           ALJ DARLING: Well, actually, that's  
11 not what our rules require nor what the  
12 ruling requires.

13                     Let's hear from Mr. Weissman.

14           MR. WEISSMANN: Thank you, your Honor.  
15 I have just received a document just prior to  
16 the commencement of today's hearing. I did  
17 not receive it prior till today. Leafing  
18 through the document, some of the materials  
19 here appear familiar and not problematic, for  
20 example, the settlement agreement. There  
21 appear to be some other things like an  
22 excerpt from the Commission's 2005 decision  
23 which don't appear to be problematic.

24                     There are some things in here that  
25 appear to be materials that were generated by  
26 counsel or their consultants about San Onofre  
27 plant balances.

28           MR. AGUIRRE: Matters that we've

1 asked --

2 ALJ DARLING: No, Mr. Aguirre.

3 MR. AGUIRRE: Sorry.

4 MR. WEISSMANN: Which I have not seen  
5 before. I don't know how these were derived.  
6 There are some data responses in here which  
7 don't appear to be problematic. There seem  
8 to be some press releases which I don't -- I  
9 don't have any independent knowledge of. Not  
10 that press releases are really evidence, but  
11 that's as it may be. There's an excerpt from  
12 the rules of Practice and Procedure.

13 ALJ DARLING: Right. I mean this is --

14 MR. WEISSMANN: I've not seen this  
15 document before today.

16 ALJ DARLING: Nor have I.

17 MR. AGUIRRE: Yes, you have. We've  
18 asked you to take judicial notice. This is  
19 not evidence. You said evidence. These are  
20 all -- can be all judicially noticed  
21 documents. The documents that show the net  
22 plant all come from the 10-Ks. Those have  
23 all been provided to you.

24 ALJ DARLING: Mr. Aguirre, those are  
25 not subject to official notice.

26 MR. AGUIRRE: Oh, yes, they are. Of  
27 course they are subject to official notice.

28 ALJ DARLING: Oh, no, they're not.

1           MR. AGUIRRE: Your Honor, excuse me,  
2 but in the case of -- I have a case.

3           ALJ DARLING: No, I'm not going to  
4 entertain -- you know, under 451 or 452?

5           MR. AGUIRRE: 452.

6           ALJ DARLING: First of all, we don't  
7 subscribe to the Evidence Code. We use it as  
8 guidance.

9           MR. AGUIRRE: No, that's not true. You  
10 incorporate it. The official notice  
11 incorporates Evidence Codes 450 expressly.

12          ALJ DARLING: And I can tell you  
13 exactly that data requests would never be  
14 subject to official notice. Okay.

15                 So I think what we're going to do is  
16 go off the record, take our ten-minute break.  
17 The judges will try to parse this into  
18 subsets, and we'll have to take it one by  
19 one, and you'll need to do an offer of proof  
20 to the extent you wish to use it.

21          MR. AGUIRRE: I'm not offering it. I'm  
22 just using it to examine the witness. I just  
23 want to mark it as an exhibit. I'm not  
24 offering it as evidence. It's just to be  
25 used as a document to assist in the  
26 examination of the witness so that he has  
27 readily available information about the  
28 questions I'm asking.

1 ALJ DARLING: Mr. Weissmann, do you  
2 have any objection to having it be marked?

3 MR. WEISSMANN: No, I don't have an  
4 objection to it being marked.

5 ALJ DARLING: All right. So Judge  
6 Dudley will mark it. We will take a  
7 ten-minute break and be back at about 10  
8 after 3.

9 MR. AGUIRRE: Henricks No. 1.

10 ALJ DARLING: Off the record.

11 (Recess taken)

12 ALJ DARLING: Let's go back on the  
13 record.

14 And before we proceed with  
15 cross-examination, Judge Dudley.

16 ALJ DUDNEY: Mr. Geesman, we just  
17 wanted to have you introduce your exhibits.

18 MR. GEESMAN: Your Honor, I had two  
19 cross-examination exhibits which TURN and ORA  
20 stipulated to the admissibility of. I have  
21 inquired of both San Diego and Edison whether  
22 they have any objections. They indicate they  
23 do not. I've not inquired with the other  
24 parties, but I would move their admission  
25 into evidence.

26 ALJ DUDNEY: Let's take it a step at a  
27 time and get them marked first. From my  
28 notes I have labeled the TURN discovery

1 response as ANR-50 and the ORA discovery  
2 response as ANR-51.

3 MR. GEESMAN: So I would move A4NR-50.

4 ALJ DUDNEY: Any objections?

5 (No response)

6 ALJ DUDNEY: Hearing none.

7 MR. GEESMAN: I would move A4NR-51.

8 ALJ DUDNEY: Any objections?

9 (No response)

10 ALJ DUDNEY: Hearing no objections,  
11 ANR-50, the TURN discovery response is marked  
12 for identification and admitted into  
13 evidence, and ANR-51, the ORA discovery  
14 response, is marked for identification and  
15 admitted into evidence.

16 (Exhibit No. ANR-50 and ANR-51 were  
17 marked for identification.)

18 (Exhibit No. ANR-50 and ANR-51 were  
19 received into evidence.)

20 MR. GEESMAN: Thank you, your Honor.

21 ALJ DUDNEY: Thank you, Mr. Geesman.

22 Mr. Heiden, do you want to introduce  
23 the ORA -- or excuse me -- DRA exhibits as  
24 well.

25 MR. HEIDEN: Thank you, your Honor. I  
26 have a statement of qualifications. It's  
27 titled Qualifications and Prepared Testimony  
28 of Robert Mark Pocta. I gave copies to some

1 folks before the hearing. If people need a  
2 copy, I could distribute it.

3 ALJ DUDNEY: All right. That is marked  
4 Exhibit DRA-10. We're sticking with DRA in  
5 this proceeding.

6 Any objections to the admission of  
7 that exhibit?

8 (No response)

9 ALJ DUDNEY: Hearing none, Exhibit  
10 DRA-10 is marked for identification and  
11 received into evidence.

12 (Exhibit No. DRA-10 was marked for  
13 identification.)

14 (Exhibit No. DRA-10 was received  
15 into evidence.)

16 MR. HEIDEN: Thank you, your Honor.

17 ALJ DARLING: All right. Mr. Henricks,  
18 you have distributed a set of documents here.  
19 It does not conform with --

20 MR. AGUIRRE: Mr. Henricks?

21 ALJ DARLING: I'm sorry. Mr. Aguirre  
22 wanted to mark Henricks-1. The difficulty of  
23 this stack of different documents is that  
24 under Rule 13.7 there should have been a  
25 table of contents. Each page should be  
26 marked individually so that the parties can  
27 all move efficiently to it. So we'll see how  
28 it goes, but it's set up to make the

1 proceeding last unnecessarily long as we all  
2 flip through pages.

3 So to the extent that you practice  
4 before this Commission, you should  
5 familiarize yourself with Rule 13.7 as to how  
6 exhibits should be presented.

7 MR. AGUIRRE: I think everyone should  
8 familiarize their self with the rules of the  
9 Commission and comply with them. I agree  
10 with that.

11 ALJ DARLING: So --

12 MR. AGUIRRE: May I please ask you now,  
13 Mr. Litzinger, if you will.

14 ALJ DARLING: Did you wish to have this  
15 exhibit marked?

16 MR. AGUIRRE: It's already been marked.

17 ALJ DARLING: No, it has not been  
18 marked on the record.

19 ALJ DUDNEY: It was not marked on the  
20 record.

21 MR. AGUIRRE: Oh, marked on the record  
22 as Henricks-1, please.

23 ALJ DARLING: It's not your direction.  
24 It's the judge's direction.

25 So Mr. Aguirre --

26 MR. AGUIRRE: I was directing my  
27 comments to you, your Honor.

28 ALJ DARLING: Judge Dudley.

1 ALJ DUDNEY: All right. Henricks-1 is  
2 marked for identification.

3 (Exhibit No. Henricks 1 was marked  
4 for identification.)

5 CROSS-EXAMINATION

6 BY MR. AGUIRRE:

7 Q Would you, Mr. Litzinger, would you  
8 mind turning to seven pages in and Section  
9 3.23 of the agreement, Section 3.23 of the  
10 agreement.

11 WITNESS LITZINGER: A Okay.

12 Q It says here, "SCE had determined  
13 that Mitsubishi made errors in designing."  
14 Do you see that?

15 A Yes.

16 Q Where in the record is there  
17 support for the errors in designing that  
18 Southern Cal Edison determined were made?

19 A I believe these general recitals  
20 were just provided as general background, and  
21 that's what we were attempting to accomplish  
22 with that statement.

23 Q Sir, the question before you, and  
24 I'll repeat it, where in the record -- let me  
25 repeat it -- where in the record is there  
26 support for the factual assertion that SCE  
27 determined there were errors in designing of  
28 the steam generators that were deployed at



1 San Onofre?

2 A I'm not aware of the specific spot  
3 in the record if any.

4 Q In fact, sir, you are aware that  
5 there is nothing in the record that supports  
6 the factual assertion in 3.23 that SCE  
7 determined there were errors in the design of  
8 the steam generators that were deployed at  
9 the San Onofre nuclear station, correct?

10 A Again, I'm not aware if there is  
11 anything in the record on it. My  
12 understanding of the general recitals is they  
13 were provided as general background for the  
14 settlement agreement.

15 Q Right, right. But I'm not asking  
16 about why you provided recitals. I'm asking  
17 you a very specific and straightforward  
18 question. If you would please answer it I  
19 would appreciate it muchly.

20 Do you know -- let me start again.  
21 Can you please tell us where if anywhere  
22 there is any factual support for the factual  
23 assertion that SCE determined there were  
24 errors in the design of the steam -- of the  
25 replacement steam generators that were  
26 deployed in San Onofre?

27 A I cannot.

28 Q What errors -- let me --

1                   Did SCE investigate whether SCE  
2 made errors in the design of the steam  
3 generators that were deployed at the San  
4 Onofre Nuclear Power Station as part of the  
5 steam replacement program approved by the PUC  
6 on December 15th of 2005?

7                   A    SCE conducted exhaustive  
8 investigations utilizing outside experts. We  
9 did that in order to pursue our restart and  
10 to build our case for making a claim against  
11 Mitsubishi Heavy Industries.

12                  Q    And will you tell us, sir, where in  
13 this record the product of your investigation  
14 into whether SCE officials had any  
15 responsibility for design errors for the  
16 replacement steam generators that were  
17 deployed in the San Onofre nuclear power  
18 plant, where in this record is any such  
19 information?

20                  A    I -- same answer. I cannot.

21                  Q    Now, you will admit that Southern  
22 Cal Edison was involved in the design process  
23 for the replacement steam generators as early  
24 as November of 2004 when Mr. Nunn sent his  
25 letter to the Mitsubishi Heavy Industry  
26 Corporation, correct?

27                  A    I would only say that Southern  
28 California Edison was not involved in the

1 design. We contracted the design of the  
2 steam generator out to MHI. As an owner we  
3 exercised oversight of that design as would  
4 normally be expected of an owner in the NRC.

5 Q Okay. Now, were you employed and  
6 working on the replacement steam generator  
7 program in 2004 as an agent, officer, or  
8 employee of Southern Cal Edison?

9 A I was not.

10 Q Were you in any way involved in  
11 overseeing, directing, managing, the  
12 replacement steam program for the San Onofre  
13 plant in the year 2004?

14 A I was not.

15 Q What is the basis of your personal  
16 knowledge of Southern Cal Edison executives,  
17 agents, officers, employees involvement in  
18 the design process?

19 A Reviewing past materials as we  
20 investigated causes such that we could come  
21 up with a restart plan and pursue that and  
22 also investigating causes. To make our claim  
23 against Mitsubishi, we read past documents  
24 associated with the design phase of the  
25 project.

26 Q And are those documents in the  
27 record available to the Commission to  
28 evaluate the reasonableness of this proposed

1 settlement, sir?

2 A All of those documents are not.

3 Q Sir, did you participate personally  
4 in any of the settlement meetings that led up  
5 to the proposed settlement?

6 A I did not.

7 Q How is the Commission to make up  
8 its mind -- let me start again.

9 Did you participate in any  
10 discussions in which the strength of the  
11 ratepayer case that Southern California  
12 executive -- executives had acted  
13 unreasonably in connection with the  
14 deployment of the steam generators at San  
15 Onofre, did you participate in any such  
16 discussion in which the strength of the case  
17 was discussed during the course of the  
18 settlement discussions?

19 MR. WEISSMANN: Your Honor, I'll  
20 interpose an objection and direct the witness  
21 not to divulge any privileged attorney-client  
22 communications.

23 MR. AGUIRRE: Q Oh, attorney-client  
24 privileged communications. Okay. Well,  
25 exclude any client, attorney-client -- well,  
26 wait a second.

27 The only person that represented  
28 Southern California Edison at the settlement

1 conferences was an attorney; is that true?

2 ALJ DARLING: Who are you directing the  
3 question to?

4 MR. AGUIRRE: I'm directing the  
5 question at the witness, your Honor.

6 WITNESS LITZINGER: A We were  
7 represented by Mr. Weissmann, yes.

8 MR. AGUIRRE: Q The question before  
9 you, sir, is, was your attorney, Mr.  
10 Weissmann, the only representative of  
11 Southern California Edison who attended the  
12 settlement negotiations?

13 WITNESS LITZINGER: A To my knowledge,  
14 he was the only one present.

15 Q And the only source of information  
16 that you have about what took place at the  
17 settlement negotiations are attorney-client  
18 privileged communications that you received  
19 from Mr. Weissmann, true?

20 A That is correct.

21 Q Now, did you have any discussions  
22 with staff members during the pendency of the  
23 settlement negotiations about what was being  
24 discussed there?

25 MR. WEISSMANN: Again, your Honor, I'll  
26 interpose the same objection. To the  
27 extent -- I'll direct the witness to exclude  
28 from his answer any attorney-client

1 communications.

2 ALJ DARLING: And I'm also not clear on  
3 the question. When you say staff members,  
4 what staff, whose staff members? Edison  
5 staff members?

6 MR. AGUIRRE: Southern California, his  
7 staff.

8 ALJ DARLING: Okay.

9 MR. AGUIRRE: His staff.

10 Q Did you talk with your staff  
11 members about the settlement discussions  
12 while they were taking place outside the  
13 presence of Mr. Weissmann?

14 MR. WEISSMANN: I'll repeat my  
15 objection.

16 ALJ DARLING: The objection is  
17 sustained.

18 MR. AGUIRRE: Q Outside the presence  
19 of Mr. Weissmann, did you have any  
20 discussions about the settlement negotiations  
21 outside the presence of Mr. Weissmann with  
22 any staff members of Southern California  
23 Edison?

24 MR. WEISSMANN: There are obviously  
25 many attorneys at Southern California Edison.  
26 Moreover, to the extent that -- and I don't  
27 know if this is true -- anybody repeated  
28 information that constituted an

1 attorney-client communication, that would be  
2 privileged as well. So I'm simply directing  
3 the witness to exclude from his answer any  
4 material that is covered by the  
5 attorney-client privilege.

6 MR. AGUIRRE: Is this normal for him to  
7 give a speaking objection like that and for  
8 him to direct what the witness does and  
9 doesn't do? Is that normal here?

10 ALJ DARLING: Yes.

11 MR. AGUIRRE: Okay. Because that's not  
12 the normal process. Most places the attorney  
13 doesn't stand up and in the middle of the  
14 examination do this, but that's fine. I'll  
15 adjust to the procedure here.

16 ALJ DARLING: An attorney is entitled  
17 to object to questions.

18 MR. AGUIRRE: That's not an objection.  
19 That's a long speaking objection, your Honor.  
20 That's what we call a speaking objection.  
21 And we don't usually --

22 ALJ DARLING: I don't know --

23 MR. AGUIRRE: The judge usually doesn't  
24 check in with the --

25 ALJ DARLING: -- Mr. Aguirre, but  
26 what's happening is appropriate. You've  
27 posed a question. He has articulated an  
28 objection that is a privilege objection. I

1 sustained that objection. And the witness is  
2 directed to response -- to respond bearing in  
3 mind the sustained portion of that objection.

4 MR. AGUIRRE: Okay. Let me restate the  
5 question so we're clear.

6 Q Forget about any attorney. Any  
7 attorney, put that out of your mind.

8 Did you have any discussion with  
9 any Southern California Edison agent,  
10 officer, employee who was not an attorney  
11 about what was taking place at the settlement  
12 negotiations? Just yes or no?

13 WITNESS LITZINGER: A Yes.

14 Q Okay. At any time in any such of  
15 those discussions that you had was there any  
16 discussion about the strength of the case  
17 that ratepayers have against Southern  
18 California Edison that its officials acted  
19 unreasonably in connection with the  
20 deployment of the steam generators, the  
21 replacement steam generators at San Onofre? ]

22 MR. WEISSMANN: Your Honor, another  
23 objection. The question seems to be  
24 asking --

25 MR. AGUIRRE: Excuse me, your Honor.  
26 If the objection is ambiguous, compound,  
27 general narrative, misquotes, leading,  
28 argumentative, assumes, asked and answered.



1 It's not a speaking objection.

2 ALJ DARLING: You are out of order. He  
3 has gotten three words out. You will remain  
4 quiet while he lodges his objection. And  
5 then we will rule on it.

6 Yes, Mr. Weissmann.

7 MR. WEISSMANN: If the question is  
8 seeking the witness to divulge what was  
9 discussed in the settlement negotiations, I  
10 would instruct the witness not to answer as  
11 that would violate the Commission's Rule 12.

12 ALJ DARLING: 12.6.

13 MR. AGUIRRE: Are you making the  
14 objection for him, your Honor?

15 ALJ DARLING: He made the objection --

16 MR. AGUIRRE: He said Rule 12. You  
17 said Rule 12.6.

18 ALJ AGUIRRE: Twelve includes Rule 12  
19 and 1, 2, 3, 4, 5, and 6. And 6 is the  
20 applicable rule. And so, yes, the objection  
21 is sustained.

22 MR. AGUIRRE: It's a yes or no. That's  
23 all it asked. It's a yes or no. It didn't  
24 ask for the content of the communication.  
25 Just said did you have a discussion about the  
26 strength of the case that was against  
27 Southern Cal Edison that ratepayers have that  
28 they acted unreasonably? That's the subject

1 matter. Was that subject matter discussed?

2 ALJ DARLING: You're asking about the  
3 substance of settlement negotiations.

4 MR. AGUIRRE: I'm asking about the  
5 subject matter, not the substance. There is  
6 a distinction.

7 ALJ DARLING: You're asking whether  
8 there was a discussion on a particular matter  
9 of substance in the settlement agreement.

10 MR. AGUIRRE: So as far as the  
11 Commission is concerned, Southern California  
12 Edison has offered nothing to the Commission  
13 that would allow the Commission to make an  
14 intelligent decision about what SCE thinks  
15 the strength of the case that it acted  
16 unreasonably --

17 ALJ DARLING: The question is -- you  
18 don't direct the question to the witness  
19 Mr. Litzinger about what the Commission  
20 thinks. So you need to reframe your  
21 question, Mr. Aguirre.

22 MR. AGUIRRE: Now you're objecting to  
23 my question.

24 ALJ DARLING: You don't get to ask  
25 Mr. Litzinger what the Commission thinks.

26 MR. AGUIRRE: No. I'm asking  
27 Mr. Litzinger about what he thinks about what  
28 the Commission thinks.

1           Q   Mr. Litzinger, would you agree that  
2 you can point to nothing in the record that  
3 would allow the Commission to make an  
4 intelligent decision about what Southern  
5 California Edison thought the strength of the  
6 case against it was that it acted  
7 unreasonably in the way that it deployed the  
8 steam generators at San Onofre? True?

9           ALJ DARLING: Do you understand the  
10 question?

11           WITNESS LITZINGER: I don't think I  
12 follow that question.

13           MR. AGUIRRE: Q Let me go over it with  
14 you slowly. You admit that there's nothing  
15 that you can provide the Commission about  
16 what Southern California Edison thought the  
17 strength of the case against it was.

18                   True or not true?

19           WITNESS LITZINGER: A Again, that was  
20 in the record.

21           Q   It's in the record. There's  
22 nothing in the record where Southern  
23 California Edison has explained what it  
24 thought the strength of the case against it  
25 was that led to the settlement, true?

26           A   True, not in the record.

27           Q   Not in the record, okay. Now,  
28 you're familiar with the fact that Southern

1 California Edison objected to any  
2 information -- actually, you're familiar with  
3 the anti-vibration bar team, correct?

4 A I am.

5 Q Were you a member of that team?

6 A I was not.

7 Q Do you know who was a member of  
8 that team?

9 A I don't recall.

10 Q Have you made -- did you know at  
11 some point who the members were?

12 A I read the names.

13 Q Where did you read the names?  
14 Where did you read the names?

15 A In past documents.

16 Q And were those documents provided  
17 to the Commission for an evaluation of the  
18 strength of the case that was -- that the  
19 ratepayers have against Southern California  
20 Edison that they acted unreasonably in  
21 connection with the deployment of the steam  
22 generators?

23 A Those documents were not provided,  
24 to my knowledge.

25 Q Did you sign any declarations that  
26 have been provided to the Commission in which  
27 Southern California Edison discusses the  
28 strength of the case against Southern

1 California Edison that ratepayers have that  
2 it acted unreasonably?

3 A I have not signed any declarations.

4 Q Have you provided any time sheets  
5 or time records illustrating your attorney's  
6 review of that question to the Commission?

7 A I have not.

8 Q Is there anything that you know of  
9 that's before the Commission that would  
10 establish the sufficiency of the settling  
11 parties' investigation into the extent to  
12 which SCE was responsible for the RSG design  
13 errors?

14 A Would you repeat that question?

15 Q I will. Is there anything before  
16 the Commission to establish the sufficiency  
17 of the settling parties' investigation into  
18 the extent to which Southern Cal Edison was  
19 responsible for the RSG design errors?

20 A There is not.

21 Q Okay. Now, did you conduct an  
22 investigation that if the Commission were to  
23 find that Southern California Edison acted  
24 unreasonably, that it would be -- that the  
25 potential recovery to ratepayers would not  
26 just be the cost of the replacement steam  
27 generators, but it would be the full costs of  
28 the failure of those generators rendering the

1 plant unable to produce additional power?  
2 Did you conduct any investigation along those  
3 lines?

4 MR. WEISSMANN: Objection. I direct  
5 the witness to exclude from his answer any  
6 attorney-client communications.

7 MR. AGUIRRE: I agree.

8 Q Excluding -- I'm talking about  
9 where you got your financial people to sit  
10 down and look at the question of if our  
11 unreasonable behavior of deploying the steam  
12 generators after we were informed of design  
13 issues and the Commission were to decide that  
14 we acted unreasonably because of that, it  
15 could affect not only just the recovery of  
16 the replacement steam generator costs, but it  
17 could affect our ability to recover for the  
18 base plant, for example.

19 MR. WEISSMANN: I object --

20 MR. AGUIRRE: Q Any investigation into  
21 those issues?

22 MR. WEISSMANN: I object to the form of  
23 the question and reiterate my privilege  
24 objection.

25 ALJ DARLING: It is compound. Can you  
26 break it apart, please?

27 MR. AGUIRRE: I thought you didn't go  
28 with technical objections here, your Honor.

1 Compound is a technical objection. It's  
2 only -- excuse me. I thought we only went  
3 according to the rules with objections that  
4 affect the substantial justice of the  
5 parties. And now you're interposing a --

6 ALJ DARLING: I don't know what kinds  
7 of rules you think you're operating under  
8 here, Mr. Aguirre, but we have a set of  
9 rules, practice and procedure. We have a  
10 customary way of moving along. You've asked  
11 a question which is unintelligible due to its  
12 complexity. I'm asking you to break it  
13 apart.

14 MR. AGUIRRE: Okay. Simple question.  
15 Can the court reporter -- Commission reporter  
16 please read back my question -- never mind.  
17 I'll relieve you of that. That's all right.  
18 We'll start again.

19 ALJ DARLING: You have it written down  
20 I think in your computer. Why don't you try  
21 that again?

22 MR. AGUIRRE: Well, your Honor must be  
23 able to look through my computer and be able  
24 to tell me that.

25 ALJ DARLING: So why don't you try  
26 reframing the question?

27 MR. AGUIRRE: Okay. I'll go with that.  
28 Okay.

1           Q    Let me shift the topic a little bit  
2 here.  You understand that when you came  
3 forward with this proposed settlement, that  
4 the Commission was going to have to decide if  
5 it was reasonable in light of the whole  
6 record, it was lawful, and that it was in the  
7 public interest, correct?

8           WITNESS LITZINGER:  A  Yes.

9           Q    Now, you have heard it argued no  
10 doubt by the opponents that what's in the  
11 public interest is to get to the bottom of  
12 whether or not Southern Cal Edison was or was  
13 not unreasonable after it was put on notice  
14 of the design flaws in the U-bend region that  
15 produced greater steam quality than in past  
16 designs.

17                   Do you agree with that?

18           MR. WEISSMANN:  Does he agree with  
19 everything that you just said?

20           MR. AGUIRRE:  Yes.

21                   Again, your Honor, I'm sorry.  What  
22 is this?  What is this doing right here?  
23 What is that?  What do we call that?

24           MR. WEISSMANN:  It's called an  
25 objection on the grounds that your question  
26 is extremely confusing and wasn't actually  
27 posed as a question.

28           MR. AGUIRRE:  Your Honor, you are



1 violating the fundamental principles of due  
2 process by letting this attorney act as the  
3 judge in the case. That's what you're  
4 letting this happen. You can do it if you  
5 want to, but that is highly improper for him  
6 to do that.

7 ALJ DARLING: You're entitled to your  
8 opinion, Mr. Aguirre. You state a question  
9 which was not entirely comprehensible. And  
10 counsel interjected an objection. This is  
11 the ordinary course of litigation.

12 MR. AGUIRRE: Okay. Your Honor,  
13 there's lawyers listening to this all over  
14 the State of California. And if you want to  
15 take the position that what he's doing is  
16 proper, that's fine. There's probably judges  
17 listening to it as well. That's fine.

18 Let's go back. Mr. Litzinger, let's  
19 go back.

20 ALJ DARLING: Mr. Aguirre, let me just  
21 make something very clear. You don't get to  
22 run this proceeding.

23 MR. AGUIRRE: I'm not. He is.  
24 Mr. Weissmann is.

25 ALJ DARLING: No. You are interrupting  
26 the judge. You interrupt counsel. You  
27 interrupt witnesses. You have been framing  
28 unintelligible questions and to which

1 objections are being interposed. You need to  
2 pull your questions together and ask clear  
3 and concise questions within the scope of  
4 this proceeding.

5 Right now have you withdrawn your  
6 last question to which there is an  
7 outstanding objection?

8 MR. AGUIRRE: Yeah, I'll withdraw it.

9 Q Okay. Let's go back. You are  
10 familiar with the fact that the AVB Design  
11 Team reported that the proposed design was  
12 creating greater steam quality in the U-bend  
13 region, true?

14 WITNESS LITZINGER: A There were  
15 numerous issues that our design team brought  
16 up with Mitsubishi. And Mitsubishi  
17 repeatedly provided assurances when we raised  
18 those issues.

19 Q Question before you, sir, is are  
20 you familiar with the fact that the AVB  
21 Design Team reported to Southern California  
22 Edison that the design that was underway for  
23 the replacement steam generators was creating  
24 greater steam quality in the U-bend region of  
25 the generators?

26 MR. WEISSMANN: Objection, your Honor.  
27 This is beyond the scope of this hearing.

28 ALJ DARLING: Sustained. Move on.

1 MR. AGUIRRE: Excuse me, your Honor.  
2 They make specific reference to this issue.  
3 In the factual findings, they talk about  
4 design errors. This is a design error. All  
5 I'm doing is examining him on that.

6 ALJ DARLING: We are looking at  
7 material contested issues of fact.

8 MR. AGUIRRE: This is. This is the  
9 material contested issue of fact.

10 ALJ DARLING: You're contesting whether  
11 there were design errors?

12 MR. AGUIRRE: I'm contesting whether  
13 there was an evaluation made of the claim  
14 against Southern Cal Edison that the  
15 Commission can evaluate one way or the other  
16 the strength of that claim in deciding  
17 whether this is a fair settlement, which is  
18 what their fiduciary obligation requires  
19 them.

20 MR. WEISSMANN: Can I be heard, your  
21 Honor?

22 ALJ DARLING: Are you finished,  
23 Mr. Aguirre?

24 MR. AGUIRRE: Yeah.

25 ALJ DARLING: Sounded like it.

26 Mr. Weissmann.

27 MR. WEISSMANN: It appears to us that  
28 counsel is attempting to transform this

1 hearing on the reasonableness of the  
2 settlement into Phase 3 and an evaluation of  
3 the prudence of Edison's conduct. That's not  
4 appropriate.

5 MR. AGUIRRE: Not so. All I'm asking  
6 is this: We can't try that issue here. And  
7 we're not going to try that issue. But the  
8 Commission must have sufficient information  
9 in front of it to make an evaluation of  
10 whether this was a fair settlement of that  
11 claim. That claim is active, the claim that  
12 they acted unreasonably after they learned of  
13 the AVB design problems from the AVB Design  
14 Team, the design problems that created  
15 greater negative void or higher steam quality  
16 in the U-bend regions. And they proceeded  
17 with it anyway. That's a claim.

18 And we're being asked -- the  
19 ratepayers are being asked to settle that  
20 claim and to compromise that claim. We can't  
21 try that claim now, but we can find out if  
22 there was an evaluation made of that claim.  
23 And the Commission has an obligation to find  
24 that out. And so we have to ask him these  
25 questions.

26 ALJ DARLING: You've asked him twice,  
27 and he's answered twice, as I recall.

28 MR. AGUIRRE: He hasn't answered yet.

1 He didn't give a responsive answer. I asked  
2 him the question. The question is -- let me  
3 just ask him.

4 Q Sir, after the design -- I'm sorry.  
5 You are familiar with the fact that  
6 the AVB Design Team reported that there was  
7 greater steam quality in the U-bend region  
8 for the new designs of the steam generators  
9 that were going to be used as replacement  
10 generators to San Onofre, true?

11 MR. WEISSMANN: I renew my objection on  
12 scope. He's not asking the question --

13 MR. AGUIRRE: Your Honor, it's  
14 either -- come on.

15 ALJ DARLING: Mr. Aguirre, come on, to  
16 use your phrase. You need to step back and  
17 allow other counsel to have their opportunity  
18 to respond. Okay. You have an outstanding  
19 question. There is an objection that was in  
20 the process of being articulated. And once  
21 again you've interrupted Mr. Weissmann. He  
22 has as much opportunity to get to the  
23 microphone as you do.

24 Mr. Weissmann.

25 MR. WEISSMANN: Your Honor, that  
26 question that was just posed goes to the  
27 scope of Phase 3. It's not within the scope  
28 of this hearing today. Question that was

1 posed was what was known by Edison about the  
2 response of people at Edison to statements  
3 allegedly made by the AVB Design Team.  
4 That's a prudence review.

5 MR. AGUIRRE: Not true. I just asked  
6 had he heard that? That's all I asked. Had  
7 he heard that?

8 ALJ DARLING: There is no evidence in  
9 the record regarding the AVB Design Team  
10 report, that I recall.

11 If you think that it's there and you  
12 want to make an argument about it in your  
13 comments that there is an inconsistent  
14 position here, you are free to argue that the  
15 settlement is not reasonable in light of the  
16 whole record.

17 But there is no -- you only have  
18 about 20 minutes. Do you really want to  
19 spend the rest of your time talking about the  
20 AVB Design Team? Or do you want to talk  
21 about the settlement and facts -- material  
22 facts, not --

23 MR. AGUIRRE: Your Honor, you have to  
24 know whether this is a reasonable compromise  
25 of that claim. You can't approve the  
26 settlement unless you know that the party  
27 reached a reasonable compromise. I have to  
28 ask as a foundation if that was ever

1 considered. That's all I'm trying to get to.  
2 Was that ever considered as part of the  
3 settlement? That's what I'm asking. And  
4 they're making comments in the recital that  
5 they did discover that there was a design  
6 flaw.

7 ALJ DARLING: Right. So move on. They  
8 have said there is a design flaw. Is that a  
9 material issue?

10 MR. AGUIRRE: Yes, because it doesn't  
11 say when. It doesn't say what.

12 ALJ DARLING: Mr. Aguirre, the standard  
13 for review is reasonable in light of the  
14 whole record. That's the whole settlement.

15 MR. AGUIRRE: Your Honor, no. The  
16 whole record. It's not the whole settlement.

17 ALJ DARLING: It's also the settlement  
18 is taken as a whole.

19 MR. AGUIRRE: No. But the record is  
20 taken as a whole. And the question is this:  
21 There is a claim against Southern Cal Edison  
22 by ratepayers you are unreasonable. You put  
23 in defective steam generators. You knew  
24 ahead of time that there was information.  
25 You did not get a 5059 certification from the  
26 federal government. You were acting --

27 ALJ DARLING: That is beyond scope.

28 MR. AGUIRRE: No, your Honor, because

1 that's the claim. We have a right to say  
2 what our claim is. There was a statutory  
3 violation. Did they discuss that? How can  
4 you evaluate that claim unless we get to  
5 whether they discussed that issue? That's  
6 all I'm trying to do.

7 I'm not trying to try the issue.  
8 I'm just asking him did you discuss whether  
9 or not Southern California Edison's failure  
10 to get a 5059 license amendment was part of  
11 the claim that the ratepayers had against  
12 Southern Cal Edison?

13 MR. WEISSMANN: Your Honor, objection.  
14 Rule 12.6.

15 ALJ DARLING: Outside.

16 MR. AGUIRRE: I appeal to the  
17 Commission for you to make inquiry of the  
18 Commission right now because -- and to ask  
19 the Commission to whether to sustain or not  
20 sustain your objection.

21 ALJ DARLING: First of all, I'm  
22 sustaining the objection on two grounds:  
23 One, it's been asked and answered, I believe.  
24 Second of all, it's outside the scope of this  
25 proceeding whether there -- what interactions  
26 Edison is meeting its obligation with the  
27 Nuclear Regulatory Commission.

28 MR. AGUIRRE: No, your Honor. You're



1 missing the point. There is a  
2 claim against --

3 ALJ DARLING: I understand your point.

4 MR. AGUIRRE: No, you don't because you  
5 just said you don't understand it. What you  
6 said was you don't understand it. The claim  
7 is the ratepayers have the potential claim to  
8 not have to pay for the rate base because of  
9 the unreasonableness of deploying defective  
10 steam generators. I'm asking the witness was  
11 that a consideration in the settlement?

12 MR. WEISSMANN: Objection, your Honor,  
13 if he's asking whether that was the subject  
14 of the negotiation --

15 MR. AGUIRRE: No. Was that a  
16 consideration?

17 MR. WEISSMANN: May I finish my  
18 objection?

19 ALJ DARLING: Mr. Aguirre, you need to  
20 conduct yourself in a professional manner or  
21 we will end your questioning right now, so.

22 MR. AGUIRRE: Your Honor, don't  
23 threaten me. Don't threaten me.

24 ALJ DARLING: I'm not threatening you.  
25 I'm pointing out that --

26 MR. AGUIRRE: No. The professionalism  
27 here -- let me say whether non-  
28 professionalism --

1 ALJ DARLING: No. You need to stop  
2 talking, Mr. Aguirre.

3 Mr. Weissmann, would you like to  
4 complete your sentence?

5 MR. WEISSMANN: Thank you, your Honor.

6 The question is asking whether that  
7 subject to which he alluded was the subject  
8 of discussions in the settlement negotiation  
9 we object under Rule 12.6.

10 MR. AGUIRRE: No. I'm not asking that  
11 question.

12 MR. WEISSMANN: The question is asking  
13 whether that was the subject that was  
14 discussed with counsel. I object on the  
15 grounds of the attorney-client privilege.

16 MR. AGUIRRE: That's not the question.  
17 Let's move on. I will move on and just ask  
18 it this way.

19 Q Did you understand that the  
20 ratepayers were making a claim that Southern  
21 Cal Edison acted unreasonably in deploying  
22 the steam generators?

23 WITNESS LITZINGER: A I reviewed the  
24 positions of all the parties. I don't know  
25 that the ratepayers themselves made an actual  
26 claim, so I'm not really following your  
27 question.

28 Q You didn't read the protests

1 that --

2 ALJ DARLING: Mr. Aguirre, your  
3 question was unclear. When you say  
4 "ratepayers," are you talking about ratepayer  
5 organizations and, if so, which one?

6 MR. AGUIRRE: Q You didn't read the  
7 ratepayer protests in this case that  
8 asserted -- for example, like Ms. Henricks --  
9 that asserted that Southern Cal Edison acted  
10 unreasonably in deploying the steam  
11 generators?

12 WITNESS LITZINGER: A I realized that  
13 a lot of people have called into question our  
14 prudence. We believe that we acted prudently  
15 based on our review. And were prepared to  
16 litigate that. We settled the case. And we  
17 believe that disallowing the steam generators  
18 and the costs associated with pursuing  
19 restart, the hundred million in O&M of the  
20 incremental inspection and repair costs, is a  
21 reasonable outcome that falls within the  
22 range of possibilities, had we been found  
23 imprudent. We believe that we were prudent  
24 in our actions.

25 Q All right. Then we agree. Where  
26 is that in the record? Where is what you  
27 just said that verifies that you actually  
28 went through that process? Where is that in

1 the record before the Commission so they can  
2 evaluate whether in fact you did that?

3 A It is not in the record.

4 Q Okay. Now, let me ask you this:  
5 When was the -- what conference did you  
6 attend after the -- after you all reached the  
7 settlement? And what conference did you  
8 attend with the parties that had not been  
9 invited to the settlement?

10 MR. WEISSMANN: Object to the form of  
11 the question. Would you like me to  
12 elaborate?

13 ALJ DARLING: Yes, sir.

14 MR. WEISSMANN: It's an extremely  
15 confusing question. First of all, no  
16 settlement was reached and no settlement was  
17 signed prior to the convening of the  
18 settlement conference.

19 MR. AGUIRRE: Your Honor, this is  
20 argument. You can't allow this. He's  
21 supposed to object. This is my cross-  
22 examination.

23 MR. WEISSMANN: I did object. And I  
24 request that the opportunity to articulate --

25 MR. AGUIRRE: It's a speaking  
26 objection.

27 ALJ DARLING: Yes, Mr. Weissmann. Your  
28 objection is that the question is

1 unintelligible?

2 MR. WEISSMANN: Yes.

3 MR. AGUIRRE: Your Honor, you offered  
4 that to him. That wasn't his objection. But  
5 that's okay.

6 ALJ DARLING: It was his objection. He  
7 said the question was confusing.

8 MR. AGUIRRE: No. Okay. Let me go  
9 back.

10 ALJ DARLING: You need to reframe your  
11 question.

12 MR. AGUIRRE: Q You heard her Honor  
13 say this afternoon that there was a  
14 conference held. Do you remember her Honor  
15 said there was a conference held?

16 ALJ DARLING: I said there was a notice  
17 of a settlement conference.

18 MR. AGUIRRE: No. You said there was a  
19 conference held. That's what you said.

20 ALJ DARLING: Don't misstate my --

21 MR. AGUIRRE: I'm not misstating it.

22 ALJ DARLING: You are. Mr. Aguirre, if  
23 you're going use my words, you're going to  
24 use them accurately or not at all.

25 MR. AGUIRRE: The record will reflect  
26 what you said twice.

27 ALJ DARLING: Yes, it will.

28 MR. AGUIRRE: Q Okay. Was there a

1 conference? Did you attend a conference  
2 after the March 20 letter was sent -- the  
3 ex parte communication was sent to Judge  
4 Darling?

5 WITNESS LITZINGER: A I did not  
6 personally attend the settlement conference.

7 Q Okay. Let me ask you the question  
8 again: Did you attend any conference with  
9 any of the non-settling parties after  
10 March 20th?

11 A No.

12 Q Okay. And do you know if any such  
13 conference was held?

14 A The only conference I'm aware of is  
15 the settlement conference that was noticed.

16 Q Let me ask you this: I asked you  
17 first though how do you know that there was a  
18 settlement conference held if you weren't in  
19 attendance besides the notice? How do you  
20 know it was actually held?

21 ALJ DARLING: Mr. Aguirre, you need to  
22 ask one question, not three.

23 MR. AGUIRRE: Q How do you know that  
24 there was a conference held if you didn't  
25 attend it?

26 WITNESS LITZINGER: A The conference  
27 was noticed. It was reported back to me.

28 Q Who reported it back to you?

1           A    I don't recall precisely who.  But  
2 I got several reports that the conference was  
3 conducted.

4           Q    At that conference that you  
5 understood was conducted, were the terms of  
6 the proposed settlement opened to  
7 modification?

8           MR. WEISSMANN:  Objection, your Honor.  
9 Rule 12.6.

10          ALJ DARLING:  Sustained.

11          MR. AGUIRRE:  No.  I'm saying at the  
12 conference.  Was there anything said at the  
13 conference to the people there that the --

14          ALJ DARLING:  All right.  Let's have an  
15 offer of proof.  Where do you think you're  
16 going with this line of questioning,  
17 Mr. Aguirre?  What material issue of fact are  
18 you attempting to --

19          MR. AGUIRRE:  Noncompliance with  
20 Rule 12.

21          ALJ DARLING:  No.  I want -- I'm asking  
22 what material -- that's a conclusion of law.

23          MR. AGUIRRE:  No.  That's a question of  
24 whether --

25          ALJ DARLING:  Did they meet the  
26 standards?  My question is where are you  
27 going in terms of a material contested issue  
28 of fact?

1           MR. AGUIRRE: That is a material  
2           contested issue of fact. Whether there was a  
3           conference is a fact. And it's material  
4           because if it wasn't -- because you can't  
5           approve it unless there was such a  
6           conference. That's a material issue, and  
7           it's a factual issue. And I'm asking about  
8           it.

9           MR. WEISSMANN: May I be heard, your  
10          Honor?

11          ALJ DARLING: Mr. Weissmann.

12          MR. WEISSMANN: Under the Commission's  
13          rules, what is discussed at the settlement  
14          conference is a confidential settlement  
15          communication under Rule 12.6.

16          MR. AGUIRRE: I'm not asking about what  
17          was discussed at the settlement conference.  
18          I'm asking what was discussed at the meeting  
19          that they called in which they announced that  
20          there was a settlement and the terms of the  
21          settlement couldn't be changed.

22          ALJ DARLING: And I'm asking you,  
23          Mr. Aguirre, to give me an offer of proof  
24          that there is relevance to a material issue  
25          of fact.

26          MR. AGUIRRE: Because it says. Rule 12  
27          says --

28          ALJ DARLING: In the settlement



1 agreement.

2 MR. AGUIRRE: It says -- it says prior  
3 to signing any settlement, the settling  
4 parties shall convene at least one conference  
5 with notice and opportunity to participate  
6 provided to all parties for the purpose of  
7 discussing settlements in the proceeding.  
8 And the question was was that complied with?  
9 That's a contested issue in the case. And  
10 underlying that is contested issues of  
11 fact --

12 ALJ DARLING: You've asked him whether  
13 he was there. And he said no. You need to  
14 move on, Mr. Aguirre. If you want to make an  
15 argument --

16 MR. AGUIRRE: Oh, my word.

17 ALJ DARLING: -- in your comments that  
18 there was -- that the notice which is in  
19 docket was a false representation, then you  
20 may make that representation and make that  
21 argument.

22 But it is not relevant to the  
23 purpose of this hearing which is to determine  
24 the underlying statements of fact in this  
25 settlement agreement. What is the effect of  
26 the agreement? What are the provisions of  
27 the agreement?

28 MR. AGUIRRE: I'm sorry, your Honor. I

1 don't -- I've never heard of such a thing. I  
2 have to say that is the most unintelligible  
3 analysis that I've ever heard ever about the  
4 process for approving settlement, having been  
5 a lawyer for 40 years and been class counsel  
6 for numerous very large class settlements  
7 going back and looking at the supreme court  
8 decisions on their -- on precedent --

9 ALJ DARLING: Mr. Aguirre, you are  
10 entitled --

11 MR. AGUIRRE: I was in the middle of  
12 saying something. I'm sorry.

13 ALJ DARLING: No. I'm tired because  
14 this is not a fruitful line of inquiry.  
15 Let's go on to a question which will deal  
16 with a contested issue of fact.

17 MR. AGUIRRE: Q Okay. Do you agree  
18 that there was some opposing parties who were  
19 not invited to the settlement conference?

20 WITNESS LITZINGER: A I believe all  
21 parties were invited to the settlement  
22 conference.

23 Q And when did the settlement  
24 conference begin?

25 MR. WEISSMANN: Objection. The  
26 question is ambiguous when he refers to the  
27 term "settlement conference." Are you  
28 referring to the March 27th meeting?

1 MR. AGUIRRE: Excuse me, your Honor.  
2 That's proper?

3 ALJ DARLING: He's asking for  
4 clarification of the question.

5 MR. AGUIRRE: That's proper?

6 ALJ DARLING: He's asking for a  
7 clarification of the question.

8 MR. AGUIRRE: Q Okay. I said when did  
9 the settlement conferences begin?

10 WITNESS LITZINGER: A They were held  
11 on March 27th. I did not recall the precise  
12 time.

13 Q I mean, when did the settlement  
14 conferences begin between Southern California  
15 Edison, Office of Ratepayer Advocacy, and  
16 TURN? When did that begin?

17 ALJ DARLING: Define "conference,"  
18 Mr. Aguirre.

19 MR. AGUIRRE: Q When did the  
20 conferences begin -- the settlement  
21 conferences?

22 ALJ DARLING: Define "conference." Do  
23 you mean one that's required by our rules?  
24 Or do you mean informal negotiations and  
25 discussions between parties?

26 MR. AGUIRRE: Q I mean -- I mean when  
27 did you start talking with the Office of  
28 Ratepayer Advocate and the other settling

1 parties -- I'm sorry.

2 When did you start talking with TURN  
3 and the Office Ratepayer Advocate about  
4 settling the case?

5 WITNESS LITZINGER: A We had reached  
6 out to TURN. It was late in May of 2013.  
7 And I believe the initial discussions were  
8 held mid to late June of 2013.

9 Q So for this -- we're in May of  
10 2014. So a year ago, you reached out. Who  
11 did you reach out to?

12 A I believe Mr. Weissmann reached out  
13 to TURN's counsel Mr. Freedman.

14 Q Okay. And then the parties started  
15 meeting in July, correct, of 2013?

16 A In June.

17 Q In June of 2013. And they started  
18 exchanging settlement agreements, drafts  
19 starting in July of 2013, correct?

20 A I don't know when drafts were  
21 exchanged.

22 Q Okay. If I told you that you  
23 responded to a data request and said that the  
24 drafts began to be distributed in July, would  
25 that refresh -- of 2013, would that refresh  
26 your recollection?

27 A I don't recall that data request  
28 coming to me.

1           Q    Now, while you were having those  
2   secret negotiations that some of the settling  
3   parties were not invited -- some of the  
4   opponents were not invited to participate,  
5   you also were having ex parte meetings with  
6   members of the Commission, true?

7           MR. WEISSMANN:   I object to the form of  
8   the question.

9           ALJ DARLING:   Why don't you just ask  
10  the last part, if that's what you want?

11          MR. AGUIRRE:   Q   Okay.   Go ahead.  
12  Answer the last part of that what your Honor  
13  said.

14          WITNESS LITZINGER:   A   Whether I had  
15  ex parte meetings with the commissioners?

16          Q    Was Southern California Edison  
17  having ex parte meetings with the  
18  commissioners while the secret negotiations  
19  were taking place?

20          A    The only ex parte communications I  
21  had with commissioners was following the  
22  Phase 1 proposed decision.   And it was  
23  noticed.

24          Q    Were other Southern California  
25  Edison agents, officers, employees having  
26  ex parte communications with the  
27  commissioners during the time of the secret  
28  negotiations?

1           MR. WEISSMANN: Object to the form of  
2 the question.

3           ALJ DARLING: It is argumentative. But  
4 I'm going to let that part go. But after  
5 this next question, Mr. Aguirre, you're going  
6 to have to give me an offer of proof of how  
7 this is going to lead to relevant evidence  
8 related to material contested issues of fact.

9           MR. AGUIRRE: Q Okay. Go ahead. Were  
10 you -- were they?

11           WITNESS LITZINGER: A Southern  
12 California Edison has ex parte communications  
13 with commissioners on multiple matters all  
14 the time.

15           Q How many times have you spoken to  
16 Mr. Peevey since November of 2012?

17           MR. WEISSMANN: Objection, your Honor.  
18 Relevance.

19           ALJ DARLING: Sustained.

20           MR. AGUIRRE: Let me give you my offer  
21 of proof. It's our contention that the  
22 representation by the Commission that there  
23 was going to be an investigation into the  
24 reasonableness of Southern California  
25 Edison's deployment of the defective steam  
26 generators was a promise of an investigation  
27 with the intent not to perform it.

28                   It is our contention that you,

1 Ms. Darling, Judge Darling, entered a ruling  
2 that put the investigation off into the  
3 remote future in order to avoid any such  
4 investigation. ]

5 It's our position that Mr. Peevey  
6 helped to orchestrate this settlement through  
7 Mr. Freedman and others, and it wasn't  
8 a settlement negotiation. It was a meeting  
9 to figure out how not to have  
10 the reasonableness investigation.

11 The rulings that you made  
12 prohibiting any kind of discovery into the  
13 relevant issues, when the dis- -- when  
14 the settlement was announced, the coordinated  
15 press releases that falsely stated, from  
16 Mr. Florio and Mr. Peevey, that the parties  
17 had settled which was picked up as part of  
18 the blitzkrieg in which the ratepayers were  
19 misinformed that they were going to get  
20 a \$1.4 billion refund was a collusive, not  
21 bona fide basis for this settlement. And we  
22 have a right to try to develop that record,  
23 which you are not permitting us to do.

24 And let me just ask this.

25 ALJ DARLING: All right.

26 MR. AGUIRRE: Let me just ask  
27 Mr. Peevey a question.

28 ALJ DARLING: No. You don't have --

1 MR. AGUIRRE: Mr. Peevey --

2 ALJ DARLING: -- any questions.

3 MR. AGUIRRE -- did you have any  
4 discussions with any parties?

5 ALJ DARLING: No.

6 MR. AGUIRRE: -- about the settlement  
7 process while it was taking place, sir?

8 Will you put that on the record?

9 And same with Mr. Florio. Will you  
10 put that on the record?

11 ALJ DARLING: Mr. Aguirre, you are in  
12 the middle of an offer of proof. You segued  
13 into trying to interrogate people who are not  
14 under oath or on as witnesses in this  
15 proceeding. So let me just stop you here.

16 MR. AGUIRRE: They have an obligation  
17 to put that on the record --

18 ALJ DARLING: First of all, if your  
19 offer of proof is that you think by exploring  
20 that line of questioning that you may develop  
21 some evidence of collusion, that is not  
22 a material contested issue of fact --

23 MR. AGUIRRE: It is.

24 ALJ DARLING: -- as it relates to the  
25 settlement.

26 If you want to make some kind of  
27 allegation of bias, this is not the  
28 proceeding to do that.



1 MR. AGUIRRE: It is the course --

2 ALJ DARLING: No.

3 MR. AGUIRRE: -- to develop it.

4 The evidentiary --

5 ALJ DARLING: No. Not under that  
6 parameters of this hearing. Under our rules,  
7 you have other procedural remedies available,  
8 and this isn't it.

9 MR. AGUIRRE: Your Honor.

10 ALJ DARLING: So you may move on, Mr.  
11 Aguirre.

12 MR. AGUIRRE: Your Honor, you wanted  
13 the basis for you not to find the settlement  
14 to be fair, legal and reasonable is if there  
15 was collusion. You are now interfering.

16 ALJ DARLING: No.

17 MR. AGUIRRE: There is an obligation.

18 ALJ DARLING: No.

19 MR. AGUIRRE: You are fiduciaries.

20 Mr. Peevey, you are a fiduciary.

21 Mr. Florio, you are a fiduciary.

22 You have an obligation to put on  
23 the record if you had any knowledge of  
24 the settlement negotiations or in any way  
25 participated in them while they were  
26 underway.

27 Did you -- or I'm asking either one  
28 of you and both of you. Did or did you not

1 have such information and such participation?

2 ALJ DARLING: Your questions are out of  
3 order, Mr. Aguirre. They're out of the scope  
4 of this proceeding.

5 MR. AGUIRRE: What's out of order is  
6 this proceeding.

7 ALJ DARLING: No.

8 MR. AGUIRRE: Yes. That's what's out  
9 of order.

10 ALJ DARLING: The purpose of this  
11 proceeding is to get to explore contented  
12 material issues of fact in the settlement  
13 agreement as to its terms, provisions, and  
14 implementations.

15 You have other mechanisms. And if  
16 you're -- as a lawyer, I'm sure you are  
17 available -- able to make use of them, but  
18 this is not it.

19 MR. AGUIRRE: Okay.

20 ALJ DARLING: So you may move on within  
21 the scope because you've got about three  
22 minutes.

23 MR. AGUIRRE: Q Okay. Did you,  
24 Mr. Litzinger, you are -- you are not just  
25 a president of the company but you are also  
26 a shareholder, are you not?

27 WITNESS LITZINGER: A I am.

28 Q Do you live in the southern -- in

1 SCE's territory?

2 A I do.

3 Q Okay. Now, when you announced this  
4 settlement, your -- the value of your stock  
5 shot up about \$160,000; true?

6 MR. WEISSMANN: Objection. Relevance.

7 MR. AGUIRRE: It's relevant --

8 ALJ DARLING: Sustained.

9 MR. AGUIRRE: It's relevant to his  
10 testimony. He's under oath. His credibility  
11 is at issue. Whether he's making money off  
12 of this settlement is an issue that you have  
13 to take into consideration.

14 The step -- the moment he put his  
15 hand up and swore, his credibility was  
16 at issue.

17 This is a proper financial  
18 motivation cross-examination question that  
19 any court would allow.

20 ALJ DARLING: Well, it's amazing how  
21 you're able to jump to the conclusion of what  
22 any and every court will do. Unfortunately,  
23 that isn't the rules that are operated in  
24 this commission. You have a narrow scope  
25 here and you have exceeded and you may move  
26 on.

27 MR. AGUIRRE: So you're not going to  
28 make him answer the question of whether his

1 stock value shot up \$160,000 the day --  
2 the few days after this announcement was  
3 made?

4 ALJ DARLING: You offer me some proof  
5 as to how that leads to a relevant evidence  
6 as to a contested issue of fact.

7 MR. AGUIRRE: Because it goes to the  
8 fact that he wants that approved not because  
9 it's far to the ratepayers, but because he's  
10 going to make money off it as the others are.  
11 That's why.

12 I stand with the Commissioners that  
13 they don't realize that this is about people  
14 making money and the ratepayers having to pay  
15 for it. And if that comes as a shock to the  
16 commissioners, I'm really sorry that this  
17 is -- the people are that naive, seriously.

18 ALJ DARLING: You're free to make your  
19 argument in briefs, Mr. Aguirre.

20 MR. AGUIRRE: Okay. Last question.

21 Q Southern California Edison has  
22 reported that after it took San Onofre out of  
23 commission, that its earnings went up as  
24 a result; is that true?

25 ALJ DARLING: Reported where,  
26 Mr. Aguirre?

27 MR. AGUIRRE: Q Reported in a analyst  
28 meeting that Mr. Litzinger participated in in

1 November of 2013.

2 Is that true, sir, that Southern  
3 California Edison, through you, reported to  
4 the financial analyst community that  
5 San Onofre -- or that Southern California  
6 Edison earnings went up as a result of taking  
7 San Onofre out of commission? Did you do  
8 that?

9 WITNESS LITZINGER: A Our previous  
10 guidance to investor analysts were based on  
11 no return on investment at San Onofre. Given  
12 this settlement, included a debt level return  
13 on the debt portion of our financial  
14 structure for the base plant and half of  
15 a preferred return on the preferred portion  
16 of the financial structure. We provided our  
17 analysts with a small estimate of earnings  
18 increase if the settlement were to be  
19 approved.

20 Q And so the answer to my question is  
21 yes?

22 A Yes.

23 MR. AGUIRRE: Thank you.

24 ALJ DARLING: Does that conclude your  
25 questions, Mr. Aguirre?

26 MR. AGUIRRE: Well, I have many more  
27 questions but I know that I'm being  
28 restricted.

1                   We're spending three hours on  
2 a \$3 billion settlement.

3           ALJ DARLING: All right. So the answer  
4 is no, Mr. Aguirre?

5           MR. AGUIRRE: Excuse me. I'm making --

6           ALJ DARLING: The answer is no --

7           MR. AGUIRRE: I'm making my record.

8           ALJ DARLING: No. You are not making  
9 a record.

10          MR. AGUIRRE: A billion dollars an  
11 hour.

12          ALJ DARLING: No.

13          MR. AGUIRRE: You spend five days --  
14 seven days --

15          ALJ DARLING: Mr. Aguirre.

16          MR. AGUIRRE: -- on the entire process.

17 And I renew my objection. This inadequate  
18 time, an inadequate review, inadequate  
19 record, and I renew my objection to the  
20 shortness of the hearing. It is not a bona  
21 fide evidentiary hearing. And I again  
22 request that you allow for a proper review  
23 with proper findings, proper basis for those  
24 findings as I have already indicated in our  
25 prior objections to these proceedings.

26          ALJ DARLING: Duly noted.

27                 All right, Mr. Weissmann.

28          MR. WEISSMANN: Yes, your Honor.

1 ALJ DARLING: Any further recross --  
2 redirect?

3 MR. WEISSMANN: No, your Honor.

4 ALJ DARLING: All right. Commissioner  
5 Florio, President Peevey, any comments?

6 COMMISSIONER PEEVEY: The only comment  
7 I would make is that I came here today hoping  
8 to be educated. I walk out of here without  
9 that happening. I am very disappointed by  
10 the whole back and forth here. It has not  
11 illuminated the settlement one iota.

12 As far as TURN goes, I think it's  
13 general knowledge my relationship with TURN  
14 is, to be fair, chilly. And I have never  
15 talked to Mr. Freedman on this topic during  
16 that whole time at all. Period.  
17 Mr. Freedman. That's it. Sorry.

18 MR. AGUIRRE: What about Southern Cal  
19 Edison?

20 COMMISSIONER PEEVEY: Sorry.

21 Edison?

22 MR. AGUIRRE: Yeah.

23 COMMISSIONER PEEVEY: I'm not here to  
24 answer your questions.

25 ALJ DARLING: Mr. Aguirre.

26 COMMISSIONER PEEVEY: I'm not here to  
27 answer your goddamn question. Now shut up.  
28 Shut up.

1 MR. AGUIRRE: Really. That's how you  
2 perform yourself?

3 COMMISSIONER PEEVEY: No. That's how  
4 the way you perform yourself for hours.

5 MR. AGUIRRE: No. Answer the  
6 question --

7 COMMISSIONER PEEVEY: -- that's how you  
8 performed yourself.

9 ALJ DARLING: Mr. Aguirre.

10 COMMISSIONER PEEVEY: I don't have to  
11 answer anything.

12 You asked me one specific  
13 question --

14 MR. AGUIRRE: No. I asked you --

15 COMMISSIONER PEEVEY: -- did I talk to  
16 Freedman, and I said no.

17 ALJ DARLING: Mr. Aguirre, if you do  
18 not stop talking right now, I'm asking to  
19 cite you for Rule 1, do you hear me?

20 Do you understand?

21 Mr. Aguirre, do you understand?

22 MR. AGUIRRE: I hear you.

23 ALJ DARLING: Thank you.

24 COMMISSIONER PEEVEY: You come here and  
25 berate this place. That's unfair and  
26 unreasonable on your part, and you know it.

27 MR. AGUIRRE: No. You are the one that  
28 should be ashamed for what you've done in



1 failing to sustain the public interest, sir,  
2 and for protecting the ratepayers, which is  
3 your sworn fiduciary duty. The travesty.

4 COMMISSIONER PEEVEY: We're not -- it's  
5 a political circus for you, but the rest of  
6 us take our job seriously.

7 MR. AGUIRRE: It's not political  
8 circus. This is a kangaroo court. That's  
9 not a political circus.

10 ALJ DARLING: Commissioner Florio?

11 COMMISSIONER FLORIO: I would simply  
12 add that at numerous points on the record of  
13 this proceeding, I urged the parties to  
14 pursue settlement and I was pleased when one  
15 was achieved.

16 I had no part in formulating  
17 the settlement and was not aware of it until  
18 it was published online in the 8-K.

19 MR. AGUIRRE: Thank you.

20 ALJ DARLING: All right. Judge Dudney,  
21 are there any exhibits -- they're all marked  
22 and admitted; right?

23 We're not admitting Henricks-1.

24 ALJ DUDNEY: All the exhibits have been  
25 marked and admitted.

26 ALJ DARLING: All right. Thank you.  
27 This hearing is adjourned.

28 (Whereupon, at the hour of  
4:05 p.m., this matter having been

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concluded, the Commission then  
adjourned.)

\* \* \* \* \*

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA

	)	
Order Instituting Investigation on	)	
the Commission's Own Motion into the	)	
Rates, Operations, Practices,	)	Investigation
Services and Facilities of Southern	)	12-10-013
California Edison Company and San	)	
Diego Gas and Electric Company	)	Application
Associated with the San Onofre	)	13-03-005
Nuclear Generating Station Units 2	)	
and 3.	)	Application
	)	13-03-013
	)	
And Related Matters.	)	Application
	)	13-03-014
	)	
	)	Application
	)	13-01-016
	)	

CERTIFICATION OF TRANSCRIPT OF PROCEEDING

I, Alejandrina E. Shori, Certified Shorthand Reporter No. 8856, in and for the State of California do hereby certify that the pages of this transcript prepared by me comprise a full, true and correct transcript of the testimony and proceedings held in the above-captioned matter on May 14, 2014.

I further certify that I have no interest in the events of the matter or the outcome of the proceeding.

EXECUTED this 14th day of May, 2014.

\_\_\_\_\_  
Alejandrina E. Shori  
CSR No. 8856

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA

	)	
Order Instituting Investigation on	)	
the Commission's Own Motion into the	)	
Rates, Operations, Practices,	)	Investigation
Services and Facilities of Southern	)	12-10-013
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Diego Gas and Electric Company	)	Application
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Nuclear Generating Station Units 2	)	
and 3.	)	Application
	)	13-03-013
	)	
And Related Matters.	)	Application
	)	13-03-014
	)	
	)	Application
	)	13-01-016
	)	

CERTIFICATION OF TRANSCRIPT OF PROCEEDING

I, Thomas C. Brenneman, Certified Shorthand Reporter No. 9554, in and for the State of California do hereby certify that the pages of this transcript prepared by me comprise a full, true and correct transcript of the testimony and proceedings held in the above-captioned matter on May 14, 2014.

I further certify that I have no interest in the events of the matter or the outcome of the proceeding.

EXECUTED this 14th day of May, 2014.

\_\_\_\_\_  
Thomas C. Brenneman  
CSR No. 9554

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA

	)	
Order Instituting Investigation on	)	
the Commission's Own Motion into the	)	
Rates, Operations, Practices,	)	Investigation
Services and Facilities of Southern	)	12-10-013
California Edison Company and San	)	
Diego Gas and Electric Company	)	Application
Associated with the San Onofre	)	13-03-005
Nuclear Generating Station Units 2	)	
and 3.	)	Application
	)	13-03-013
	)	
And Related Matters.	)	Application
	)	13-03-014
	)	
	)	Application
	)	13-01-016
	)	

CERTIFICATION OF TRANSCRIPT OF PROCEEDING

I, Michael J. Shintaku, Certified Shorthand Reporter No. 8251, in and for the State of California do hereby certify that the pages of this transcript prepared by me comprise a full, true and correct transcript of the testimony and proceedings held in the above-captioned matter on May 14, 2014.

I further certify that I have no interest in the events of the matter or the outcome of the proceeding.

EXECUTED this 14th day of May, 2014.

\_\_\_\_\_  
Michael J. Shintaku  
CSR No. 8251