

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
)

REPORTER'S TRANSCRIPT
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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

Irrelevant since
none examined
whether Edison
acted reasonably

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

False statement,
such a meeting was
required under
CPUC rules but it
was never
convened. This
becomes an issue
later in the transcript

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 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

ALJ disrespectfully
calls Aguirre by his
clients name

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?

Litzinger claims
unsupported facts
just "background."

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 --

Litzinger admits no
facts in record
showing SCE
determined there
were design errors

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.

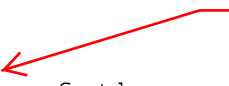
21 Q Now, you will admit that Southern
22 Cal Edison was involved in the design process
23 for the replacement steam generators as early
24 as November of 2004 when Mr. Nunn sent his
25 letter to the Mitsubishi Heavy Industry
26 Corporation, correct?

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

Nothing in record
on whether SCE
officials at fault



SCE Engineer I. S.
(Jun) Goar Issued
Certification of
Specifications



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

Judge allows SCE
Attorney to interrupt
cross-examination



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

Judge, SCE attorney block questions about whether strength of case against SCE discussed, a key factor in deciding if settlement should be approved

Judge helps SCE Attorney bloc questions about settlement

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.

Judge blocks
question about
whether SCE
has made record
to support CPUC
approving the
settlement

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

Judge coaches
Litzinger to not
answer question

Was the CPUC
being asked to ok
settlement of a
strong case, weak
case? Need to
know to determine
if settlement fair.

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

Admits SCE did not
give names of key
witnesses to CPUC



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. ←

With this admission
settlement should
not have been
approved.

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.

Start of Darling
obstruction of
examination on
report AVB
designed team
warned Edison
warned of the
design flaws

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

Judge says
question outside
scope and its
already answered

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

Litzinger agrees
claim SCE acted
prudently not
support by
evidence in the
record

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.

Judge misstates
record

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.

**Perjury" Litzinger had several
including one with Peevey a few
hours before giving this false**

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?

Judge obstructs
examination, did
she know of the ex
partes?

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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)	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)	
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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