

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company) Application 12-12-012
In its 2012 Nuclear Decommissioning Cost Triennial) (Filed December 21, 2012)
Proceeding (U39E))

Joint Application of Southern California Edison) Application 12-12-013
Company (U338E) and San Diego Gas & Electric) (Filed December 21, 2012)
Company (UU902E) for the 2012 Nuclear)
Decommissioning Cost Triennial Proceeding to Set)
Contribution Levels for the Companies' Nuclear)
Decommissioning Trust Funds and Address Other)
Related Decommissioning Issues.)

**OPENING BRIEF OF
THE COALITION TO DECOMMISSION SAN ONOFRE BY
RAYMOND LUTZ AND MARTHA SULLIVAN**

December 16, 2013

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I. SUMMARY OF RECOMMENDATIONS

1 The following table summarizes the recommendations of the CDSO regarding the
 2 subject matter of this proceeding.

ISSUE	RECOMMENDATION
ISSUE 1: Cost Estimates and Plans not considered "baselines"	<ol style="list-style-type: none"> 1. All cost estimates and plans should be intimately related, and constantly compared. 2. Order the utilities to provide a detailed cost estimate suitable for use as a baseline to track the decommissioning project. 3. Mandate that SCE break down the project into a reasonable number and type of subprojects. 4. No approvals of trust funds disbursements until a spending baseline is published and approved.
ISSUE 2: Existing Proceedings Insufficient for adequate oversight	Establish a Citizens Oversight Panel to provide timely a <i>priori</i> oversight of the decommissioning project.
ISSUE 3: SCE Advice Letter 2968-E does not comply with D.11-07-03	<ol style="list-style-type: none"> 1. This Advice Letter does not comply with D. 11-07-003. 2. Direct That SCE Request Amounts For Planning Only. 3. Require That Changes Be Described, Reviewed, And Approved. 4. Advice Letter process should Compare Funds Spent With The Detailed Cost Estimate. 5. Use Of Advice Letter Process And Any New Balancing Accounts Must Utilize Full Proceeding Process For Review. 6. Consider Working With Other State Agencies To Design An Appropriate Decommissioning Project Management Methodology.
ISSUE 4: Decommissioning Phases no longer compatible with Spent Fuel Plans	<ol style="list-style-type: none"> 1. Redefine the decommissioning phases such that Phases 1 and 3 of the decommissioning plan should be completed separately and before Phase 2 is completed. 2. Engage with the NRC to review NRC in this regard and make changes if necessary to allow Phases 1 and 3 to be completed prior to the completion of Phase 2, based on the current outlook for completion of a permanent repository.

ISSUE	RECOMMENDATION
ISSUE 5: Contingency may become "Stranded"	Order that the contingency be allocated to a separate trust that is not subject to the qualified nature of the primary trust, and only be provided to SCE when necessary (when a reasonable and unavoidable situation warrants use of the contingency); and returned to ratepayers as soon as Decommissioning Phase 1 is completed. (Only required if Issue 4 is not addressed as recommended).
ISSUE 6: Contingency excessive, should decrease as unknowns decrease	Direct SCE to determine contingency rates based on unknowns which will decrease over time and as plans are refined, and not use the default 25% contingency as plans are refined.
ISSUE 7: SCE Unit 1 Expenditures not "reasonable and prudent"	Find that these costs were not "reasonable and prudent" and request more justification from SCE.
ISSUE 8: High Burnup Fuel not adequately addressed	Order SCE to provide a supplementary report which details this issue, as soon as possible, and certainly included in the Irradiated Fuel Management Plan.
ISSUE 9: Decommissioning Trusts not Authorized to fund Severance Costs	Find that these severance costs should not be charged to the decommissioning trust funds, but only those costs involved in assisting employees in securing other work.

II. OVERVIEW

1 In accordance with Rule 13.3, the Assigned Commissioner's and Administrative Law
2 Judge's Scoping Memo of June 17, 2013, and ALJ Darling's granting our December 12, 2013,
3 request for a 1-day extension to file, the Coalition to Decommission San Onofre (CDSO)
4 hereby submits its Opening Brief in Phase 2 of this Nuclear Decommissioning Cost Triennial
5 Proceeding (NDCTP) of the California Public Utilities Commission (CPUC, or "Commission").

A. The Coalition to Decommission San Onofre (CDSO)

6 The Coalition to Decommission San Onofre is a DBA of Citizens Oversight, a 501(c)3
7 Delaware Corporation, with offices in Southern California. Member organizations and individuals
8 reside within the evacuation area of the San Onofre Nuclear Generating Station (SONGS).

9 CDSO/Citizens Oversight, Inc., encourages **increased engagement by the public in**
10 **the operation of their local, state and federal government to reduce waste, fraud and**
11 **abuse.** CDSO is unique in its localized, on-the-ground volunteer membership which affords
12 ready consultation with local elected officials and community members regarding the varied
13 impacts of the San Onofre Nuclear Power Plant, including those of decommissioning. Citizens
14 Oversight is based in San Diego and Orange Counties and we have no office in the S.F. Bay
15 Area; therefore effective participation in the CPUC's decision-making process requires
16 additional time, travel and communications expenses. We lack the ratepayer-funded facilities
17 and resources of Southern California Edison, San Diego Gas & Electric and the Commission
18 and we are new intervenors at the Commission. Our communities in Orange and San Diego
19 Counties most impacted by the San Onofre Nuclear Power Plant and its admittedly defective
20 nuclear reactors depend upon us – *unpaid community members who also have to tend to our*
21 *businesses/jobs, kids, elderly parents* – to represent them in this proceeding as well as in the
22 U.S. Nuclear Regulatory Commission's (NRC) decision-making process for the operation, and
23 now decommissioning, of this defective nuclear power plant. Our neighbors and the media
24 increasingly call upon us with questions about San Onofre, and a large amount of our time is
25 demanded by essential briefings of our elected representatives at the local, state and Federal
26 levels.

III. BACKGROUND

1 This brief is regarding the Nuclear Decommissioning Cost Triennial Proceedings
2 (NDCTP) and the Advice Letter procedure.

3 According to the scoping memo for this proceeding¹,

4 The purpose of these proceedings is to establish just and reasonable rates
5 to adequately fund the nuclear decommissioning trusts in place for the
6 benefit and protection of ratepayers and to verify that PG&E, SCE, and
7 SDG&E are in compliance with all prior decisions applicable to
8 decommissioning. Further, these proceedings will determine whether the
9 costs expended to-date to decommission Humboldt Unit 3 and SONGS 1
10 were reasonable and prudent, including funding Humboldt Unit 3
11 SAFSTOR O&M costs.

12 To the extent necessary, these proceedings will examine all underlying
13 forecasts and assumptions to estimate the future costs of
14 decommissioning the various nuclear generating stations; the costs and
15 earnings associated with the decommissioning trust funds and review of
16 the management of the trust funds; and other relevant data, policies or
17 laws and regulations. These proceedings will also include the standard
18 reasonableness review of managerial decisions and actions by PG&E,
19 SCE, and SDG&E as they have pursued decommissioning either
20 Humboldt Unit 3 or SONGS Unit 1.

21 So primarily, the proceeding scope can be viewed as two major aspects, the
22 Decommissioning Trusts, and Decommissioning oversight to ensure compliance with prior
23 Commission decisions and that decommissioning actions by the utilities are reasonable and
24 prudent.

25 Each of these two major components can be further divided into three subcomponents,
26 as follows:

27 1. Decommissioning Trusts

28 (a) **Cost estimates** to provide sufficient funds for decommissioning are required by
29 Public Utilities (PU) Code Section 8326². To comply with this statute, "conceptual"

1 June 17, 2013, scoping memo for A.12-12-012, citing D.07-01-003 at pp. 10-11.
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M067/K524/67524492.PDF>

2 PU Code Section 8326. (a) Each electrical utility owning, in whole or in part, or operating a nuclear facility, located in California or elsewhere, shall provide a decommissioning cost estimate to the commission or the board for all nuclear

1 cost studies have been prepared, which include site-specific information but are not
2 intended to be used as a project execution plan. Of note, the following plans include
3 extensive analyses by ABZ, a consulting firm with a history of preparing such
4 studies. These cost estimates, although conceptual, do include some site-specific
5 information to refine the cost estimates. These estimates include a contingency
6 factor of 25%.

- 7 i. SCE-02, "Testimony On The Nuclear Decommissioning Of SONGS 2 & 3 And Palo
8 Verde," otherwise known as the "Base case" or "2012 Estimate"
- 9 ii. SCE-06: "Supplemental Testimony: SONGS Early Decommissioning Scenario",
10 sometimes known as the "July 2013 estimate" or "Early Decom Estimate."

11 (b) **Trust Fund Investment policies and procedures** used by the utilities to manage
12 and invest the funds, and review of the investment performance, per PU Code
13 Section 8325³.

14 (c) **Determination of Rates** to be charged to the ratepayer to fund the
15 Decommissioning Trusts, based on the cost estimates, investment performance
16 forecasts, and estimated service life and retirement date of the plant⁴.

17 2. **Decommissioning Oversight: Costs Must be Reasonable and Prudent.**

18 (a) **Review and Approval of Detailed Project Budgets** -- Plans and budgets for
19 actual decommissioning are much more detailed than the conceptual plans used to
20 adequately fund the trusts. Although this element is not explicitly mentioned in the
21 scope of the NDCTP, it is necessary to allow prudent oversight of decommissioning
22 to ensure that ratepayer funds are efficiently and effectively spent, as provided by

facilities which shall include all of the following:

- (1) An estimate of costs of decommissioning.
- (2) A description of changes in regulation, technology, and economics affecting the estimate of costs.
- (3) A description of additions and deletions to nuclear facilities.
- (4) Upon request of the commission or the board, other information required by the Nuclear Regulatory

Commission regarding decommissioning costs.

(b) The decommissioning costs estimate study shall be periodically revised in accordance with procedures adopted by the commission or the board pursuant to Section 8327.

3 PU Code Section 8325, in summary, provides that the utilities shall establish an externally managed, segregated decommissioning fund which will qualify for tax deduction per IRS Section 468A, and to collect revenues in rates to contribute to this fund. The Utilities may also establish other funds, as appropriate for decommissioning that are not qualified under Section 468A.

4 *Ibid.* and PU Code Section 8329, the estimation of the service life and retirement date.

1 PU Code Section 701 and PU Code Section 701.1⁵ At this point, CDSO asserts
2 there is insufficient guidance by the Commission regarding this element, as will be
3 discussed below.

5 PU Code Sections 701 and 701.1 provide that the Commission "may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction" to accomplish "ratepayer protection objectives" and "to minimize the cost to society."

1 (b) **Approval of fund disbursements** for components of an active decommissioning
2 project. The Commission has ordered the use of the Advice Letter process to allow
3 a utility to access the decommissioning trusts between triennial NDCTP
4 proceedings, as described in D.11-07-003 on July 14, 2011, entitled: "Decision
5 Adopting Recommendations Of The Independent Panel On Nuclear
6 Decommissioning Costs, Estimates, Assumptions, And Format"⁶

7 (c) **Reasonableness Review** of any actual decommissioning projects to insure
8 effective, efficient, and reasonable use of the funds. PU Code Section 8328
9 explicitly mentions a reasonableness review if trust funds are insufficient to cover all
10 decommissioning costs such that additional costs would be paid by current
11 ratepayers. However, we assert that the foundational mission of the Commission to
12 protect ratepayers and minimize the cost to society provides that the Commission
13 should closely monitor decommissioning expenditures to ensure that they "protect
14 ratepayers" and "minimize the cost to society." In this case, it means effective and
15 efficient use of the decommissioning funds. Although the NRC does review the
16 PSDAR, it does not perform a reasonableness review of any kind. This is up to the
17 CPUC.⁷

18 In this proceeding, SCE-01 provides the information regarding the costs and justification for
19 SONGS Unit 1.

20 These proceedings have occurred systematically without the expectation that the
21 operating nuclear plants would experience a complete shutdown. Now that SONGS has
22 ceased operations, we find that the Commission should make substantial changes to the
23 manner in which it provides oversight. CDSO will outline what we see as the important issues
24 and make recommendations for improved oversight by the Commission to avoid waste, fraud,
25 and abuse, and respect the ratepayer monies in the Decommissioning Trusts.

6 http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/139321.PDF

7 Transcript Page 614 Lines 6-19

(FREEDMAN) Q Is the NRC, with respect to cost, is their primary focus to ensure that there are sufficient funds available in the trust, or is the NRC also looking at the reasonableness of the costs?

A They're looking to make sure that there is adequate assurance that we can complete the decommissioning and that there's adequate funds available, not the reasonableness.

Q So, so long as there are funds available, the NRC cannot reject a plan as being too expensive, for example.

A I believe that's correct.

IV. ISSUES

ISSUE 1: Cost Estimates and Plans not considered "baselines"

1 In addition to the conceptual cost estimates useful for providing adequate funding of
2 the decommissioning trusts, SCE plans to prepare a number of documents comprising the
3 "site decommissioning plan" in the near future⁸:

- 4 1. site-specific decommissioning cost estimate -- this estimate will be more refined than
5 the estimate of SCE-06 but will still not be an engineering estimate⁹.
- 6 2. Irradiated Fuel Management Plan
- 7 3. PSDAR: Post Shutdown Activities Report - includes the two components above and is
8 submitted to the NRC. This plan includes all components of the work to be performed,
9 including not only work mandated by NRC regulations but also nonradiological
10 decommissioning.¹⁰ This plan is reviewed by the NRC for compliance with its guidance
11 but is not approved by the NRC, and the NRC does not perform a reasonableness

8 **Transcript Page 552 starting at line 22**

(OPITZ) When we talk about the site decommissioning plan, there is actually several key elements in developing the site decommissioning plan. One of them is performed as a site-specific estimate, another one is to develop an irradiated fuel management plan, and the third is to put together the post -- PSDAR, ... Post-Shutdown Decommissioning Activities Report. All three of those are required to be submitted to the NRC within two years after shutdown. We are planning on working on those and having those ready next year. So when you talk about decommissioning plan, site-specific decommissioning plan, all these three elements are linked into that and are integral parts of that site-specific decommissioning.

9 **Transcript Page 554 Lines 5-16**

The ABZ estimate which is in front of us which is in testimony here is that conceptual estimate. The one that will be prepared, and it has not been determined who will prepare it yet, is a more detailed -- it is a more informed estimate. And we expect to have a greater level of information into it. It is still not going to be an engineered estimate with engineered plans behind it, but it will have some better information in it that will give us higher quality data.

Transcript Page 533:3-16 A (OPTIZ) Well, you know, a detailed -- what you described as a detailed engineering plan, I would use the term you'd come up with a very -- it's a very specific estimate where you have similar to that a contractor would bid on a fixed price contract with where you have all the information is known or you know exactly what you're going to do, design drawings are 100-percent complete so you know what you're going to execute. This study will have much better information than the conceptual studies that have been done by ABZ, but it still won't have that level of maturity.

10 **Transcript Page 616 Lines 10-28:**

(MR. FREEDMAN) Q Well, does the PSDAR plan cover all of the work that Edison intends to perform at the site, or just a subset of that work?

A No. The PSDAR would include all, all the work at the site.

Q And does the NRC review all of the work beyond the radiological decommissioning elements?

A It's not within their jurisdiction, as you know. The decommissioning plan -- you know, subject to check, I believe the decommissioning -- the PSDAR will include all of our -- all of our scope to decommission the plant.

Q But the NRC will be reviewing the radiological decommissioning portion subject to its authority; correct?

A I believe that's correct.

1 review (see Footnote 7).

- 2 4. SCE has alluded to a "detailed engineering plan" which, in their opinion, can be used
3 for a project management baseline, but they were unable to provide a date when it
4 would be available.¹¹

5 **ISSUE 1: OBSERVATIONS AND RECOMMENDATIONS**

6 Toward achieving the purpose of this proceeding, as well as this Commission's
7 foundational mandate, we have some observations and recommendations about these
8 various cost estimates and related plans:

- 9 1. **All cost estimates and plans should be intimately related**, and constantly
10 compared. Although it is understandable that the cost estimates used for trust fund rate
11 determination purposes is different from the cost estimates and plans suitable for the
12 PSDAR or the detailed engineering plans, each of these should be a refinement of the
13 former. And, the reasons for the refinements should be reflected back to improve future
14 decommissioning conceptual plans. As the work is actually completed, variances from
15 plans can help the Commission, utilities, and the public, to learn and avoid those
16 variances in the future.

- 17 2. **The Commission can use any estimate for a project management baseline.**

18 SCE wants to avoid committing to any estimate as a baseline, and would prefer
19 probably to have no baseline, and just allow funding with no controls whatsoever. This
20 comes out in the testimony of SCE Witness Opitz, when he says that "Th[e PSDAR],
21 however, will not and cannot possibly be used as a cost baseline for the entire

11 Transcript Page 629 Lines 23+:

(FREEMAN) Q And moving to page 26 of your rebuttal testimony, ... on lines 15 through 17 that "This updated decommissioning plan, however, will not and cannot possibly be used as a cost baseline for the entire project, which may take decades to complete." Again, is this -- we're talking about the same plan here that's related to the PSDAR? (Opitz) A Correct. That's correct.

Q Why are you saying that such a plan cannot be used as a cost baseline?

A The -- the primary reasons that we're -- that we make that statement is that it's still a conceptual estimate. It's informed with better information now that we know we're actually shutdown, and we certainly will have better information in terms of the fuel management plan and some site characterization. But everything is still at a -- at a high conceptual level, so that's -- that's the basis for that statement.

Q At what point does Edison expect to have a plan that could be used as a cost baseline?

A I would have to have a conversation with the decommissioning project management team to get that exact answer for you.

1 project"¹² The PSDAR can be used as a baseline if the Commission desires to use it,
2 even if additional detailed estimates are provided.

3 SCE may be confusing the internal project management baseline with a baseline used
4 by the Commission to ensure that the decommissioning funds are spent in a
5 reasonable and prudent manner.

6 **3. The Commission should direct SCE to provide a cost estimate that is suitable for**
7 **a baseline.**

8 It is nearly inconceivable, but true, that the Commission has no explicit instructions to
9 the utilities in terms of providing a cost estimate that will serve as a baseline to allow
10 the commission to determine whether the trusts are being utilized effectively and
11 efficiently, so as to "protect ratepayers and minimize the cost to society," a key mission
12 of the Commission. According to SCE testimony, the PSDAR is the only document that
13 will be made available, and SCE has stated that it is not suitable to be used as a
14 baseline. Therefore, **the Commission should order the utilities to provide a**
15 **detailed cost estimate suitable for use as a baseline to track the**
16 **decommissioning project.**

17 Typically, a plan useful as a baseline includes three components, cost, schedule, and
18 technical factors (quality). These are commonly abbreviated in project management
19 circles as C,S, and T.¹³

20 **4. Funds should not be approved until a baseline plan is published.**

21 In SCE Advice Letter 2968-E submitted to the Commission's Energy Division on
22 November 18, 2013, there is no attempt to correlate requested funds and costs to
23 tasks identified in the conceptual project plan as provided for use in the NDCTP to
24 estimate the costs, and detailed plans have not been completed. As CDSO has
25 recommended in our timely Protest of this Advice Letter, SCE should be required to
26 request funds in relation to these plans, and break costs out according to the plan, as
27 opposed to the "one big project" approach which will eliminate the ability for the
28 Commission, the public, and other stakeholders to monitor that SCE is doing related

12 Ibid.

13 From "Winning at Project Management - What Works, What Fails, and Why" by Robert D. Gilbreath (1986)

1 work, or if they are using it for unrelated purposes. Therefore, the Commission should
2 not approve any use of the decommissioning trust funds until a spending baseline is
3 published and approved.

4 **5. The Commission should direct SCE to breakdown the baseline plan into a small**
5 **number of discrete subprojects that can be individually tracked.**

6 SCE has a history of very poor tracking, as exemplified by their use of a single account
7 to track all SONGS Unit 1 decommissioning costs¹⁴. Instead, the Commission should
8 direct SCE to break down the overall project into a reasonable number of logically
9 separate subprojects that can be individually tracked, including any maintenance and
10 monitoring tasks. These subprojects should be chosen so as to also be cross-
11 referenced to the conceptual cost estimates.

12 It appears that SCE hopes to keep the project as "one big chunk" so it will be difficult to
13 determine what is going on, and perhaps repeat their habit of dividing it into a plethora
14 of line items that have nothing to do with timely completion of anything, but only serve
15 to obfuscate.

16 CDSO supports the proposal by TURN¹⁵ to require that SCE define subprojects that
17 can individually tracked. SCE did not comment on this proposal. The Commission
18 should mandate that SCE break down the project into a reasonable number and type

14 **Transcript 656 lines 17+**

Q (LUTZ) You say for SONGS 1, Phase 1 decommissioning work... [SCE-08 Page 4] line 19. It says: "As for Phase 2 decommissioning expenditures, SCE develops budgets and tracks expenditures for monitoring and maintenance activities in a single account." Can you explain that single account reference right there?

(OPTIZ) A Currently, if you look at our budgets for SONGS Unit 1, Phase 2, as I stated earlier, it's primarily a maintenance activity where we're monitoring and maintaining equipment. When I talk about maintenance, that would be to the security facilities around the ISFSI [Independent Spent Fuel Storage Installation] as well as from a monitoring standpoint. It's just to make sure that it's well-lit and that there are -- and we do some groundwater monitoring.

...In this monitoring mode that we're in on Phase 2, we approve budgets on an annual basis with our co-owners and make sure that the amount that we set aside for the activities during the calendar year are adequate. We don't have a specific contingency number that we're drawing down from over a period of time.

15 From "Testimony Of Bruce Lacy On Behalf Of The Utility Reform Network Addressing Issues Related To The Decommissioning Costs For The San Onofre, Palo Verde And Diablo Canyon Nuclear Plants", Page 21: "

The Edison plan for SONGS decommissioning should break decommissioning into some number of major subprojects, no more than 10-15, that include both period and activity dependent subprojects, each with defined budget, schedule, and completion milestones suitable for tracking performance and making periodic reasonableness and prudence determinations at periodic NDCTPs. The subprojects, in aggregate, should represent the total effort for completing SONGS decommissioning. Should there be material changes in SONGS decommissioning strategy; the major subprojects would be adjusted or old ones deleted or new ones added with Commission review and approval to enable proper Commission oversight.

1 of subprojects. CDSO makes the following suggestion regarding the selection of
2 subprojects:

- 3 1. Not too many, not too few -- probably between 10 and 30 subprojects.
- 4 2. Logically discrete -- each subproject should be logically discrete, with a clear start
5 and completion.
- 6 3. Temporally discrete -- each subproject should encompass a limited time period.
- 7 4. Preferably, can be cross-referenced with conceptual cost estimates.
- 8 5. Preferably, could be individually outsourced to an appropriate contractor.
- 9 6. Probably not related to FERC accounts, which will likely span several or all
10 subprojects, and wind up being useless from a project management standpoint.
- 11 7. The subprojects in aggregate, should encompass the entire decommissioning
12 project.

13 CDSO would be happy to review and comment on any proposed list of subprojects for
14 effective oversight of the decommissioning project. We will not attempt to formulate a list of
15 subprojects as we acknowledge the fact that they will be heavily dependent on the actual
16 decommissioning plans.

ISSUE 2: Existing Proceedings Insufficient for adequate oversight

17 **NDCTP Proceedings are too infrequent to provide oversight to actual**
18 **decommissioning projects; Advice Letter process also too infrequent, includes**
19 **insufficient information, compares with wrong cost estimates, and has insufficient**
20 **opportunity for intervenor participation.**

21 Although the frequency of triennial review process of the NDCTP is probably sufficient
22 to manage the Decommissioning Trusts, this schedule is too infrequent for oversight of actual
23 decommissioning, such as for SONGS. The Commission has recognized this problem, and
24 has proposed extending the Advice Letter process to improve oversight. An Advice Letter
25 would be published every year with any protests to occur within 20 days.

26 Even when published every year, this process does not compare well with the day-by-
27 day, week-by-week, and month-by-month time scales typical for large construction projects.

1 Of course, SCE finds no problem with such lax oversight, but CDSO asserts this is an
2 imprudent level of oversight to meet the expectations for proper treatment of ratepayers and
3 minimizing cost to society. Other aspects of this issue are discussed in **Attachment 1**.

4 **CDSO Recommends that the Commission establish a Citizens Oversight Panel**
5 **to provide timely and effective oversight of the San Onofre Decommissioning project.**
6 See Attachment 1 for details.

ISSUE 3: SCE Advice Letter 2968-E does not comply with D.11-07-003

7 **As required by D.11-07-003, the Commission has yet to “evaluate the Advice**
8 **Letter process for HBPP to determine whether it is appropriate and sufficient review**
9 **before extending it to other decommissioning activities.”**

10 CDSO submitted a timely protest to SCE Advice Letter 2968-E, which is incorporated
11 here in its entirety as Attachment 1. The following excerpt is especially relevant to this Brief:

12 “In 2011, after the vast majority of work was already completed in the decommissioning
13 process for SONGS 1, the Commission published Decision (D.) 11-07-003 on July 14,
14 2011, entitled: "Decision Adopting Recommendations Of The Independent Panel On
15 Nuclear Decommissioning Costs, Estimates, Assumptions, And Format"¹⁶

16 This decision provided a method for expressing information about the various plants so
17 they could be more conveniently compared, as well as steps to improve the oversight
18 available for the Humboldt Unit 3 decommissioning project, utilizing the "Advice Letter"
19 procedure already in use by the Commission for other purposes¹⁷.

20 At Page 37 of this decision, the Commission described problems with the process used
21 in SONGS 1 and proposed a new method based on Advice Letters, to be used in the
22 Humboldt Bay Power Plant Unit 3 Decommissioning project, as follows:

8. Transparency of Major Decommissioning Expenditures

To date, the Commission has only its experience with the decommissioning of SONGS 1 as a basis to develop its methods for exercising oversight of the utilities’ decommissioning activities. PG&E, as its own contractor, has recently begun to decommission Humboldt Bay Power Plant and has used Advice Letters to communicate with the Commission about its activities. The procedures followed by PG&E and SCE for SONGS are different due to a lack of direction from the Commission. Further, PG&E’s Advice Letters have not contained all of the

16 http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/139321.PDF

17 CPUC General Order 96-B -- General Rules govern advice letters and information-only filings submitted to the Commission by public utilities that are gas, electrical, telephone, water, sewer system, pipeline, or heat corporations, as defined in the Public Utilities Code. -- http://docs.cpuc.ca.gov/word_pdf/GENERAL_ORDER/164747.pdf

information necessary for the Commission to adequately or promptly review how closely actual costs are following estimated costs during the major decommissioning phase where the vast majority of activities and expenses occur. We think this is an essential part of our oversight and waiting for triennial review after hundreds of millions of dollars may be spent, perhaps well in excess of what has been previously estimated, is unreasonable.

Therefore, at the March 14, 2011 evidentiary hearing in Phase 2 of this proceeding, representatives of the utilities agreed to meet with Energy Division to discuss the Advice Letter process for notice and authorization to withdraw funds from the nuclear decommissioning trust funds. PG&E agreed to a periodic Advice Letter process under Tier 2 to request approval for anticipated trust fund disbursements and which will include, inter-alia, specific information about the activities, prior cost estimates, actual costs, and whether trust fund reimbursement has been obtained. A description of the process and contents of the Advice Letters is attached hereto as Attachment B.

SCE and SDG&E expressed their preference to not have this process apply to SONGS 1 until Phase 3 and commencement of SONGS 2 and 3 decommissioning. We agree at this time because the ongoing decommissioning expenses at SONGS 1 are minor, **giving the Commission time to evaluate the Advice Letter process for HBPP to determine whether it is appropriate and sufficient review before extending it to other decommissioning activities.** (Emphasis added.)

1 From the same decision, Conclusion of Law #2 is also relevant:

2. The Commission should establish the Advice Letter Process set forth in Attachment B for utilities to notify the Commission of decommissioning activities, expenses, and trust fund reimbursements related to nuclear decommissioning. **It is reasonable to first apply the process to PG&E, which has the only active decommissioning project within the Commission's jurisdiction, so the Commission may evaluate its efficacy for future decommissioning projects.** (Emphasis added.)

2 This Advice Letter seeks to quickly institute procedures -- with almost no review or
3 discussion -- that will allow SCE to prematurely access funds from the Decommissioning
4 Trusts prior to completing the prescribed Post Shutdown Activities Report (PSDAR) and the
5 detailed site-specific decommissioning plans. SCE also suggests a method to launder trust
6 funds through a proposed "SONGS Operations and Maintenance Balancing Account"
7 (SOMBA) and then into the Energy Resource Recovery Account (ERRA) to cover for
8 overspending by SCE; and suggests an inappropriate allocation of the trust funds so as to
9 improperly over-allocate funds that SCE can spend on non-radiological decommissioning,
10 while under-allocating funds for U.S. Nuclear Regulatory Commission (NRC)-mandated

1 radiological decommissioning. These plans provide for an inappropriate low level of oversight
2 by both this Commission and the public, exemplifying embarrassing disregard for the integrity
3 of the decommissioning trust funds.

Most of what has been requested in this Advice Letter should be processed in a separate application or perhaps in a deferred portion of this NDCTP, including the suggestion that a Tier 2 Advice Letter process should be approved, a new balancing account should be established (SOMBA) that interacts with ERRA to allow decommissioning funds to be misused. The only exception to that would be amounts allocated specifically for planning purposes, or about \$14 million.

ISSUE 4: Decommissioning Phases no longer compatible with Spent Fuel Plans

4 **Residual amounts in the Trust Funds will be stranded, perhaps forever. Phases 1**
5 **& 3 should be completed on a timely basis and Phase 2 operated with indefinite term**
6 **based on availability of permanent geologic repository.**

7 When the various laws and regulations were designed for decommissioning, including
8 the provisions for the Decommissioning Trusts, there was an expectation that a permanent
9 geologic repository would be available by 1998. Today, 15 years later, there still is no
10 repository and when it will be available is speculation at best, and may be many decades in
11 the future. In testimony for this NDCTP, SCE continues to assert that spent nuclear fuel could
12 be removed from the site in 2024¹⁸. According to the DOE, however, in a report published in
13 January 2013, "Strategy for the Management and Disposal of Used Nuclear Fuel and High-
14 Level Radioactive Waste" (The so-called "Blue Ribbon Report")

The Administration's goal is to have a [permanent geologic] repository sited by 2026; the site characterized, and the repository designed and licensed by 2042;

18 **Transcript Page 653 Line 21+**

(LUTZ) Q: Given that any plan is a set of professional judgments, what is your current professional judgment of the availability of the permanent repository?

ALJ DARLING: That's fair.

OPITZ: Regarding the permanent repository, you know my understanding is the NRC is under an order by an appeals court to complete the licensing of Yucca Mountain. Any other facility is completely unscoped, and no location for any other facility has been identified. And I would have no idea of when the DOE would actually execute on such a promise since they did not execute their original contract.

Q So is it your professional judgment that the permanent repository might be around in 2024?

A It is a reasonable assumption based on what we currently know.

and the repository constructed and its operations started by 2048.¹⁹

1 SCE management does not try to stay up on the latest official investigations into this
2 matter, as they say they are unaware²⁰ of the Blue Ribbon Commission findings on nuclear
3 waste. The fact that they do not maintain a healthy awareness of research and reports in this
4 area underlines the fact that instead of being a "reasonable manager", SCE sets the "ignorant
5 manager" reasonableness standard, reaching conclusions that have no basis in any facts that
6 are present at the time, because they assert they are unaware. Recently, the NRC circulated
7 the "Waste Confidence Draft Generic Environmental Impact Statement"²¹ (DGEIS) regarding
8 the use of co-located ISFSIs (Independent Spent Fuel Storage Installations) for an indefinite
9 period of time, on the order of hundreds of years, in the event no geologic repository sufficient
10 to accept all the spent fuel does not become reality.

11 Thus, it may be the case that the ISFSI is still active on the site long after the rest of
12 the site has been fully decommissioned. Despite that fact, any residual funds not required for
13 actually decommissioning will be stranded in the trust accounts and never returned to
14 ratepayers in a timely manner.²²

19 http://energy.gov/sites/prod/files/2013%201-15%20Nuclear_Waste_Report.pdf, at Page 7.

20 **Transcript Page 405 Line 4:**

MR. LUTZ: Q ...[I]n our testimony we cite the Blue Ribbon Commission regarding the fact that they are saying that the geologic repository will not be available until 2048. Are you familiar with the Blue Ribbon Commission findings? (PALMISANO) A I am not specifically familiar with the Blue Ribbon Commission findings.

Q Is anyone at SCE familiar with the Blue Ribbon Commission findings about when the geologic repository will become available?

A I'm not privy to that, so I can't say whether anybody is or not.

21 <http://pbadupws.nrc.gov/docs/ML1322/ML13224A106.pdf>

22 **Transcript Page 442 Line 14:**

(FREEDMAN) Let's turn to page 4, still on Exhibit SCE-7. At the bottom of page 4 you state, on line 22 -- and we're talking here about SONGS Unit 1.

"It is prudent to keep all of the accumulated funds in the trust. Indeed, since all of SONGS 1 decommissioning funds are now held in the qualified trust, these funds can only be spent on decommissioning of SONGS 1 without disqualifying the trust which would result in an enormous tax liability to the trust."

When would Edison propose to return any remaining funds in the SONGS 1 trust that are not needed for decommissioning?

A At the conclusion of SONGS 1 decommissioning.

Q And would that be in the year 2055, as currently forecasted by Edison?

A Yes.

Q If Edison determines at any point prior to 2055 that the SONGS 1 trust is significantly over funded and, yet, decommissioning is not complete at that point, can excess balances be returned to the ratepayers at an earlier date?

A I believe not.

Q And why not?

A Because that is not permitted under the terms of the master trust agreement. It's also I believe not permitted under the

1 CDSO recommends that the Commission redefine the decommissioning phases such
2 that **Phases 1 and 3 of the decommissioning plan should be completed separately and**
3 **before Phase 2 is completed.** Thus, the major work to dismantle the plant would proceed as
4 planned for Phase 1, and after only the ISFSI remains, SCE would file with the NRC and
5 complete license termination. Any excess funds could then be returned to ratepayers, at
6 about 2025.

7 Phase 2 of the decommissioning plan, specifically regarding operation of the ISFSI for
8 a long-term and indeterminate time, should be split out of the decommissioning process, and
9 handled as a separate long-term operation that should be mainly funded by DOE lawsuits
10 which have been processed on a routine basis. This is what we have called the "Nuclear
11 Waste Operation" in our Phase 2 Opening Brief in I.12-10-013 (SONGS OII).

12 This change could require changes to NRC regulations. **CDSO recommends that the**
13 **Commission engage with the NRC and request that the NRC review their regulations in**
14 **this regard and if necessary, change their regulations²³ to allow Phases 1 and 3 to be**
15 **completed prior to the completion of Phase 2, based on the current outlook for**
16 **completion of a permanent repository.**

ISSUE 5: Contingency too large, may become "Stranded"

17 **Contingency should not be applied to the amounts in the trust funds, since**
18 **those may be stranded for an extended period of time, but instead the utilities should**

current IRS regulations governing qualified trusts.

Transcript Page 444, Line 1:

MR. FREEDMAN: Q And do you know what event must transpire in order for Edison to deem decommissioning complete and to allow the return of excess funds from the trust?

...

THE WITNESS (HUNT): I believe it is the termination of the license and the release of the site for unrestricted use.

Q And so if there were an ISFSI that continued to be maintained on the site, would that mean that the funds from the trust could not be returned to ratepayers until the ISFSI were removed?

A That's my understanding.

23 10 CFR 20 Subpart E—Radiological Criteria for License Termination, requires that the entire site be reduced in radiation. One option is "unrestricted use", for example: "A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal."
If the ISFSI continues to operate on the site, then it will be impossible to meet the current criteria for decommissioning as specified in these NRC regulations.

1 **set aside the contingency in a separate fund that is not subject to stranding.**

2 If the trusts are funded to include a 25% contingency, and if they become "stranded"
3 per Issue 5, above, this is unfair to ratepayers if those funds are never needed. If the rules are
4 changed per our recommendation in Item 5, then this issue is moot. If the rules are not
5 changed to reduce the likelihood of stranding per Item 5, then the following recommendation
6 applies.

7 **CDSO recommends that the Commission order that the contingency be**
8 **allocated to a separate trust that is not subject to the qualified nature of the primary**
9 **trust, and only be provided to SCE when necessary (when a reasonable and**
10 **unavoidable situation warrants use of the contingency) and returned to ratepayers as**
11 **soon as Decommissioning Phase 1 is completed.**

ISSUE 6: Contingency excessive, should decrease as unknowns decrease

12 The methodology used to determine the funding amounts for the Decommissioning
13 Trusts includes the use of a contingency of 25%. We have concerns regarding this as follows.
14 First, the use of such a large contingency may encourage the concept that spending is
15 "according to plan" when in fact, it is over the planned amount and utilizing the contingency
16 funds. We noticed almost no discussion of the use of contingency for SONGS Unit 1 in this
17 proceeding until in cross examination, we discovered recent spending was about 60% over
18 budget and using contingency funds accordingly²⁴. Even worse, SCE was unwilling to confirm

24 Transcript Page 664 Line 16

Q (LUTZ) Mr. Opitz, I just have one question regarding this Exhibit Number SCE-15, which was the detailed listing of decommissioning costs for the years 2009 to 2012. Can you take a look at that?

A Yes.

Q In terms of calculating the contingency, would we take for the Phase One closeout subtotal, 4,213, over 6,974, for about 60 percent?

A I'm a little unclear on your question.

Q Calculating the overall contingency percentage for that period. I just did it on my calculator, taking 4213 divided by 6974, and I got about 60 percent. Do you agree with the calculation?

ALJ DARLING: What's that calculation supposed to be?

MR. LUTZ: It's supposed to be the actual rate of usage of the contingency, because according to their statement on the following page and of this data request, and maybe we should turn to that. It's at the previous page, yes.

Q The last line of the paragraph, it says, "Thus, the 11.2 million incurred included the \$7 million budgeted cost plus a \$4.2 million application of contingency relative to the 2009 budget?" Do you see that sentence?

A Yes, I see the sentence.

Q Okay. So the budgeted amount was around 7 million, and then the 4.2 million was the contingency. In order to figure out the percentage, I just divided. 4.2, divided by 7, and I got around 60 percent. Do you agree with that calculation?

A I'm not going to comment on the calculation. I will state that, you know, these numbers are correct and that the budgeted amount for that for 2011 was the 6,974, and in the recorded was, you know, 11,187, which gives you the 4,213

1 that the contingency rate was 60%, and was unwilling to provide testimony regarding the
2 actual contingency rate for the period, including to confirm the manner in which contingency is
3 calculated.

4 Second, it may encourage a "spend it our lose it" mentality and in the end, excess
5 spending and artificial costs.

6 Third, the cost estimates used to determine the funding requirements of the trusts are
7 only "conceptual" and as a result, SCE argued successfully that the contingency should be
8 25% due to the substantial unknowns.

9 Applying this same contingency as the plans become firmed up is improper, and may
10 lead to excessive spending if SCE is not required to justify the use of contingency, and
11 particularly if the costs for a subproject exceeds the contingency factor. If the contingency is
12 set too high, these advantages are lost. We note that for the operation of the ISFSI at Palo
13 Verde, a 14.9% contingency is used.²⁵

14 Any treatment of contingency will include the notion that the contingency should
15 decrease as unknowns decrease, i.e. as plans are firmed up.

variance.

Q Well, then, let me ask you the question. What is the percentage contingency rate? Because I see a lot of times in a lot of discussion here about how much contingency would be estimated to be used for budgeting purposes, and they say 25 percent is kind of the going rate. And so I'm trying to actually get the actual usage of contingency for this period. And so my question is either you can agree with my calculation or tell me how to calculate the contingency.

A Well, I'm not going to validate your calculation because I would want a calculator up here and I would like to look at other documents. So I'm not going to do that.

25 Transcript Page 583 Line 17

(MR. LEE): Q Mr. Opitz, ORA-06 is a copy of a letter from APS, the operator of the Palo Verde nuclear station, to the Nuclear Regulatory Commission dated December 14, 2012. And you see that on the first page of Exhibit ORA-6, do you not, Mr. Opitz?

A That's correct.

Q Thank you. And do you see the 14.9 percent that we just referred to that is presented by APS as the contingency factor for ISFSI?

A Yes, I do.

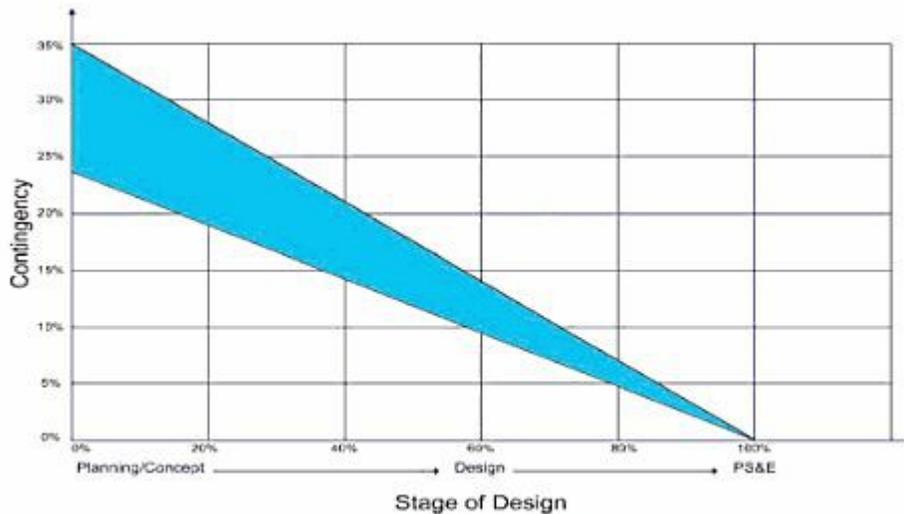


Figure R3.3-2. Ohio DOT design completion contingency guidelines for cost estimating of major projects.

*Figure 1: Contingency decreases as design plans firm up.
 (From "Guidebook on Risk Analysis Tools and Management Practices to Control Transportation Project Costs" Transportation Research Board, 2010)*

1 **The CDSO recommends that the Commission direct SCE to determine**
 2 **contingency rates based on unknowns which will decrease over time and as plans are**
 3 **refined, and not the default 25% contingency used in conceptual budgetary estimates.**

ISSUE 7: SCE Unit 1 Expenditures not "Reasonable and Prudent"

4 **SCE Provides inadequate information for review of SONGS Unit 1 expenditures;**
 5 **Commission should find these expenditures to be unreasonable.**

6 One of the important elements of the NDCTP is the review of expenditures over the
 7 prior period to determine the reasonableness and prudence of those expenditures. This is
 8 addressed in SCE-01, Section III. SCE provided table III-1, which listed two line items and a
 9 total. This is shown in Figure 1. In addition, there is a two-page narrative description of the
 10 work performed and planned for the near future. There were no workpapers or other
 11 supporting information provided by SCE²⁶.

26 Transcript Page 599:

MR. FREEDMAN: Q So with respect to the completed work at SONGS 1, is Edison's complete showing what I would see here on pages 10 and 11 of SCE-1? Is there any other additional information that Edison has presented that supports the finding of reasonableness?

(OPITZ) A Yeah. 10 and 11 is the testimony on the work that was performed that supports the reasonableness.

1 During the hearing, it became painfully obvious that SCE was wholly unprepared to
2 substantiate their claims of reasonableness, and did not provide sufficient detail for the
3 Commission, Intervenors, or the public to review these \$14 million without undue difficulty. It is
4 the responsibility of the utility to provide sufficient information to support the assertion of
5 reasonableness, and should not require data requests or other party-only access to reach that
6 conclusion.

7 Several mistakes were also clearly made in this section. First, the title of the Table
8 says it is a "Reconciliation" but there is no reconciliation with estimated costs, and SCE does
9 not plan to provide such a reconciliation, nor comparison with the budget of estimated costs.²⁷
10 This approach which does not compare spending with budgets is absolutely ridiculous,
11 imprudent, and unreasonable. **The CDSO strongly recommends that the Commission**
12 **provide clear and concise mandates that include the creation of budgets and**
13 **completion schedules and any submission to request a conclusion of reasonableness**
14 **shall include a comparison with actual expenditures and actual completion dates.**

Q And again, there's nothing in the workpapers that provides additional detail?

THE WITNESS: Could I reference -- could I go off the record to reference the workpapers?

ALJ DARLING: Sure. Off the record. (Off the record) ALJ DARLING: Back on the record.

THE WITNESS: There's nothing in the workpapers.

27 **Transcript Page 601 Lines 4-14**

Q (FREEDMAN) Is it your testimony that Edison when coming back for additional reviews in the next NDCTP for example would not be comparing the costs incurred in Phase 2 or 3 with the 2012 estimate that's presented in this case?

A I would think so.

Q You would think that Edison would or would not?

A I would believe we would not be comparing it to an estimate.

Table III-1
Reconciliation Of Costs For Work Complete
Between January 1, 2009 And December 31, 2012
To The 2009 Decommissioning Cost Estimate
(100% Share, Thousands of 2011\$)

Line No.	Activity Cost Category	Actual Costs for Work Completed between January 1, 2009 and December 31, 2012
1.	Phase I Close-out Activities (2009)	\$11,187
2.	Ongoing Decommissioning Activities (2009-2012)	\$3,717
3.	TOTAL	\$14,904

Figure 2: Table III-1 from SCE-01

1 SCE provided SCE-15 during the evidentiary hearings, which provided a bit more
2 information about these costs, but they admitted that no reconciliation was provided.²⁸

3 In addition, the witness could not correlate the statements in the narrative description
4 with Table III-1, and incorrectly associated the CAD work with the overhead category²⁹.

5 Although it is understandable that an error will be made from time to time, the fact that
6 the sponsor and witness would make such a mistake certainly points out that the information
7 provided by SCE was insufficient not only for others, but also insufficient for their own sponsor

28 Transcript Page 759

(MS. ANABTAWI of SCE) Q Is the title of that table: "Reconciliation of costs for work complete between January 1, 2009, and December 31, 2012, to the 2009 decommissioning cost estimate"? Is that the title of this table?

(OPITZ) A That is the title of the table.

Q Can you explain this title?

A This title does not accurately represent what's on here; it doesn't really reconcile costs. It's just -- the table shows the summary of costs for the work complete during that time frame.

Q Was that title, then, an error? A That title was then an error.

29 Transcript Page 789

MR. LUTZ: Q In SCE-15, in redirect, you said that the CAD costs you originally thought were allocated to the overheads and allocations, parentheses, 2009 were actually allocated to MARSSIM, the acronym M-A-R-S-S-I-M, Multi-Agency Radiation Survey and Site Investigation Manual, activity. Is that correct?

A (OPITZ) That is correct.

Q Okay. Is there any testimony that provides more detail about these tasks in the table including the MARSSIM activity?

A I don't believe so in testimony.

1 of the testimony.

2 Again, this written testimony is insufficient, imprudent, and certainly unreasonable, and
3 it is a disgraceful embarrassment for SCE and the Commission, and indeed everyone
4 involved. CDSO requested that the ALJ order SCE to prepare a replacement section to more
5 fully describe the costs for this period, and that request was rejected.

6 **Therefore, CDSO recommends that the Commission should find that these costs**
7 **were not "reasonable and prudent" and request more justification from SCE.** It is
8 extremely important that the Commission stand up to these shoddy reporting practices by the
9 utility and demand that they do a better job than this. If the Commission finds they are
10 reasonable, this will send the message that these ridiculously brief reports, with no
11 reconciliation, and with several mistakes, are sufficient. This must not be done.

ISSUE 8: High Burnup Fuel not adequately addressed

12 "High burnup fuel" (burnup >45 GWd/MTU or 45,000 MWd/tHM) is so-called because it
13 can burn longer in the reactor, thereby increasing nuclear industry profits.³⁰ However, high
14 burnup fuel has unresolved serious waste storage issues, with serious implications for the
15 forecasts and assumptions for estimating the future costs of decommissioning the various
16 nuclear generating stations.

17 Per SCE's 8/23/13 response to Women's Energy Matters' Data Request Question 40.d
18 in I.12-10-013, et al³¹:

- 19
- 20 • 8 fuel assemblies exceeding 45 GWd/MTU are stored in dry cask storage
 - 21 • 570 fuel assemblies exceeding 45 GWd/MTU are stored in the U2 Spent Fuel Pool
 - 22 • 545 fuel assemblies exceeding 45 GWd/MTU are stored in the U3 Spent Fuel Pool

23 The 1,105 "high burnup" spent fuel assemblies recently reported by SCE to be in the
24 Unit 2 and 3 Spent Fuel Pools present a number of serious unresolved technical challenges
25 for decommissioning, which must be considered in developing the decommissioning plan and
26 considering reasonable cost estimate parameters. This is yet another compelling reason to
have an independent Citizens Oversight Panel (COP) to provide timely and effective oversight

30 U.S. Government Accountability Office: Spent Nuclear Fuel/Accumulating Quantities at Commercial Reactors Present Storage and Other Challenges, August 2012 <http://www.gao.gov/assets/600/593745.pdf>

31 Data Request Set WEM-SCE-007, prepared by Steve Lelewer, SCE Nuclear Fuels Procurement Manager.

1 of the ratepayers' Decommissioning Trust Fund.

- 2 1. The NRC has "insufficient data to support a licensing position" on high burnup dry cask
3 storage per Dr. Robert E. Einziger, a Senior Materials Scientist in the NRC's Division of
4 Spent Fuel Storage & Transportation, earlier this year.³²
- 5 2. Nuclear engineers have long known of increased risks from high burn-up fuels. The
6 U.S. Nuclear Waste Technical Review Board December 2010 Report stated insufficient
7 information is available on high burnup fuels to allow reliable predictions of degradation
8 processes during extended dry storage:

Only limited references were found on the inspection and characterization of fuel in dry storage, and they all were performed on low-burnup fuel after only 15 years or less of dry storage. Insufficient information is available on high-burnup fuels to allow reliable predictions of degradation processes during extended dry storage, and no information was found on inspections conducted on high-burnup fuels to confirm the predictions that have been made. The introduction of new cladding materials for use with high-burnup fuels has been studied primarily with respect to their reactor performance, and little information is available on the degradation of these materials that will occur during extended dry storage.³³

- 9 3. Elias Henna of SCE is quoted in the March/April 2003 "Radwaste Solutions Saving a
10 Few Hundred Million Dollars" [A Session Report from the 2002 American Nuclear
11 Society (ANS.org) Winter Meeting]:

Henna noted that his company is learning a lot from the San Onofre-1 cleanup, because it has two operating units sharing the plant site. His major suggestion was one that might seem counterintuitive, he said: If you have already decided on a decommissioning date sometime in the future, toward the end of life, switch to shorter refueling cycles and use lower burnup fuel. That way you will have to cool the fuel in the pool only five years, whereas high-burnup fuel has to cool for about 15 years. In this way, he said, you will add a couple more refueling cycles but can shorten your decommissioning project by some four years (assuming no technological breakthroughs in canister design and no change in U.S. Nuclear Regulatory Commission regulations). You will add about \$191 million in fuel costs, he noted, but will save up to \$261 million in decommissioning costs.

This idea is more appropriate for a plant operating in a regulated market not a free market, he conceded. SCE is current replanning the fuel cycles of Units 2

32 See his presentation (slide 7) on Status of NRC Research on High Burnup Fuel Issues, at the March 13, 2013 Regulatory Information Conference session on W24- Storage and transportation of High Burnup Fuel. <http://www.nrc.gov/public-involve/conference-symposia/ric/past/2013/docs/abstracts/einzigerrrev-2-onsite-w24-hv.pdf>

33 http://www.nwtrb.gov/reports/eds_rpt.pdf

and 3 toward the end of plant life to incorporate this idea.

Henna also touched on the issue of safety. One incident can shut down the whole project, and you may not be able to go back to work for a couple of years. (at p. 69).

1 NOTE that per SCE Testimony in I.12-10-013, SCE actually LENGTHENED the refueling
2 cycles in installing the failed Steam Generator Replacement Project in Units 2 and 3, and there
3 is no indication that they used lower burnup fuel during this refueling, even though the NRC
4 license for San Onofre was due to expire in 2022. **These management decisions by SCE**
5 **need to be scrutinized in light of their sizeable cost implications for the**
6 **Decommissioning Trust Fund.**

7 4. There is no ability to monitor inside dry casks. Uncertain what's happening inside dry casks,
8 DOE and the industry's Electric Power Research Institute are embarking on a four-year, \$16
9 million project to develop instrumented lids that can report on the status of the spent rods
10 inside. Consider the following news on this issue:

- 11 • Fancy New Lids for Nuclear Waste Casks, As Contents Get Hotter – Forbes – May 2, 2013.
12 [http://www.forbes.com/sites/jeffmcmahon/2013/05/02/fancy-new-lids-for-nuclearwaste-](http://www.forbes.com/sites/jeffmcmahon/2013/05/02/fancy-new-lids-for-nuclearwaste-casks-as-contents-get-hotter)
13 [casks-as-contents-get-hotter](http://www.forbes.com/sites/jeffmcmahon/2013/05/02/fancy-new-lids-for-nuclearwaste-casks-as-contents-get-hotter)
- 14 • EPRI Press Release and Schedule, April 22, 2013, [http://www.epri.com/Press-](http://www.epri.com/Press-Releases/Pages/-U-S--Department-of-Energy-Taps-Electric-Power-Research-Instituteto-Lead-Spent-Nuclear-Fuel-Storage-Project-.aspx)
15 [Releases/Pages/-U-S--Department-of-Energy-Taps-Electric-Power-Research-Instituteto-](http://www.epri.com/Press-Releases/Pages/-U-S--Department-of-Energy-Taps-Electric-Power-Research-Instituteto-Lead-Spent-Nuclear-Fuel-Storage-Project-.aspx)
16 [Lead-Spent-Nuclear-Fuel-Storage-Project-.aspx](http://www.epri.com/Press-Releases/Pages/-U-S--Department-of-Energy-Taps-Electric-Power-Research-Instituteto-Lead-Spent-Nuclear-Fuel-Storage-Project-.aspx)
- 17 • NRC: The Use of a Demonstration Program as Confirmation of Integrity for Continued
18 Storage of High Burnup Fuel Beyond 20 Years (Draft),
19 <http://pbadupws.nrc.gov/docs/ML1305/ML13056A516.pdf>

20 CDSO finds the treatment of high-burnup fuel wholly inadequate, given the attention that the technical
21 oversight agencies are now giving to this issue. **The Commission should order SCE to provide a**
22 **supplementary report which details this issue, as soon as possible, and certainly included in**
23 **the Irradiated Fuel Management Plan.**

ISSUE 9: Decommissioning Trusts not Authorized to fund Severance Costs

24 PU Code Section 8330 provides that the decommissioning trusts can be used to help
25 employees find alternative employment, but it does not provide for lucrative severance

1 packages³⁴ In addition, SCE provides a higher average severance cost per employee of
2 \$98,000 than PG&E at the Diablo Canyon Power Plant, of \$82,400, and SCE had no idea
3 why this difference exists.³⁵ Because this is not explicitly provided for in the PU Code Section
4 8330, **CDSO recommends that the Commission find that these severance costs should**
5 **not be charged to the decommissioning trust funds, except those costs which**
6 **expressly assist employees in securing other work.**

V. CONCLUSIONS

7 Please see Section 1 for a summary of our recommendations regarding the subject
8 matter of this proceeding, and all recommendations from the attached Protest of SCE Advice
9 Letter 2968-E are also included in that same table.

Respectfully submitted,

--/s/--

--/s/--

Martha Sullivan and

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34 PU Code Section 8330. Every electrical utility involved in decommissioning, closure, or removal of nuclear facilities, shall provide assistance in finding comparable alternative employment opportunities for its employees who become unemployed as the result of decommissioning, closure, or removal. The commission or the board shall authorize the electrical utility to collect sufficient revenue through electric rates and charges to recover the cost, if any, of compliance with this section.

35 Transcript Page 589 Line 26 Q (FREEDMAN) I'm -- well, I guess my question is that if you look at the first line of the second paragraph, it lists the per person estimated cost is \$98,000?

A (OPITZ) Uh-huh, yes.

Q And is based on average base salary and years of service?

A Correct.

Q On the left side if you look under "Diablo Canyon," that same comparable is \$82,400. Do you have any understanding of why the severance costs between the two utilities would be so different?

A I don't have any -- any basis to make that judgment. I don't know why Diablo's is at 82 compared to ours.

1 December 16, 2013

ATTACHMENT 1: CDSO PROTEST OF SCE ADVICE LETTER 2968-E

[Please note, this attachment has been paginated with the Brief it is attached to.]

December 9, 2013

TO: CPUC Energy Division Attention: Tariff Unit
505 Van Ness Avenue San Francisco, CA 94102
EDTariffUnit@cpuc.ca.gov

FR: *Coalition to Decommission San Onofre (CDSO)*
(A Project of Citizens Oversight, Inc.)

SUBJ: ***CDSO Protest of SCE Advice Letter 2968-E***

1 The Coalition to Decommission San Onofre (CDSO), a Party in I.12-10-013 and A.12-
2 12-012/013, hereby protests Southern California Edison (SCE) Advice Letter (A.L.) 2968-E,
3 dated November 18, 2013, in accordance with the Commission's General Order (G.O.) 96-B.

I. OVERVIEW

1 This advice letter is inappropriate, overreaching, and a disgusting attempt by SCE to
2 circumvent both the SONGS OII proceeding (I.12-10-013) and the Nuclear Decommissioning
3 Cost Triennial Proceeding (NDCTP) – A.12-12-012/013. This A.L. seeks to quickly institute
4 procedures -- with almost no review or discussion -- that will allow SCE to prematurely access
5 funds from the Decommissioning Trusts prior to completing the prescribed Post Shutdown
6 Activities Report (PSDAR) and the detailed site-specific decommissioning plans. SCE also
7 suggests a method to launder trust funds through a proposed “SONGS Operations and
8 Maintenance Balancing Account” (SOMBA) and then into the Energy Resource Recovery
9 Account (ERRA) to cover for overspending by SCE; and suggests an inappropriate allocation
10 of the trust funds so as to improperly over-allocate funds that SCE can spend on non-
11 radiological decommissioning, while under-allocating funds for U.S. Nuclear Regulatory
12 Commission (NRC)-mandated radiological decommissioning. These plans provide for an
13 inappropriate low level of oversight by both this Commission and the public, exemplifying
14 embarrassing disregard for the integrity of the decommissioning trust funds.

15 We will expand on these issues in the remainder of this protest and propose an
16 appropriate response by the Commission to address the legitimate planning expenses while
17 deferring the remaining issues for resolution in the aforementioned proceedings, and until the
18 PSDAR and detailed plans are submitted and reviewed by the NRC and other parties.

II. BACKGROUND

19 The entire nuclear energy industry has only recent experience with the
20 decommissioning of plants, and in California, there have been only a few cases that provide
21 learning experiences for this Commission and the public regarding providing effective
22 oversight. There are two major opportunities for oversight, the Nuclear Decommissioning Cost
23 Triennial Proceedings (NDCTP) and the Advice Letter procedure.

Nuclear Decommissioning Cost Triennial Proceedings (NDCTP)

24 These proceedings occur every three years, as the title implies, and include 1) cost
25 estimates for the decommissioning of each plant; 2) determination of the rates that will be
26 charged to the ratepayer to fund the Decommissioning Trusts; 3) investment policies and

1 procedures used by the utilities to manage and invest the funds; and 4) review of any actual
2 decommissioning projects to insure effective and reasonable use of the funds. As this protest
3 is being written, the Commission is in the midst of NDCTP proceedings (A.12-12-012/013).

4 Although reviewing the cost estimates for **future** decommissioning can proceed at a
5 snail's pace, since almost nothing will change in three years and investment policies and
6 procedures probably do not need to change substantially in three years either, monitoring the
7 actual trust funds available and forecast is an important task to complete at least as often as
8 every three years. The same cannot be said for monitoring **actual** decommissioning projects,
9 which may change dramatically within days, weeks, or months, and in fact, the entire project
10 may mostly be completed within a three-year period. Therefore, the triennial proceedings are
11 hardly a prudent method to provide adequate oversight for actual decommissioning.

SONGS Unit 1

12 The SONGS Unit 1 decommissioning project is an example of very poor oversight and
13 record keeping – so poor in fact, that at this point, it is not possible to learn much from this
14 project. The Commission provided very minimal oversight and all the records are now
15 essentially lost, since SCE used tracking and accounting software written in-house, which is
16 now conveniently unusable to retrieve data in response to data requests during the current
17 NDCTP³⁶. To provide reasonable oversight of future decommissioning projects, having this
18 historical record available would be beneficial. The fact that SCE cannot provide historical
19 data on this project is a poor reflection on the propriety of this utility and the requirements for
20 transparency exerted by the Commission, which are minimal.

36 **NDCTP 2012 (A.12-12-012/013) Transcript Page 689, Line 1:**

MR. LUTZ: Q I'm sorry. Page 4 of SCE-08, lines 8 and 9. It says: "As explained in the responses to data requests, SCE was unable to provide detailed records for each contingency draw down because the database that was used at the time is no longer fully functional." Do you see that sentence?

A (Optiz for SCE) Absolutely.

Q Okay. So my question is did SCE produce reports and extract data from the old system so that it could be available for access in the future?

A No, the system is partially decommissioned. There's some -- some information that's available, but, you know, all the cost records for Phase 1 -- and that's what that particular database was used for. Since it was litigated and judged as reasonable, when we found ourselves in a position where our cost accounting system was going to be replaced, we -- as you know, we went to SAP. We retired some of our older mainframe systems, and when we did that, all the linkages and some of the software to extract data out of it were decommissioned. So I have limited access, but I don't have a full set of reports and everything that the system could have provided.

Q Was the UIDCOM -- do you happen to know was that made by yourselves?

A It's a homegrown system.

1 During the SONGS Unit 1 Decommissioning, there was a presumption that if the
2 project could be completed within the cost estimates previously generated by consultants and
3 reviewed in the NDCTP, that the work by SCE to perform the work would be deemed
4 "reasonable." This reasonableness standard has now changed to the "Reasonable Manager"
5 standard, such that the project is only reasonable if a reasonable manager acted
6 appropriately based on the information s/he had or should have had at the time. It is pretty
7 clear that this could be renamed "ignorant manager" because the utility constantly argues that
8 they know almost nothing about the industry in which they find themselves, and can produce
9 almost no documentation of any decision this corporation ever makes.

10 At this point, Phase 1 of the SONGS 1 decommissioning project is considered
11 "completed" even though some tasks are still incomplete, such removal of the reactor
12 pressure vessel (RPV) from the site, and there is no clear path forward to do so.

Independent Panel and the use of Advice Letters

13 In 2011, after the vast majority of work was already completed in the decommissioning
14 process for SONGS 1, the Commission published D.11-07-003 on July 14, 2011, entitled:
15 "Decision Adopting Recommendations Of The Independent Panel On Nuclear
16 Decommissioning Costs, Estimates, Assumptions, And Format"³⁷

17 This decision provided a method for expressing information about the various plants so
18 they could be more conveniently compared, as well as steps to improve the oversight
19 available for the Humboldt Unit 3 decommissioning project, utilizing the "Advice Letter"
20 procedure already in use by the Commission for other purposes³⁸.

21 At Page 37 of this decision, the Commission described problems with the process
22 used in SONGS 1 and proposed a new method based on Advice Letters, to be used in the
23 Humboldt Bay Power Plant Unit 3 Decommissioning project, as follows:

8. Transparency of Major Decommissioning Expenditures

To date, the Commission has only its experience with the decommissioning of

37 http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/139321.PDF

38 CPUC General Order 96-B -- General Rules govern advice letters and information-only filings submitted to the Commission by public utilities that are gas, electrical, telephone, water, sewer system, pipeline, or heat corporations, as defined in the Public Utilities Code. -- http://docs.cpuc.ca.gov/word_pdf/GENERAL_ORDER/164747.pdf

SONGS 1 as a basis to develop its methods for exercising oversight of the utilities' decommissioning activities. PG&E, as its own contractor, has recently begun to decommission Humboldt Bay Power Plant and has used Advice Letters to communicate with the Commission about its activities. The procedures followed by PG&E and SCE for SONGS are different due to a lack of direction from the Commission. Further, PG&E's Advice Letters have not contained all of the information necessary for the Commission to adequately or promptly review how closely actual costs are following estimated costs during the major decommissioning phase where the vast majority of activities and expenses occur. We think this is an essential part of our oversight and waiting for triennial review after hundreds of millions of dollars may be spent, perhaps well in excess of what has been previously estimated, is unreasonable.

Therefore, at the March 14, 2011 evidentiary hearing in Phase 2 of this proceeding, representatives of the utilities agreed to meet with Energy Division to discuss the Advice Letter process for notice and authorization to withdraw funds from the nuclear decommissioning trust funds. PG&E agreed to a periodic Advice Letter process under Tier 2 to request approval for anticipated trust fund disbursements and which will include, inter-alia, specific information about the activities, prior cost estimates, actual costs, and whether trust fund reimbursement has been obtained. A description of the process and contents of the Advice Letters is attached hereto as Attachment B.

SCE and SDG&E expressed their preference to not have this process apply to SONGS 1 until Phase 3 and commencement of SONGS 2 and 3 decommissioning. We agree at this time because the ongoing decommissioning expenses at SONGS 1 are minor, **giving the Commission time to evaluate the Advice Letter process for HBPP to determine whether it is appropriate and sufficient review before extending it to other decommissioning activities.** (Emphasis added.)

1 From the same decision, Conclusion of Law #2 is also relevant:

2. The Commission should establish the Advice Letter Process set forth in Attachment B for utilities to notify the Commission of decommissioning activities, expenses, and trust fund reimbursements related to nuclear decommissioning. **It is reasonable to first apply the process to PG&E, which has the only active decommissioning project within the Commission's jurisdiction, so the Commission may evaluate its efficacy for future decommissioning projects.** (Emphasis added.)

2 As is Ordering Paragraph #3:

3. Pacific Gas and Electric Company shall adhere to the Advice Letter Process set forth in Attachment B to notify the Commission of decommissioning activities, expenses, and trust fund reimbursements related to nuclear decommissioning of the Humboldt Bay nuclear power plant. During the major decommissioning phase, Pacific Gas and Electric Company shall file the Advice Letters at least once during

each calendar year.

- 1 Attachment B of this decision provides the details for processing advice letters, specific
- 2 to the Humboldt Bay Unit 3 decommissioning project (underlining added):

Information to be Included in Nuclear Trust Fund Disbursement Advice Letter Filings

Future advice letter filings will continue to be made on a periodic basis and in the general format used for previous advice letters for Humboldt Bay Power Plant Unit 3. Humboldt Bay Power Plant Unit 3 advice letters will be made under Tier 2, and will request approval for anticipated Trust Fund disbursements. In addition, each advice letter will contain the following information:

- Summary of Previous Advice Letter Approvals and Trust Withdrawals
 - Previously identified activities
 - Amount previously requested for each activity
 - Actual expenditures
 - Total Trust disbursements
 - Comparison of any advances to actual expenditures
- Anticipated Disbursements
 - Activity
 - Amount estimated to be spent in next period
 - Correlation of cost to the most recent NDCTP cost study, including nominal dollar adjustment
 - Explanation for differences (amount and timing) from NDCTP cost study estimate (e.g. schedule accelerated)
- Comparison Chart
 - Graph tracking NDTCP forecast and actual decommissioning expenditures

As is the case presently, during the calendar year, PG&E would be able to seek reimbursement from the Trusts for up to the total amount authorized, i.e., PG&E could withdraw funds for a particular activity in excess of the annual request for that activity so long as the total disbursements were within the advice letter authorization. Any such variances would be identified in the next advice letter.

The format for the above information will be in the form of an excel spreadsheet, with the exception of any explanation, which will be in a narrative attachment.

III. DISCUSSION

1 1. **Advice Letter Process is better, but not sufficient**

2 The advice letter procedure prescribed in D.11-07-003 for the Humboldt Bay Unit 3
3 Decommissioning does improve tracking and oversight over just the once-in-three-
4 years NDCTP, but it is still not sufficient.

5 (a) **Too Rare:**

6 Advice letters are required to be submitted only once per year. A decommissioning
7 project should be monitored on a month-by-month basis during critical intervals,
8 where much of the work will be accomplished in a single year.

9 (b) **Compare with wrong cost estimates:**

10 There is no reference to the detailed and site-specific cost estimates required to be
11 developed per NRC regulations, and which provide a means to more closely track
12 spending being done on the project. Comparing with the conceptual estimates used
13 in the NDCTP to determine an adequate funding level and investment strategy is of
14 value, but those estimates are too rough and do not include completion times
15 sufficient to track the actual project, plus they include a 25% contingency, which
16 may not be necessary in the actual project, and can result in a "slush fund" with
17 little control or oversight.

18 (c) **Was never intended for tracking construction, demolition, and
19 decommissioning projects.**

20 There is no mention of this type of use -- i.e. construction, demolition, and
21 decommissioning project -- in General Order 96-B. The California Public Contract
22 Code (PCC) defines standard methods for conducting projects using either the
23 traditional "design-bid-build" methodology or the alternative "design-build" method.
24 These regulations establish mechanisms for similar projects with an eye toward
25 lowest-cost and effective execution. The Advice Letter process does not include any
26 of these procedures, such as Request for Proposal (RFP), competitive bidding,
27 change order processing, escrow accounts, etc. that are normal in any public works
28 project, and have been determined over many years of bitter experience³⁹.

39 See State Contracting Manual - Vol. 1 -- The State Contracting Manual (SCM), Vol. 1 is provided as a resource to those

1 The method proposed to be employed by this Commission and SCE in this case is
2 a sole-source contract, where SCE is contracting with itself, and has nearly
3 unlimited access to funds to spend them as it wishes, with a limited report provided
4 after-the-fact. This provides very little, if any, opportunity for real oversight to ensure
5 the public funds are not lost to waste, fraud, or abuse.

2. Advice letter process was not explicitly approved for SONGS.

6 The advice letter process as described in D.11-07-003 is explicitly approved only for
7 the Humboldt Bay Power Plant Unit 3 decommissioning project on an experimental
8 basis.

9 Per D.11-07-003 "Conclusion of Law #2": "It is reasonable to first apply the process to
10 PG&E, which has the only active decommissioning project within the Commission's
11 jurisdiction, so the Commission may evaluate its efficacy for future decommissioning
12 projects."

13 Unfortunately, the commission has not evaluated its efficacy and SCE is proposing to
14 start using the same process without any evaluation or explicit direction to do so by the
15 Commission.

**3. SCE is asking for more than is necessary for the planning process, PSDAR
and Detailed cost estimates.**

16 SCE is asking for \$214 million, but at this point SCE should only be requesting funds
17 sufficient to plan decommissioning, which is listed by SCE in their Advice Letter
18 Attachment A as \$14 million (through 2014), and that is extremely generous. Instead,
19 SCE attempts to lump all kinds of costs into this advice letter, including costs for
20 employees that are not even directly connected with SONGS, the "non-SONGS
21 personnel."

in California state government who are involved in the state's contracting process. It provides the policies, procedures and guidelines to promote sound business decisions and practices in securing necessary services for the state.
<http://www.dgs.ca.gov/ols/Resources/StateContractManual.aspx>

4. SCE is attempting to treat this as one massive project, and not a project with identifiable phases and components that can be individually tracked.

1 SCE hopes to keep the project as "one big chunk" so it will be difficult to determine
2 what is going on. There is no attempt to correlate these costs to tasks identified in the
3 conceptual project plan as provided for use by the NDCTP to estimate the costs⁴⁰, and
4 detailed plans have not been completed. SCE should be required to request funds in
5 relation to these plans, and break costs out according to the plan, as opposed to the
6 "one big project" approach which will eliminate the ability for the Commission, the
7 public, and other stakeholders to determine if SCE is doing work in relation to the
8 money spent, or if they are using it for unrelated purposes.

9 The requests as outlined in Attachment 1 and 2 of the Advice Letter are a perfect
10 example of why contracting is never done this way. This allows SCE to rip off the public
11 of millions because there is no way to correlate what is being done and the funds used.

5. SCE misallocates the funds so more is allocated for non-radiological uses.

12 At Page 10 of the Advice Letter, Table 1, (see Illustration 1) SCE analyzes the amount
13 of the funds in the trust to be allocated for the various purposes.

40 The NDCTP estimates were prepared by ABZ, a consultant firm contracted to generate unit-based "conceptual level" cost estimates that may be site-specific, but are inadequate for use in managing the actual project. These estimates tend to be overly generous, and include a 25% contingency, which is argued is necessary because the planners don't know enough about the specifics of the project before detailed planning and before it is started. ABZ prepared a cost study in 2012, and then a subsequent July 2013 plan, which included the assumption of an early shutdown of SONGS. These studies are primarily intended to be used only to estimate adequate funds in the trust funds to cover the entirety of the decommissioning project.

According to A12-12-012/013 SCE-02 "SCE Testimony On The Nuclear Decommissioning Of SONGS 2 & 3 And Palo Verde" Page 7, Lines 7-12: "The cost estimates contain reasonable estimates of the scope and cost of future work to set aside sufficient funds. These cost estimates are not based on detailed planning studies because these decommissioning activities are not expected to be performed until many years in the future. The Utilities are not presently adopting the schedules or sequences of activities embedded in the estimates for any purpose other than for cost estimation."

And A12-12-012/013 SCE-08 "SCE Rebuttal Testimony On the Nuclear Decommissioning Of SONGS 1, 2 & 3 And Palo Verde, Page 26, Lines 14-22 "As previously stated, SCE is currently developing an updated decommissioning plan that will provide comparable or greater detail than the cost estimates already submitted in this NDCTP. This updated decommissioning plan, however, will not, and cannot possibly, be used as a cost baseline for the entire project, which may take decades to complete. It will be a conceptual study based on the best currently available industry knowledge and forecasting methodologies. It will not, however, be based on detailed engineered plans for each decommissioning activity, and will not be informed by actual contract pricing for specialty vendors and other services retained for the performance of the various decommissioning activities, because that level of detailed information will not yet be available when that study is developed."

(Where SCE meant that the entire project may take decades to complete rather than the updated decommissioning plan.)

Table 1
Designation of Decommissioning Costs by ABZ Category
(SCE Share)⁴¹
\$ in Millions, 2013\$

	Latest NDCTP Estimate 100% Level	SCE Share*	Calculated Value	Breakdown of Trust Fund** Using Calculated Value
SONGS 2		75.7363%		
License Termination	849,547	643,415	43%	567,132
Site Restoration	436,725	330,759	22%	291,544
Fuel Storage	686,292	519,772	35%	458,148
Total	1,972,564	1,493,947	100%	1,316,824
SONGS 3		75.7475%		
License Termination	829,091	628,016	38%	569,761
Site Restoration	606,393	459,328	28%	416,720
Fuel Storage	724,291	548,632	34%	497,741
Total	2,159,775	1,635,976	100%	1,484,221
Grand Total	4,132,339	3,129,923		2,801,045
* Share as of shutdown				
** 7/31/2013 Trust Balances				

Illustration 1: Table 1 of SCE Advice Letter 2968-E

1 However, this analysis under-allocates for the required estimate for radiological
2 decommissioning (which includes all decommissioning including the final License
3 Termination phase, making this title somewhat misleading, and the title should say "in
4 thousands" not "in millions"). According to the ABZ estimate⁴¹, the cost for this phase is
5 estimated to be \$(849 + 829 = 1,678) million, with SCE share being \$(643 + 628 =
6 1271) million. However, SCE allocates only \$(567 + 569 = 1136) million for these
7 purposes, or \$135 million short. This may be in violation of NRC requirements because
8 SCE has not completed the planning required by NRC regulations. Allocating a lower
9 amount than was included in estimates previously generated by SCE is done without
10 any rationale, but only because they have not collected the total amount that was
11 originally estimated due to early shutdown.⁴²

41 *Ibid.*, this is the NDCTP estimate in Illustration 1.

42 10 CFR 50.75 "Reporting and recordkeeping for decommissioning planning." includes the following passage:

1 Consequently, the amounts for the other categories are over-allocated.

2 Again, SCE should provide the detailed plans for this spending rather than this
3 ridiculous “analysis” using only three categories.

6. Fuel Storage should be allocated from DOE Nuclear Waste Funds

4 SCE and other utilities which operate nuclear reactors and Independent Spent Fuel
5 Storage Installations (ISFSIs), regularly and routinely litigate with the U.S. Department
6 of Energy (DOE) regarding costs to build, operate, and transfer spent fuel to the ISFSIs
7 that are co-located at nuclear plants. In a recent lawsuit, they recovered 97% of these
8 costs. The Advice Letter does not address the recovery of these costs and crediting the
9 decommissioning fund.

7. The use of the Advice Letter to institute a new balancing account is improper

10 SCE proposes a new balancing account, the “SONGS Operations and Maintenance
11 (O&M) Balancing Account” (SOMBA) to record the difference between actual SONGS
12 2&3 O&M expenses, trust fund disbursements, and the authorized SONGS 2&3 O&M
13 expenses included in customer rates.

14 First, this assumes that customer rates should be involved at all. The decommissioning
15 process should be wholly and completely funded by the decommissioning trust funds,
16 with the exception of some transitioning costs that may be funded by customer rates,
17 as determined by the Commission in I.12-10-013 into the SONGS outage.

(4) Each non-power reactor licensee shall at or about 2 years prior to the projected end of operations submit a preliminary decommissioning plan containing a cost estimate for decommissioning and an up-to-date assessment of the major factors that could affect planning for decommissioning. Factors to be considered in submitting this preliminary plan information include—

(i) The decommissioning alternative anticipated to be used. The requirements of § 50.82(b)(4)(i) must be considered at this time; [possible delay of decommissioning for public safety.]

(ii) Major technical actions necessary to carry out decommissioning safely;

(iii) The current situation with regard to disposal of high-level and low-level radioactive waste;

(iv) Residual radioactivity criteria;

(v) Other site specific factors which could affect decommissioning planning and cost.

(5) If necessary, the cost estimate, for power and non-power reactors, shall also include plans for adjusting levels of funds assured for decommissioning to demonstrate that a reasonable level of assurance will be provided that funds will be available when needed to cover the cost of decommissioning.

1 The establishment of such a balancing account and the mechanisms for the use of
2 funds from customer rates should not be slapped into place by the simple mechanism
3 of the Advice Letter. This is far beyond what the Advice Letter is envisioned to be used
4 for.

8. This Advice Letter circumvents normal processing in other proceedings, which are now in process, or should be in process.

5 Nowhere in the Advice Letter is there any mention of the other formal proceedings
6 which are now in process before the Commission. The Advice Letter attempts to
7 circumvent these proceedings, and establish a way to handle the decommissioning
8 process before the other proceedings have had their proper input into the situation.

9 In fact, briefs are now being drafted for the current NDCTP, which included references
10 to the Advice Letter process.

9. The advice letter process does not provide a means for intervenors to request or require an evidentiary hearing.

11 Other than a protest of this nature, there is no formal process for intervenors or
12 members of the public to be able to conduct the normal procedures that are included in
13 other Commission proceedings, such as discovery and cross-examination, so as to at
14 least understand what SCE is proposing. This proposal goes far beyond even what
15 was disclosed in the NDCTP, which is the proceeding where the plans and actual costs
16 of decommissioning are supposed to be reviewed.

17 The Commission should reject the Advice Letter on this basis alone.

10. The advice letter is premature. SCE should complete the PSDAR and detailed cost analysis before asking more than the funds to perform those studies.

18 Most importantly, the Advice Letter is premature. As mentioned in the Advice Letter, Section
19 2.01(7) of the Qualified and Non-Qualified Master Trust Agreements further state:

One year prior to the time decommissioning of a Plant or Plants is estimated to begin, the Company shall apply for CPUC approval of the estimated cost and schedule for decommissioning each Plant or Plants. Upon approval of the cost and schedule for decommissioning each Plant or Plants, the CPUC shall authorize

Interim Disbursements from the applicable Fund to pay
Decommissioning Costs.

1 Although it is true that SCE does not have the luxury of performing these actions prior
2 to actual shutdown, (such as the speculation that it would be done five years in
3 advance), the Master Trust agreements state that the company must have the
4 estimated cost and schedule completed BEFORE applying for funds. According to SCE
5 in the Advice Letter,

"Under the sequence of events that was previously contemplated,
SCE would have submitted a site-specific decommissioning
activities plan and detailed cost estimate for review by NRC⁴³ and
approval by this Commission at least five years prior to the
expiration of the operating licenses."⁴⁴

6 So again, we see that the proper course of events is for SCE to first PLAN before
7 DOING. SCE wants to turn these plans on their heads, and start to spend \$200 million
8 more than necessary without an approved PLAN.

IV. CONCLUSION

9 SCE Advice Letter 2968-E is inappropriate, premature, excessive, and circumvents
10 the Commission proceedings currently in process. The Advice Letter procedure is insufficient
11 for the public, stakeholders, and the Commission to provide adequate oversight. The plans of
12 SCE have not been developed, and instead, SCE wants approval of \$200 million more than
13 necessary for a project without detailed planning and without detailed costs estimates, and
14 they want to treat it as one big project, uncorrelated with the plans outlined in the NDCTP.
15 See CDSO's RECOMMENDED COMMISSION ACTIONS in Section V.

43 10 CFR 50.75 Reporting and recordkeeping for decommissioning planning. <http://www.nrc.gov/reading-rm/doc-collections/cfr/part050/part050-0075.html>

44 Advice Letter 2968-E, at Page 3.

V. RECOMMENDED COMMISSION ACTIONS

1 CDSO recommends that the Commission take the following actions.

2 1. **REJECT ADVICE LETTER SCE 2968-E.**

3 Based on the numerous deficiencies and illegalities described above, the Commission
4 must reject Advice Letter SCE 2968-E. SCE should submit an application.

5 2. **DIRECT THAT SCE REQUEST AMOUNTS FOR PLANNING ONLY.**

6 The Commission should direct that SCE request only those funds sufficient for
7 planning purposes, to produce the Post Shutdown Activities Report (PSDAR), detailed
8 decommissioning project plan and cost estimates, and spent fuel management plans.
9 These plans should be reviewed by the NRC and any and all questions by the NRC
10 answered by SCE prior to any additional funding approvals.

11 3. **REQUIRE THAT PLANS BE PARTITIONED INTO DISCRETE STEPS OR PHASES**

12 Decommissioning plans must be resolved into a number of discrete phases or steps,
13 so that each phase can be completed and confirmed as completed, and cost estimates
14 compared with funds utilized.

15 4. **REQUIRE THAT CHANGES BE DESCRIBED, REVIEWED, AND APPROVED.**

16 Each request for funds should require reconciliation with the estimates provided for
17 that particular phase. If additional funds are required for a given phase, that change
18 should be described and the Commission, the public, stakeholders, and intervenors
19 should have an opportunity to ask questions, and if necessary request a hearing
20 regarding those changes.

21 5. **COMPARE FUNDS SPENT WITH THE DETAILED COST ESTIMATE**

22 The decommissioning project should use the detailed cost estimates, and not the
23 rough estimates provided for fund allocation in the NDCTP.

1 **6. USE OF ADVICE LETTER PROCESS AND ANY NEW BALANCING ACCOUNTS**
2 **MUST UTILIZE FULL PROCEEDING PROCESS FOR REVIEW**

3 The various suggestions by SCE to approve the use of Tier-2 Advice Letters for future
4 requests and the SOMBA balancing accounts, are inappropriately using the Advice
5 Letter procedure. These decisions require the full proceeding process, including the
6 opportunity for intervenors to perform discovery, cross-examine witnesses, and provide
7 their briefs on the matter. The concept that these can be established using just the
8 Advice Letter process flies in the face of the proceedings that are now in process, such
9 as the San Onofre OII I.12-10-013 and the current NDCTP, A.12-12-012/013.

10 We believe the SOMBA account is inappropriate as it allows co-mingling of ratepayer
11 funds and decommissioning funds. Ratepayer funds should only be used for non-
12 decommissioning costs.

13 If the Advice Letter process is used to provide oversight of the decommissioning
14 process, then they should be produced once every quarter during Phase 1 of the
15 decommissioning process.

16 **7. CONSIDER WORKING WITH OTHER STATE AGENCIES TO DESIGN AN**
17 **APPROPRIATE DECOMMISSIONING PROJECT MANAGEMENT METHODOLOGY**

18 A number of state agencies are practiced in the art of contract generation and
19 management, including conducting competitive bidding⁴⁵. The Commission should
20 consider working with these agencies to help avoid waste, fraud, and abuse that may
21 result from the **open-loop procedures** that have historically been used by the
22 Commission for these activities⁴⁶ that are outside the service paradigm commonly used
23 by the Commission for energy generation and distribution services.

45 See State Contracting Manual - Vol. 1 -- The State Contracting Manual (SCM), Vol. 1 is provided as a resource to those in California state government who are involved in the state's contracting process. It provides the policies, procedures and guidelines to promote sound business decisions and practices in securing necessary services for the state.
<http://www.dgs.ca.gov/ols/Resources/StateContractManual.aspx>

46 The term "open loop" is used to describe the methodology used in SONGS Unit 1 decommissioning where almost no oversight was provided, and the only check was whether the costs incurred fell below the conceptual estimates. This is compounded by the fact that many steps remain incomplete in the SONGS Unit 1 decommissioning, and all records are now inaccessible.

1 **8. ESTABLISH A CITIZENS OVERSIGHT PANEL**

2 As CDSO has recommended in its testimony in the current NDCTP, the Commission
3 should establish a "Citizens Oversight Panel", similar to the bond oversight committees
4 now commonly established for oversight of school district or hospital district bond and
5 construction projects. Our 501(c)(3) organization, Citizens Oversight, is willing to
6 provide an umbrella for this purpose and solicit members from the community so as to
7 review the ongoing decommissioning plans, expenditures, and trust fund transfers⁴⁷. A
8 similar community advisory board has been established with respect to the Humboldt
9 Bay Power Plant decommissioning project with respect to Unit 3 of that plant.⁴⁸

10 There is no reason to reinvent the wheel. Situations similar to the oversight required
11 here have been frequently encountered at other levels of government. The California
12 League of Bond Oversight Committees⁴⁹ is primarily focused on best practices and
13 guidelines for school or hospital district bond oversight committees, but other than the
14 name and type of monies involved, the actions of these oversight bodies are precisely
15 what is needed to ensure prudent management of ratepayer-funded Decommissioning
16 Trust Funds.

17 In all cases, there is a large fund which the public expects is properly acquired,
18 invested and expended for the benefit of the community. These similar cases include
19 fund and contract management, and review of detailed plans and construction
20 activities. Arguably, hospital special districts deal with construction projects with similar
21 levels of detail and technical concerns as exists in the decommissioning of a nuclear
22 power plant, and so the model can work just as well here as it does in those situations.

23 Use of such an independent Citizens Oversight Panel (COP) of volunteers who have
24 the proper background to provide oversight and timely review can efficiently and
25 effectively improve oversight of decommissioning and spent nuclear fuel management
26 over the many decades these activities will likely continue. A COP typically meets on a
27 monthly basis (if not more often) to review the details of the decommissioning process
28 and the many issues that will likely arise.

47 See CDSO Testimony in A.12-12-012/013 as Exhibit CDSO-20, reproduced also here as ATTACHMENT 1.

48 See Attachment 1 for a description of the Community Advisory Board from the HBPP website.

49 <http://www.calboc.org/>

1 The concept that SCE will act as its own contractor is a big difference in the Bond
2 Oversight Committees mentioned for school and hospital boards and what is proposed
3 here, and underscores the need for detailed and a priori oversight. Typically, such an
4 oversight panel insures that subcontracting is done fairly and cost effectively. If SCE
5 proposes that they handle the contract, reasonable manager decision making would
6 include requesting and accepting multiple bids from outside contractors. The oversight
7 body would review contracts and change orders for decommissioning plans. If there
8 are concerns, they would be escalated for review by the CPUC.

9 Even if SCE continues to operate as their own contractor, the COP can ensure that the
10 work is clearly defined and costs seem reasonable. When changes occur, and they
11 always do, then these are handled as change orders, which if they exceed a
12 reasonable threshold, are reviewed in advance by the COP.

13 The utilities have objected to the notion of retroactively micromanaging activities, and
14 we understand the difficulty because the retroactive nature of this process makes it
15 hard to understand what was known at the time. However, the use of a COP which can
16 review contracts, change orders, and other issues that arise on a real-time and *a priori*
17 basis would render the retroactive nature of the existing “reasonableness review”
18 process largely unnecessary, and is harmonious with the reasonableness standard:

19 [W]e define the reasonableness for decommissioning expenditures
20 consistent with prior Commission findings; i.e. that the reasonableness of
21 a particular management action depends on what the utility knew or
22 should have known at the time that the managerial decision was made.⁵⁰

23 The use of a COP to review such management actions protects all parties. If the COP
24 reviews a proposed action and finds it reasonable, then the utility will have an
25 expectation that the action will also be considered reasonable by the Commission, and
26 extended proceedings to resurrect past actions will be averted. On the other hand, if
27 the COP reviews the proposed action and considers it to be unreasonable, then the
28 COP and/or the utility can escalate it for review by the Commission prior to the utility
29 taking the action.

50 D.10-07-047 at Page 45

1 A COP to provide oversight for decommissioning activities may also review trust fund
2 management that is typically processed in Phase 2 of the NDCTP proceedings, and all
3 parties can benefit from *a priori* and timely review rather than retroactive review. (See
4 D.10-07-047, at Page 2.)

5 Please see the Testimony by Barry Jantz, CEO of the Grossmont Healthcare District
6 with respect to the Independent Citizens Bond Oversight Committee (ICBOC) which
7 they have experience with, provided in Attachment 2.

Respectfully submitted,

--/s/--

Martha Sullivan and

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--/s/--

Raymond Lutz, on behalf of

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ATTACHMENT 1 - HBPP Community Advisory Board

1 The following text is extracted from the Humboldt Bay Power Plant website at this
2 URL: <http://www.pge.com/en/about/environment/pge/minimpact/humboltdbay>

3 This illustrates the use of a body similar to the COP as proposed by CDSO to improve
4 oversight of decommissioning spending and activities. This body is not an independent body
5 as it is chaired by the HBPP manager Loren D. Sharp

Community Advisory Board (CAB)

The HBPP Community Advisory Board meets regularly to provide a public perspective on plant activities. PG&E would like to thank the following people for their participation.

- **Rex Bohn**, 1st District Supervisor, Humboldt County Board of Supervisors
- **John Driscoll**, Field Representative, The Office of U.S. Representative Jared Huffman
- **Mariann Hassler**, Carpenters Local 751
- **Jessica Hall**, Executive Director, Humboldt Baykeeper
- **Michael Manetas**, HSU Environmental Resources Engineering Dept., Retired
- **Matthew Marshall**, Executive Director, Redwood Coast Energy Authority
- **Dave Meserve**, Former Arcata City Council Member
- **Paul Meyers**, Superintendent/Principal, South Bay Unified School District
- **Holly Nash**, Humboldt Hill Resident
- **Ross Nash**, Board Member, South Bay Union School District
- **Julie Owens**, King Salmon Resident
- **Jimmy Smith**, Former 1st District Supervisor, Humboldt County Board of Supervisors
- **Dr. Angus Stewart**, King Salmon Resident
- **Donna Stoneman**, Former Humboldt Hill Resident
- **Don Tuttle**, Humboldt County Dept. of Public Works, Retired
- **Michael Welch**, Redwood Alliance

ATTACHMENT 2 - TESTIMONY BY BARRY JANTZ

1 The following questions were asked of Barry Jantz, Chief Executive Officer, Grossmont
2 Healthcare District (GHD), regarding their Independent Citizens Bond Oversight Committee,
3 which is similar to the Citizens Oversight Panel CDSO has proposed for use by the CPUC.

4 **Q: Please state your name and business address for the record.**

5 Barry Jantz, Chief Executive Officer, Grossmont Healthcare District (GHD) - 9001
6 Wakarusa St, La Mesa, CA 91942, phone 619-825-5050, email
7 biantz(Sjgrossmonthealthcare.org)

8 **Q: What is your academic background and professional qualifications?**

9 Bio excerpts...

10 Barry Jantz is the CEO of the Grossmont Healthcare District and a former member of
11 La Mesa City Council. He serves on the board of directors of the San Diego East County
12 Chamber of Commerce, as vice chairman/treasurer of the San Diego County Taxpayers
13 Association, and as immediate past chairman of the East County Economic Development
14 Council.

15 Barry's academic background includes journalism, political science and construction
16 management practices at Grossmont Community College and San Diego State University
17 (SDSU). He wrote for the Grossmont College G and SDSU's The Daily Aztec. He was
18 inducted into the Grossmont College Walk of Fame in 2004.

19 Starting as a carpenter apprentice and casework designer and eventually becoming
20 the financial services manager of the Facilities Development Department, Barry worked for
21 Kaiser Permanente in San Diego from 1980-1999

22 Jantz ran successfully for La Mesa City Council in 1990. Winning in three subsequent
23 re-elections, he served as vice mayor four times during his 16 years on the council. He
24 represented La Mesa on the boards of the San Diego Association of Governments, Heartland
25 Communications Authority and Mission Trails Regional Park.

26 He formed Jantz Communications in 2000, specializing in government affairs and
27 media relations. From 2001 to 2004, Jantz served as district chief of staff to California State

1 Assemblyman Jay La Suer.

2 In late 2004, Jantz was appointed chief executive officer of the Grossmont Healthcare
3 District, a public hospital district in East San Diego County, after serving as its community
4 relations consultant, managing the annual grants program since 2000. Under his guidance, in
5 2006 the District passed a \$247 million bond measure for improvements at Grossmont
6 Hospital, achieving 77.8 percent of the vote.

7 **Q: What is your current position at the Grossmont Healthcare District (GHD) and**
8 **how long have you been in that position?**

9 Chief Executive Officer since December 2004.

10 **Q: What are your duties in this position?**

11 Report to and administer the public meetings of the elected Board of Directors of the
12 Grossmont Healthcare District. Management of GHD staff, construction project
13 management staff and miscellaneous consultants for the administration of all District
14 programs, including operations of a community healthcare library and 65-seat conference
15 center, a \$2 million per year community grants program, a \$247 million ongoing bond-funded
16 construction program, administration of the Independent Citizens' Bond Oversight Committee,
17 all related government and community activities, and oversight and a possible extension of
18 the 30-year-lease of Grossmont Hospital.

19 **Q: Please describe the general nature of the GHD, the board of directors and its**
20 **relationship with Sharp Healthcare in the operation of the hospital and facilities.**

21 The Grossmont Healthcare District (GHD) is a public agency that supports health-
22 related community programs and services in San Diego's East County region. The tax-
23 supported District was formed in 1952 to build and operate Grossmont Hospital, and today
24 serves as landlord of the hospital, including ownership of the property and buildings on behalf
25 of local taxpayers. The District is governed by a five-member board of directors, each elected
26 to four-year terms, who represent more than 500,000 people residing within the GHD's 750
27 square miles in San Diego's East County.

28 In 1991, GHD entered into a 30-year lease with Sharp HealthCare (via the Grossmont
29 Hospital Corporation) for the operation of Grossmont Hospital. The lease ensures the District

1 has one-third of the seats on the hospital corporation board, as well as the unilateral authority
2 to approve any Sharp requested changes to critical, core hospital services.

3 Grossmont is the only healthcare district in the state allowed through legislation to
4 consider an extension of its 30 year hospital lease (Assembly Bill 1155, 2005), which would
5 require a vote of the district residents.

6 In 2006 the voters approved \$247 million in general obligation bond improvements,
7 financed over 30 years, to benefit Grossmont Hospital. GHD's role is critical in ensuring not
8 only the completion of construction, but also that the approved tax monies are collected and
9 administered efficiently to pay off the debt on the projects. The construction is currently
10 underway and managed directly by GHD.

11 The working relationship between Grossmont Healthcare District and Sharp
12 HealthCare provides both entities the ability to provide health benefits to the public at a level
13 that neither one could do so on its own. The District's \$247 million in voter-approved bonds is
14 augmented by approximately \$183 million in Sharp dollars, in addition to Sharp's ongoing
15 maintenance to and improvement of the facilities.

16 **Q: Please describe the bond(s) authorized by the voters and the intended**
17 **purpose for those funds. What was the approval percentage of the ballot measure,**
18 **when was it approved, etc?**

19 Proposition G is a \$247 million general obligation bond placed on the ballot by the
20 Grossmont Healthcare District (GHD) Board of Directors, and passed by 77.8 percent of the
21 voters on June 6, 2006 (one of the highest percentages ever achieved on a measure in San
22 Diego County). The approval of Proposition G authorized GHD to issue and sell bonds to
23 provide projects consisting of the improvement, acquisition, construction and renovation of
24 facilities for hospital and health care purposes on the Grossmont Hospital and District
25 campuses. This includes projects specified in the Grossmont Hospital Facilities Master Site
26 Plan. (The full bond language is available upon request.)

27 The construction, currently underway, includes the completion of a new 90-bed critical
28 care wing, a new state of the art Heart and Vascular Center and an energy-efficient Central
29 Energy Plant, including a new Cogeneration Unit which will provide 95 percent of the
30 electrical needs of the hospital and reduce nitrogen oxide emissions by 90 percent.

1 **Q: Describe the Independent Citizen Bond Oversight Committee (ICBOC) in**
2 **terms of its intended purpose.**

3 In order to ensure that bond funds are spent in an efficient manner as outlined in
4 Proposition G, the GHD Board of Directors desired that an effective and functional oversight
5 committee be in place. The Independent Citizens' Bond Oversight Committee (ICBOC)
6 represents the community and is appointed by the GHD Board of Directors, while operating
7 independently. The ICBOC is intended to provide accountability for expenditures made from
8 Proposition G bond revenues. In addition, the ICBOC's intent is to function in an independent
9 and open manner to ensure that the intent of the voters as set forth in the ballot measure is
10 effectively implemented. The role of the ICBOC is to represent, advocate and promote the
11 interests of the District residents. It is important to note that the purpose of the ICBOC is to
12 monitor and evaluate the expenditure of bond revenues on behalf of the public, not the design
13 or management of construction projects.

14 **Q: Prop 39 allowed school bonds to be approved by less than a 2/3 majority,**
15 **allowing approval by only 55%, as long a certain criteria were also provided, such as**
16 **the establishment of an independent oversight committee. Is there a similar state**
17 **statutory requirement for the ICBOC?**

18 There is no such requirement for bond oversight committees for other than school
19 districts. Healthcare Districts and other special districts are required to pass bonds with a 2/3
20 majority, and there is no related requirement to have a bond oversight committee in place.
21 Special districts may, however, voluntarily opt to have a bond oversight committee in place, as
22 we have done at the Grossmont Healthcare District.

23 **Q: What is the composition of the ICBOC in terms of members, the categories of**
24 **qualifications and any compensation by the district? What is the term of service of**
25 **those members?**

26 According to the ballot language, the ICBOC is to be comprised of at least nine
27 members, each member to be selected by the GHD Board of Directors through a public
28 application process and to serve without compensation. The GHD Board established the
29 number of members at eleven.

30 Members of the ICBOC shall serve for not more than two full consecutive terms. All

1 members must reside within the Grossmont Healthcare District. The intent is to have one
2 member representing each of the specified areas of expertise (listed below).

3 The ICBOC membership is to include:

4 At-Large Positions (3) One (1) individual from each of the following three (3) categories
5 with extensive experience in:

6 Project management - The chief executive officer or person in a similar senior-level
7 decision making position, of a major private sector employer with demonstrated experience in
8 leading a large organization.

9 Large-scale construction operations - A professional with demonstrated experience of
10 ten years or more in the management of large-scale construction projects.

11 Finance - A professional in the field of municipal/public finance and/or budgeting with a
12 minimum of ten years in a relevant and senior decision making position in the public or private
13 sector.

14 Designated Positions (6) An individual nominated from current members of each of the
15 following:

16 Sharp Grossmont Hospital Executive Management

17 Grossmont Healthcare District Board (Designee)

18 Professional staff of Sharp Grossmont Hospital (e.g. doctors, nurses and other
19 professionals such as therapists and technicians)

20 Sharp Grossmont Hospital Auxiliary or Foundation

21 San Diego County Labor Council

22 San Diego County Taxpayers Association

23 It should be noted that of the above designated positions, the member does not need
24 to be an employee of the entity making the nomination, but simply be nominated by the entity
25 itself. In fact, to avoid conflicts of interest, the ICBOC bylaws note that "excluding the hospital
26 professional staff, no individual employed by or who transacts business on a regular basis
27 with the hospital, Sharp HealthCare or Grossmont Healthcare District may serve."

1 Of those above, the makeup should also include a member active in a taxpayers'
2 organization, a member active in a senior citizens' organization, a member active in a
3 business organization, and at least one nurse or physician

4 **Q: How are these members appointed to the ICBOC?**

5 Per the Board-adopted ICBOC bylaws, the GHD Board provides for appointing or
6 reappointing the members of the ICBOC through the following process:

7 1. The District will solicit nominations and applications through press releases and
8 appropriate District newsletters as it relates to proposed new members, and a written
9 statement of intent to continue as a member as it relates to an existing member(s) who is
10 qualified to serve an additional term.

11 2. The District CEO and the ICBOC Chairman will review the applications received and
12 make recommendations to the full GHD Board. 3. The Board will review the recommendations
13 and in a duly noticed public session of the Board will make a final decision regarding
14 appointments.

15 **Q: Are the members considered "officials" or what? What is the technical nature
16 of the body, is it considered to be advisory?**

17 The ICBOC reviews the processes of the GHD bond program and from time to time
18 makes recommendations to the GHD Board. As the ICBOC has no expenditure authority, but
19 can only make recommendations to the GHD and the Board, the body is advisory in nature.

20 **Q: Has it been difficult to find capable members for this body?**

21 For the most part, it has not been overly difficult to find members, but at times there
22 have been singular difficulties with one or two vacancies. Since the initial appointments in
23 2006 when there were more than enough applicants, a few time vacancies have taken some
24 time to fill, as we have solicited via the media and other avenues with press releases more
25 than once before those interested took note of the opportunity and applied for a position.
26 Those applying have been very capable individuals.

27 **Q: What exactly does the ICBOC do? How often does it meet? How does it
28 interface with the GHD Board and the project management firm(s) and building
29 contractors?**

1 The ICBOC met initially every other month for the first two years of existence at a
2 regular date, time and location publicized to the general public in advance. Thereafter, the
3 ICBOC has met quarterly. The committee has established standing sub-committees to
4 address specific issues, with those committees meeting in between the quarterly meetings as
5 needed, some of them monthly.

6 GHD's contracted project management firm reports directly to the ICBOC membership
7 on the progress and status of the projects. The ICBOC presents an annual public report to the
8 GHD Board and some of the members attend Board meetings on occasion, with the ICBOC
9 chairman attending Board meetings on specific items to be addressed to the Board. The
10 ICBOC members are on the agenda distribution for all Board meetings.

11 Per adopted GHD Board resolutions and other subsequent Board actions, the ICBOC
12 has the following responsibilities:

13 1. Engage independent auditors as an expense of the bond-funded program to
14 conduct separate fiscal and performance audits of all bond-funded activities. Bond revenues
15 shall be segregated and audited separately from all other Healthcare District funds.

16 2. Monitor the expenditure of bond revenues. The ICBOC shall have prior review of
17 any proposed changes of the approved expenditures in excess of \$250,000. Such reviews
18 shall be conducted in a timely manner and not cause delays in the project.

19 3. Assure that best practices are consistently observed and that bond revenues are
20 used in the most efficient and cost effective manner possible.

21 Review and comment upon the financial status of the project and take special note of
22 budgetary variances or changed circumstances at each meeting.

23 4. Participate in the on-going refinement of the project scope, setting of priorities and
24 benchmarking of progress as it may relate to project execution.

25 5. Review and comment upon proposed debt financing and the process proposed for
26 the issuance of bonded indebtedness.

27 6. Post agendas, minutes of meetings and all related documents on the District web
28 site in compliance with the Brown Act.

1 7. Provide each committee member, no later than five (5) business days in advance of
2 each meeting, a full set of documents including but not limited to project financial and
3 progress reports, committee findings and recommendations and a detailed quarterly status
4 update prepared by the Project Manager.

5 8. Prepare and distribute an annual report to the community summarizing the
6 accomplishments of the year, related issues affecting the project, financial status and
7 progress toward completion of the approved project. This report shall be published and sent
8 to all publications and other forms of media within the District, elected officials within the
9 District and interested parties. Committee members may append minority reports should there
10 be dissenting views.

11 Authority: The authority delegated to the ICBOC by the District shall assure the
12 committee sufficient access to required current information and individuals relevant to
13 successfully fulfilling its responsibilities in a timely manner. Should the committee encounter
14 errors, omissions or events that conflict with the stated and implied intent of ballot language,
15 bond resolution, expenditure plan or ordinance, it shall promptly notify both the District Board
16 Chairperson and the Sharp Grossmont Hospital CEO in writing. Should these matters not be
17 resolved to the satisfaction of all parties within 60 days then the matter shall be referred to the
18 full District Board for action in a regularly scheduled open meeting. Committee members may
19 inspect all project records upon giving prior notice through the ICBOC Chairperson. Periodic
20 site inspections shall be provided as appropriate and practical. Bidding solicitations, results
21 and contract documents shall be made available for inspection to designated committee
22 members.

23 **Q: Since the GHD is a special district, it must comply with the Brown Act. Does**
24 **the ICBOC also comply with the Brown Act?**

25 There is not a State of California requirement for the ICBOC to comply with the Brown
26 Act. However, the GHD Board's intent from the beginning of the panel was for it to comply
27 with all aspects of the Act, and thus the bylaws require such compliance and the
28 administration of the processes follows all such requirements. Specifically in an adopted
29 Board resolution, "All proceedings must be open to the public and in compliance with the
30 Brown Act and public records laws."

1 **Q: The ICBOC must have some costs in terms of general support, running a**
2 **website, etc. How is this handled, and what have those costs been on a historical**
3 **basis?**

4 Per GHD Board adopted resolution, "The committee shall be allowed a sum annually
5 to provide for required technical consultants, legal counsel and studies, subject to the
6 approval of an annual operating budget by the District Board and not to exceed \$100,000
7 annually. The District and/or hospital shall provide reasonable clerical assistance, supplies,
8 materials and publishing of the annual report as requested by the ICOC chairperson. The
9 District shall be responsible for funding and publishing the annual audit of bond revenues &
10 expenditures. The District and/or Hospital shall make appropriate space available for the
11 committee to conduct public meetings."

12 Actual costs for the last few years:

13 FY 2007-08 \$32,944.51

14 FY 2008-09 \$48,283.57

15 FY 2009-10 \$64,020.67 (Independent performance audit was conducted this year,
16 approximately \$30,000)

17 FY 2010-11 \$33,806.85

18 FY 2011-12 \$32,185.94

19 FY 2012-13 \$34,392.84

20 **Q: What exactly does it review? At what level do contracts and change orders go**
21 **before the body for review?**

22 See details under the "What exactly does the ICBOC do?" question above. As noted
23 therein, the ICBOC has authority for prior review of any proposed changes of the approved
24 expenditures in excess of \$250,000. In addition, all change orders are reviewed by the
25 ICBOC construction committee, which may ask for a report and explanation of changes at any
26 amount to the full ICBOC membership.

27 **Q: Is the ICBOC effective? Can you cite any examples when the body did catch**
28 **mistakes or misallocations of funds or any similar situation?**

1 Neither the ICBOC nor its auditors have identified any misallocation of funds. I don't
2 recall the ICBOC noting any mistakes, but several process improvements have been
3 recommended and implemented. Specifically, the ICBOC requested a third-party independent
4 performance audit of program management processes, which resulted in a detailed report
5 with several recommendations subsequently implemented by GHD. The ICBOC has also
6 ensured appropriate expenditure of bond funds by requesting the GHD's bond counsel to
7 provide a written opinion of some expenditures, which were deemed by bond counsel as
8 appropriate. The ICBOC has been effective in this added level of scrutiny on behalf of the
9 public.

10 **Q: Is the ICBOC "over burdensome" or otherwise difficult to work with in any**
11 **respect? Does it substantially slow things down?**

12 The ICBOC is not difficult to work with. There are provisions in place to ensure the
13 ICBOC's review of an item does not delay construction, but in all cases when an urgent
14 review was required it has been possible to schedule a special ICBOC meeting as needed so
15 as to not impact project schedules.

16 **Q: The state of California has numerous regulations on hospital construction**
17 **and many other regulatory agencies exist that must be respected in terms of**
18 **expenditures of bond funds on hospital construction projects. Does the ICBOC present**
19 **any difficulties in terms of incompatibility with fulfilling these requirements, or does it**
20 **help ensure that the regulatory requirements are fulfilled?**

21 The bond oversight committee neither presents any difficulties in fulfilling regulatory
22 compliance nor helps with fulfilling such requirements. However, the members are informed
23 as to the nature of such compliance and in turn have reporting the complexities of meeting the
24 requirements to the public when compliance relate matters have impacted project schedules
25 and costs.

26 **Q: To manage other public funds of a substantial amount, and even if there is no**
27 **statutory requirement for the establishment of a Citizens Oversight Panel similar to the**
28 **ICBOC at the GHD, do you feel it is prudent to establish an independent oversight**
29 **panel to ensure the proper expenditure of funds provided by the public?**

30 Given the belief on the part of many in the public -- whether real or perceived -- that

1 some elected officials and government staff members could be using publicly approved
2 dollars inefficiently, I believe it is prudent to establish an oversight group. An independent
3 oversight panel provides an added level of confidence to the public that funds are being spent
4 as promised. The added confidence is more than perception, as well, as the oversight
5 committee members often bring real value and concrete suggestions to the process, an
6 added benefit to many government agencies. Having a panel in place may result in an agency
7 "erring" on the side of prudence and conservatism, as part of the decision-making process
8 includes deliberative thinking about justifying and explaining expenditures to the oversight
9 committee.

10 **Q: Given that there is some "burden" or operational overhead to establishing**
11 **and running such a body, it is probably not appropriate to establish a body for**
12 **oversight or funds below some level. At what level do you think a panel of this type is**
13 **definitely inappropriate, and at what level do you think it should always be considered?**

14 That may very well depend on the circumstances. An agency with \$250 million in
15 bonds may be costing the taxpayers less in assessments per household than a smaller
16 agency with only \$15 million in bonds. Assessed valuations, number of assessed properties
17 and size of a bond program all come into play to mean marked differences from one agency
18 to the next. Every agency needs to make a policy decision in this regard based on their
19 circumstances, but it would seem that the cost of running an oversight committee over the life
20 of the bonds could be considered as a percentage of the overall bond program to determine a
21 threshold at which the cost of the independent panel may be too costly, perhaps over five
22 percent of the overall program costs.

23 **Q: The "California League of Bond Oversight Committees" is an association of**
24 **mainly bond oversight committees related to school districts. Are you affiliated with**
25 **this or another similar group that promulgates best practices for bodies like the**
26 **ICBOC?**

27 We are not affiliated with the California League. We have sought and utilized input
28 from other bond programs with oversight committees (healthcare districts, special districts,
29 cities and schools), as well as sought out best practice information from time to time from
30 organizations including the Association of California Healthcare District, California Special

1 Districts Association, and San Diego County Taxpayers Association.

2 **Q: Do you have anything you would like to add regarding this topic?**

3 The ICBOC has been of tremendous benefit to the public and to the Prop G bond
4 program, via the added level of scrutiny on the processes of GHD and the resulting added
5 level of trust on the part of the citizens that bond monies are being spent as promised.

6 END OF TESTIMONY BY BARRY JANTZ