Application No.: A.15-01-014/15-02-006
Exhibit No.: SDGE-06 (PUBLIC)
Witnesses: Sue E. Garcia
Ragan G. Reeves

SUPPLEMENTAL TESTIMONY

ON BEHALF OF

SAN DIEGO GAS & ELECTRIC COMPANY

(SDG&E's 2013 & 2014 SONGS Nuclear Fuel Contract Cancellation Costs)

(PUBLIC VERSION)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

February 17, 2017

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SUPPLEMENTAL TESTIMONY
ON BEHALF OF
SAN DIEGO GAS & ELECTRIC COMPANY

I. INTRODUCTION (S. GARCIA)

This testimony is submitted in support of San Diego Gas & Electric Company's ("SDG&E") request that the California Public Utilities Commission ("CPUC" or "Commission") find:

(1) Nuclear fuel contract cancellation expenses incurred by SDG&E in 2013 are not subject to reasonableness review, in accordance with Decision ("D.") 14-11-040; and

(2) Nuclear fuel contract cancellation expenses incurred by SDG&E in 2014 (and in 2013, if the Commission determines such costs are subject to review) were reasonable.

On January 27, 2017, the assigned ALJ in this proceeding ordered SDG&E and Southern California Edison Company ("SCE") to serve supplemental testimony in A.16-03-004 and any related proceedings (which includes this proceeding) by February 17, 2017. This testimony is being served in compliance with the January 27, 2017 Ruling[1] and meets the requirements of the September 28, 2015 Scoping Memo and Ruling. In this supplemental testimony (Section II), SDG&E first explains its request for confidential treatment of the testimony. In Section III, SDG&E provides background information on the San Onofre Nuclear Generating Station ("SONGS") nuclear fuel contract termination costs that SCE billed to SDG&E in 2013 ([redacted] (SDG&E share, nominal$)), and 2014 [redacted] (SDG&E share, nominal$)). In Section IV, SDG&E demonstrates that these nuclear fuel contract cancellation costs are eligible decommissioning costs. In Section V, SDG&E explains that the Commission – in its decision approving the Settlement in SONGS Order Instituting Investigation 12-10-013 ("SONGS OII") - already has approved the Settlement's treatment of SDG&E's recorded 2013 O&M SONGS

[1] *Administrative Law Judge's Ruling Directing the Parties to Meet and Confer and File an Updated Report for 2015 Nuclear Decommissioning Cost Triennial Proceeding and Related Dockets*, A.16-03-004 and Related Dockets (January 27, 2017).

costs as reasonable.[2] In Section VI, SDG&E demonstrates that, notwithstanding the Commission's prior determination with respect to the reasonableness of 2013 SONGS costs, the nuclear fuel contract cancellation costs that SCE billed to SDG&E in 2013 – and in 2014 – are reasonable and should be approved for recovery.

II. PROCEDURAL BACKGROUND (S. GARCIA)

The September 28, 2015 Assigned Commissioner's Scoping Memo and Ruling[3] directed San Diego Gas & Electric Company ("SDG&E") and Southern California Edison ("SCE") "to serve supplemental testimony to support the claimed amounts [of nuclear fuel contract termination costs incurred in 2013 and 2014] by no later than October 30, 2015."[4]

SDG&E served the required supplemental testimony on October 30, 2015.[5] On June 7, 2016, after consulting with SCE, SDG&E informed members of the service list for this proceeding that the supplemental testimony served October 30, 2015 contained confidential information and requested that the recipients destroy any copies of the supplemental testimony in their possession.[6] SDG&E stated in its June 7, 2016 email, "SDG&E will prepare updated confidential and public versions of the testimony, to be served in accordance with the procedural schedule adopted by the Commission for this proceeding." No party objected to SDG&E's request. This volume of testimony (Ex. SDGE-06) supersedes its withdrawn testimony (Ex. SDGE-04).

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[2] D.14-11-040, approving the *SONGS OII Amended And Restated Settlement Agreement Between Southern California Edison Company, San Diego Gas & Electric Company, The Office Of Ratepayer Advocates, The Utility Reform Network, Friends of The Earth, and The Coalition Of California Utility Employees,* dated September 23, 2014.

[3] *Assigned Commissioner's Scoping Memo and Ruling* (September 28, 2015), at 6.

[4] *Id*. Ordering Paragraph 3 of Resolution E-4678, issued July 23, 2015 (approving requests by SCE and SDG&E for disbursements from the SONGS decommissioning trusts for expenses incurred in 2014) also states "[t]he SONGS 2 and 3 2013 nuclear fuel contract termination expenditures of $10.5 million, of which $2.1 million is SDG&E's share, shall be addressed in A.15-01-014 and A.15-02-006 . . . "

[5] Ex. SDGE-04. SCE also timely served its required supplemental testimony (Ex. SCE-03).

[6] Email from L. Fucci-Ortiz, SDG&E, A.15-01-014-SDG&E Notification Regarding Supplemental Testimony in Support of the 2013 & 2014 SONGS Nuclear Fuel Contract Cancellation Costs (Ex. SDGE-04), June 7, 2016. SCE sent a similar email to the service list concerning its supplemental testimony (Ex. SCE-03) regarding its 2013 and 2014 nuclear fuel contract cancellation costs on May 27, 2016.

III. CONFIDENTIAL TREATMENT (S. GARCIA)

This testimony contains confidential information that, if disclosed, could place SDG&E and SCE, as well as their customers, at an unfair business disadvantage. Therefore, SDG&E respectfully requests confidential treatment for the testimony.[7]

In accordance with D.16-08-024, the specific confidential information has been identified and the pages on which the confidential information appears have been appropriately marked. In addition, the Declaration of Diana Day, Vice President of Enterprise Risk Management and Compliance, provided as Attachment D, explains the basis of SDG&E's request to treat the marked information as confidential.

In accordance with D.08-04-023 and D.16-08-024, SDG&E requests confidential treatment of these attachments pursuant to Sections 2.2(b) and 2.8 of General Order 66-C as well as Public Utilities Code Section 583. SDG&E will provide the unredacted version of the testimony to the Commission (on request), and will provide redacted versions to the public.

IV. THE 2013 AND 2014 NUCLEAR FUEL CONTRACT TERMINATION COSTS (S. GARCIA)

As the 20% minority owner, SDG&E pays its 20% ownership share of decommissioning expenses for SONGS, including costs incurred to cancel fuel contracts. When the plant was operating, SCE served as operating agent for the co-owners and was recognized as such by the Nuclear Regulatory Commission ("NRC") and the CPUC. As operating agent, SCE's SONGS staff had expertise and responsibilities that included nuclear fuel purchasing and contracting. SDG&E relied upon SCE as operating agent to procure nuclear fuel on its behalf for the recent fuel contracts.

On January 31, 2012, a leak in the SONGS Unit 3 steam generator forced a shutdown of that unit (and the continued shutdown of SONGS Unit 2, which was in a scheduled refueling outage) and, on June 7, 2013, SCE publicly announced that SONGS Units 2&3 would permanently cease operations. From that point forward, SCE has served as decommissioning

[7] As explained in the Declaration of Diana Day, provided hereto as Attachment D, some of the information has been inadvertently previously disclosed by SDG&E before it was informed by SCE that the information was confidential. However, the basis for confidential treatment by the Commission remains valid, meets the requirements of G.O. 66-C and Public Utilities Code Section 583, and should be upheld.

agent for the four parties responsible for decommissioning (SCE, SDG&E, the City of Anaheim and the City of Riverside).[8]

In light of the SONGS shutdown, SCE settled two nuclear fuel contracts, one in 2013 and one in 2014. In 2013, SCE settled and partially terminated one contract with United States Enrichment Corporation ("USEC").[9] This contract, initially entered into in 2008, was for enrichment services for delivery of enriched uranium product to SCE's fabrication contractors in 2012 and 2013. The 2013 [redacted] (100% share, nominal$) settlement that SCE entered into with USEC allowed for termination of half of the 2013 delivery quantity, which represented what would have otherwise been approximately a [redacted] (100% share, nominal$) contractual commitment (100%). This partial settlement also provided for the delivery delay of the remaining 50% quantity until 2015. SCE billed and SDG&E paid for its 20% share of the cancellation settlement [redacted] 20% share, nominal$)) in 2013.

In 2014, SCE entered into a separate settlement and consent agreement with Westinghouse for [redacted] (100% share, nominal$). Westinghouse had claimed it was entitled to up to [redacted] (100% share, nominal$) in termination fees under a 1996 contract (which was amended in 2003) for the remaining [redacted] fuel assemblies to be delivered, out of which [redacted] already had been fabricated. SCE billed, and SDG&E paid for, its 20% share of this settlement [redacted] (20% share, nominal$) in 2014.

V. NUCLEAR FUEL CONTRACT TERMINATION COSTS ARE ELIGIBILE DECOMMISSIONING COSTS (R. REEVES)

In Resolution E-4678, the Commission approved SCE's and SDG&E's requests to disburse funds from their respective decommissioning trusts and, in the process of doing so, correctly determined that "[n]uclear fuel contract termination expenditures are decommissioning costs, which are eligible for disbursement from the SONGS 2&3 nuclear decommissioning trust funds."[10]

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[8] SCE is responsible for over 75% of the decommissioning costs for SONGS Units 2&3, SDG&E is responsible for 20% and the Cities are responsible for approximately 2% each.

[9] USEC now operates under the name of Centris. At the time of SCE's 2013 settlement with USEC, SONGS was seeking approval to re-start Unit 2 at 70% and delay any re-start of Unit 3 until such time as repair options and operating scenarios were further evaluated. Therefore, a need for a continued, but more limited supply of fuel was anticipated.

[10] Resolution E-4678 at Finding of Fact 13.

The Commission's determination that nuclear fuel contract termination costs are decommissioning costs also is consistent with an Internal Revenue Service ("IRS") ruling issued to SDG&E. In November 2013, SDG&E petitioned the IRS in a request for a private letter ruling ("PLR") to confirm that specific categories of costs as enumerated by SDG&E qualify as nuclear decommissioning costs (See Appendix A). Specifically, SDG&E asked the IRS to rule that particular categories of costs that SDG&E expected to incur as a result of the closure and permanent retirement of SONGS were nuclear decommissioning costs.[11] SDG&E's PLR Request proposed that "Pre-dismantlement Decommissioning Costs" were nuclear decommissioning costs as defined in the Treasury Regulations under IRC Section 468A, and as such, they represent a permissible use of the Funds under section 468A(e)(4).[12] SDG&E asked the IRS to rule, in part, that "[c]osts that will qualify as Pre-Dismantlement Decommissioning Cost activities can be grouped into several categories including, but not limited to (1) preparation for physical decommissioning of the Units."[13] In describing specific examples of activities and costs that would be grouped into "preparation for physical decommissioning of the Units," SDG&E provided the following example: "Terminating supply and other contracts . . ."[14]

On March 31, 2014, the IRS issued a private letter ruling to SDG&E (*See* Appendix B). In its conclusion in the PLR, the IRS stated:

> We have examined the representations and information submitted by the Taxpayer in relation to the requirements set forth in § 468A and the regulations thereunder. Based solely upon these representations of the facts, *we conclude that severance payments and pre-dismantlement decommissioning costs are nuclear decommissioning costs within the meaning of § 468A and § 1.468A-1(b)(6)*. The expenses, as broadly described by Taxpayer, are incurred in connection with the entombment, decontamination, dismantlement, removal, and disposal of the structures, systems, and components of a nuclear power plant. We note that we are not ruling on any particular expense but on broad categories of expense and emphasize that each specific expense must satisfy the tests in § 468A and the regulations thereunder.

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[11] San Diego Gas & Electric Company (EIN: 95-1184800) Ruling Request Under Sections 468A and 172 Regarding Nuclear Decommissioning Costs (November 8, 2013).

[12] *Id*. at pp. 11-13.

[13] *Id*. at p. 12.

[14] *Id*.

> Regarding the reimbursement by the Funds of severance payments and pre-dismantlement decommissioning costs, these amounts fall into two groups: (1) those paid initially by the unrelated company and then invoiced to Taxpayer and paid by the Funds and (2) those paid initially by the unrelated company, invoiced and paid by Taxpayer and then reimbursed by the Funds to Taxpayer. *In both cases, we conclude that such payments are a permissible use of the Funds* and that the reimbursements are within the exception to the self-dealing rules contained in § 1.468A-5(b)(2)(i)[15]

With this ruling, the IRS confirmed that broad categories of pre-dismantlement decommissioning costs enumerated by SDG&E were eligible for reimbursement by the trusts. The IRS did not disagree with SDG&E's characterization of supply contract cancellation costs as "pre-dismantlement" decommissioning costs as defined by the Internal Revenue Code and Treasury Regulations. Because costs to cancel supply contracts are nuclear decommissioning costs for purposes of IRC §468A, they must also be nuclear decommissioning costs for purposes of California Public Utilities Code Section §8324(d).

VI. NUCLEAR FUEL CONTRACT TERMINATION COSTS INCURRED DURING 2013 ARE NOT SUBJECT TO REASONABLENESS REVIEW (S. GARCIA)

SDG&E has provided testimony on its 2013 nuclear fuel contract termination costs in compliance with the September 28, 2015 Ruling. The nuclear fuel contract termination costs that SDG&E incurred during 2013, however, are not subject to a reasonableness review in this, or any other Commission proceeding.

Per the terms of the Amended and Restated SONGS OII Settlement Agreement, approved by the Commission in D.14-11-040 ("Settlement Agreement") in I.12-10-013, the 2013 nuclear fuel contract termination costs are not subject to reasonableness reviews. The 2013 nuclear fuel contract termination expenses fall into the category of costs "resulting from the permanent shut down at SONGS recorded in 2013."[16] Pursuant to the Settlement Agreement, because SDG&E's 2013 nuclear fuel contract termination costs and certain other 2013 expenses (i.e., O&M, employee severance and incremental inspection and repair costs), tallied less than SDG&E's authorized GRC revenue requirement for SONGS in 2013, SDG&E was permitted to retain rate

[15] PLR-147158-13, issued to SDG&E on March 31, 2014 (emphasis added).

[16] Settlement Agreement at section 4.9(e)(ii).

revenues sufficient to cover such 2013 costs.[17] Under the Commission-approved Settlement Agreement, those costs (including nuclear fuel contract cancellation costs recorded in 2013), shall not be subject to "*any form of reasonableness review by the Commission.*"[18] Therefore, the nuclear fuel contract termination costs that SCE billed to SDG&E in 2013 are not subject to reasonableness review pursuant to the terms of the SONGS OII Settlement that the Commission approved in D.14-11-040.

VII. THE NUCLEAR FUEL CONTRACT CANCELLATION COSTS THAT SCE BILLED TO SDG&E IN 2013 AND 2014 ARE REASONABLE (S. GARCIA)

Regardless of the Commission's ability to review SDG&E's 2013 costs, SDG&E states that its 2013 and 2014 nuclear fuel contract cancellation costs are reasonable. Long lead times are required for the purchase of uranium, conversion and enrichment services and fabrication of new fuel assemblies. SCE's decision to retire SONGS Unit 2&3 left several nuclear fuel contracts with remaining contractual commitments. Therefore, it was reasonable for SCE to attempt to cancel the nuclear fuel contracts associated with unneeded products and services and mitigate the costs. This testimony demonstrates that the negotiated settlements represented a significant reduction in the contractual obligations that the SONGS co-owners faced for the unwanted fuel and related services. In addition, the 2013 and 2014 costs compare favorably with the 2014 DCE. As such, these nuclear fuel contract termination costs are reasonable and the Commission should approve SDG&E's 20% share of these costs ([redacted] million (nominal$) recorded in 2013 and [redacted] million (nominal$) recorded in 2014).

A. The 2013 and 2014 Nuclear Fuel Contract Termination Costs Represent a Significant Reduction in Contractual Obligations for Unnecessary Products and Services.

The [redacted] (100% share, nominal$) settlement that SCE negotiated with USEC in 2013 represents a significant reduction in the [redacted] (100% share, nominal$) contractual obligation that the SONGS co-owners faced. Similarly, the [redacted] (100% share, nominal$) settlement SCE negotiated with Westinghouse in 2014 represents a significant reduction in the [redacted] (100% share, nominal$) in termination fees for which Westinghouse claimed it was entitled.

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[17] Settlement Agreement at section 4.9(e).

[18] Settlement Agreement at section 4.9(m) (emphasis added).

B. Comparison with the 2014 Decommissioning Cost Estimate.

SDG&E's 20% recorded share of 2013 and 2014 nuclear fuel contract termination costs [redacted] (SDG&E share, nominal$) in 2013 and [redacted] (SDG&E share, nominal$) in 2014) for a total of $3.1 million (SDG&E share, 2014$)) compares favorably to its 20% share of the 2014 Decommissioning Cost Estimate (DCE) of $3.5 million (SDG&E share, 2014$) (20% of $17.7 million (100% share, 2014$) for nuclear fuel contract cancellation costs, as set forth below in Table SEG-01:

Table 1
Comparison of SDG&E Nuclear Fuel Contract Cancellation Costs to the DCE
(SDG&E Share, 2014$ in millions)

Nuclear Fuel Contract Cancellation Costs	DCE	Recorded	Variance
June – Dec 2013	0.0	[redacted]	[redacted]
2014	3.5	[redacted]	[redacted]
TOTAL	**3.5**	**3.1**	**0.4**

Note that the cumulative totals for 2013 and 2014 are closely aligned with the DCE. The reason for the variances in the year-to-year amounts is that of timing, as the estimated DCE cash flows did not align with SDG&E's actual recorded cash flows.

WITNESS QUALIFICATIONS OF RAGAN G. REEVES

My name is Ragan G. Reeves. I am employed by Sempra Energy, SDG&E's parent company, as a Principal Tax Counsel. My business address is 488 8th Avenue, San Diego, California 92101. I advise SDG&E on the implications of federal and state tax law, including tax compliance issues, tax audit issues and strategies, and regulatory tax issues.

Prior to joining Sempra Energy in 2005, I worked as a tax attorney for eight years at Miller & Chevalier, Chartered, in Washington, D.C., where my practice focused on tax credits, tax litigation, and tax controversy matters.

I received a Bachelor's of Business Administration in Accounting, a Master's in Professional Accounting, and a Juris Doctorate from the University of Texas at Austin. I am licensed to practice law in the District of Columbia and Texas, and I am a registered in-house counsel in California. I also am a licensed Certified Public Accountant in Texas.

I have previously testified before this Commission.

ATTACHMENT A

SDG&E's November 8, 2013 Private Letter Ruling Request

McDermott
Will & Emery

Boston Brussels Chicago Düsseldorf Frankfurt Houston London Los Angeles Miami
Milan Munich New York Orange County Paris Rome Seoul Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

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November 8, 2013

BY HAND DELIVERY

Internal Revenue Service
Associate Chief Counsel
(Passthroughs & Special Industries)
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Avenue, NW
Washington, DC 20224

Re: San Diego Gas & Electric Company (EIN: 95-1184800)
Ruling Request Under Sections 468A and 172
Regarding Nuclear Decommissioning Costs

Dear Sir or Madam:

On behalf of San Diego Gas & Electric Company (the "Company"), we respectfully request a ruling from the Internal Revenue Service (the "Service") that the term "nuclear decommissioning costs" in section 468A[1] and Treas. Reg. § 1.468A-1(b)(6), and the term "amounts incurred in the decommissioning of a nuclear power plant" in section 172(f), include (i) separation payments made to employees as a result of the permanent retirement and decommissioning of a nuclear power plant, and (ii) certain costs incurred as a result of the permanent retirement of such plant, but prior to the date that physical dismantling of major components of the plant begins. The Company currently maintains separate qualified nuclear decommissioning reserve funds (the "Funds")[2] for Unit Two of the San Onofre Nuclear

[1] All "section" references are to the Internal Revenue Code of 1986, as amended (the "Code"), and all "Treas. Reg. §" references are to the Treasury regulations promulgated thereunder.
[2] Each of the Funds meets the requirements of a qualified nuclear decommissioning reserve fund under section 468A.

Generating Station and associated facilities ("SONGS 2") and for Unit Three of the San Onofre Nuclear Generating Station and associated facilities ("SONGS 3," and together with SONGS 2, the "Units" and each a "Unit"). Subject to a favorable ruling from the Service, the trustee of the Funds may be instructed to disburse assets from the Funds in satisfaction of the separation payments ("Severance Payments"), as described below, and certain costs incurred as a result of the permanent retirement and decommissioning of the Units, but prior to the date that physical dismantling of major components of the plant begins ("Pre-Dismantlement Decommissioning Costs"), as described below.

The Company also requests a ruling from the Service that any reimbursement by the Funds to the Company for the Severance Payments and the Pre-Dismantlement Decommissioning Costs represents a permissible use of the Funds under section 468A(e)(4) and Treas. Reg. §§ 1.468A-5(a)(3)(i) and 1.468A-5(b)(2)(i) and such reimbursement is not a prohibited self-dealing transaction under Treas. Reg. § 1.468A-5(b)(1). In addition, the Company requests a ruling that the Severance Payments and Pre-Dismantlement Decommissioning Costs are specified liability losses under section 172(f), and, to the extent that they are taken into account in computing a net operating loss ("NOL") of the Company in the taxable year incurred, the specified liability losses attributable to the Severance Payments and Pre-Dismantlement Decommissioning Costs are eligible to be carried back to each of the taxable years starting with 1984 and ending with the taxable year preceding the loss.

It is our understanding that the majority owner and operator of the Units, Southern California Edison Company ("SCE" or "Operator"), requested a similar ruling from the Service on similar issues by letter dated August 23, 2013.

I. STATEMENT OF FACTS

A. The Company

The Company (EIN: 95-1184800) is incorporated in the state of California and is wholly owned by Enova Corporation, which is wholly owned by Sempra Energy, a California corporation (EIN 33-0732627) ("Parent"). The Company is principally engaged in the generation, transmission, and distribution of electric energy in southern California.

The Company's principal place of business is 8306 Century Park Court, San Diego, California, 92123. Parent and its affiliated group of corporations, including the Company, electronically file with the Service a consolidated federal income tax return on a calendar year basis using the accrual method of accounting. The Company is under the audit jurisdiction of the Communications, Technology & Media Industry of the Internal Revenue Service.

B. The Units

1. Generally

The Company owns a 20 percent minority interest in and is responsible for 20 percent of the decommissioning liability for each of SONGS 2 and SONGS 3. SCE, which operates the Units, owns a 78.21 percent interest in and is responsible for 76.31 percent of the decommissioning liability for each of SONGS 2 and SONGS 3.[3] Currently, SCE invoices the Company for the Company's 20 percent share of the decommissioning costs for the Units. Payment is due from the Company within 30 days of receipt of an invoice from SCE for such

[3] The City of Riverside owns the remaining 1.79 percent interest in each of SONGS 2 and SONGS 3. In addition, SCE purchased the 3.16 percent interest in each of the Units owned by The City of Anaheim ("Anaheim") on December 29, 2006. However, Anaheim retained 1.9 percent of the decommissioning liability for each of the Units based on the pro rata portion of the Units' lives that Anaheim held an ownership interest. Thus, SCE is responsible for 76.31 percent of the decommissioning liability for the Units.

costs. Thus, the Company will be responsible for 20 percent of the Severance Payments and Pre-Dismantlement Decommissioning Costs, as described herein.

The Units are located on the coast of Southern California in San Diego County. SONGS 2 was placed in service in 1983 and SONGS 3 was placed in service in 1984. The original operating license for SONGS 2 was issued by the Nuclear Regulatory Commission ("NRC") in 1982 and was scheduled to expire on February 16, 2022. The original operating license for SONGS 3 was issued by the NRC in 1982 and was scheduled to expire on November 15, 2022. On June 7, 2013, the Operator formally notified the NRC that it had permanently ceased operations of the Units. As a result, and pursuant to NRC Regulations (10 C.F.R.) § 50.82(a)(2), the operating licenses for the Units no longer authorize operation of the reactors or emplacement or retention of fuel into the reactors vessels.

The Service issued a schedule of deduction amounts and a revised schedule of ruling amounts to the Company dated July 28, 2011 with respect to SONGS 2 (the "SONGS 2 Prior Schedule"). In order to make a special transfer to a qualified nuclear decommissioning reserve fund ("qualified fund") under section 468A, a taxpayer is required to obtain from the Service a schedule of deduction amounts which specifies the annual deductions over the taxable years in the remaining useful life of a nuclear power plant that will result in the deduction of the entire special transfer.[4] A copy of the SONGS 2 Prior Schedule is attached hereto as Exhibit A.

The Service issued a revised schedule of ruling amounts to the Company dated March 23, 2004 with respect to SONGS 3 (the "SONGS 3 Prior Schedule"). A copy of the SONGS 3 Prior

[4] Treas. Reg. § 1.468A-8(c)(1). A request for a schedule of deduction amounts may be combined with a request for a schedule of ruling amounts. *Id.*

Schedule is attached hereto as Exhibit B. The SONGS 2 Prior Schedule and the SONGS 3 Prior Schedule are collectively referred to herein as the "Prior Schedules."

The Company is subject to regulation by the California Public Utilities Commission ("CPUC"). Since the issuance of the Prior Schedules, any change in amounts collected by the Company for decommissioning as a result of subsequent CPUC proceedings has not required the Company to seek revised schedules of ruling amounts under section 468A(d) with respect to the Units. The Company is not currently requesting a revision to the approved schedules of ruling amounts in the Prior Schedules at this time. However, the Company is presently participating in its nuclear decommissioning cost triennial proceeding pending before the CPUC, and depending upon the outcome in that proceeding, the Company may file requests under section 468A for revised schedules of ruling amounts with respect to the Units.

2. **Permanent Retirement of the Units**

On June 6, 2013, the Company was notified that the Operator had reached a decision to permanently retire SONGS 2 and SONGS 3, and to seek approval to start decommissioning activities for the Units. A copy of the Company's Form 8-K filing with the Securities Exchange Commission ("Commission") dated June 7, 2013, is attached hereto as Exhibit C.

On June 12, 2013, pursuant to 10 C.F.R. § 50.82(a)(1)(i), the Operator formally notified the NRC in a Certification of Permanent Cessation of Power Operations that it had permanently ceased operation of the Units effective as of the Permanent Retirement Date. On June 28, 2013, pursuant to 10 C.F.R. § 50.82(a)(1)(ii), the Operator sent a letter to the NRC certifying that fuel had been removed from SONGS 3. On July 22, 2013, the Operator sent a similar letter certifying

that fuel had been removed from SONGS 2. Copies of the June 12, 2013, June 28, 2013 and the July 22, 2013 letters sent to the NRC by the Operator are attached hereto as Exhibit D.

Pursuant to the terms of 10 C.F.R. § 50.82(a)(2), once the Operator's certifications are docketed by the NRC, the operating licenses for the Units no longer authorize the operation of the reactor or emplacement or retention of fuel in the reactor vessels. In accordance with 10 C.F.R. § 50.82(a)(3), the decommissioning of the Units must be completed within sixty years of the permanent cessation of operations. Thus, the decommissioning period of the Units commenced upon permanent cessation of operations (i.e., the Permanent Retirement Date of June 7, 2013).

3. Staff Reductions After Permanent Retirement and Commencement of the Decommissioning Period

Prior to the Permanent Retirement Date, the Operator of the Units employed approximately 1,500 people in connection with the operation and maintenance of the Units. The Company employed three people in connection with the Units. The process of safely taking the Units from an operational-ready status to a non-operational decommissioning status as a result of the permanent retirement will require a reduction in the workforce for the Units by approximately 1100 employees. The Company does not plan to reduce its current workforce at the Units; however, as noted above, the Company will be responsible for 20 percent of the costs of the reduction of the workforce consistent with its ownership percentage in the Units.

The Operator's employees affected by the permanent retirement of the Units will include: (i) employees who work on-site at the Units and who are involved in the safe and orderly process of taking the Units from its operational-ready status to a non-operational decommissioning status

(the "On-Site Pre-Dismantlement Employees"); (ii) employees who work off-site from the Units and provide logistical support and service to the Units during the safe and orderly decommissioning of the Units from operational-ready status to a non-operational decommissioning status, and throughout the physical dismantling process (the "Off-Site Support Employees"); and (iii) employees who will remain on-site at the Units throughout the physical dismantling process ("On-Site Dismantling Employees"). The Operator has already separated On-Site Pre-Dismantlement Employees and certain Off-Site Support Employees. By the time the Units are dismantled and removed from the site, and the site is restored to its required conditions, the On-Site Dismantling Employees and remaining Off-Site Support Employees will also be separated.

4. Nuclear Decommissioning Cost Studies

Section 8323 of the California Public Utilities Code ("California Pub. Util. Code") requires regulated utilities, such as the Company, to establish rates for the collection of funds necessary for the future nuclear decommissioning of its Units. As part of the process of establishing estimated decommissioning costs, the Operator has utilized the nuclear industry consulting services of ABZ, Incorporated ("ABZ") to prepare decommissioning cost estimates that were used to establish nuclear decommissioning costs in rates approved in decisions by the CPUC. The Company used a Decommissioning Cost Estimates prepared by ABZ dated October 2001 (the "2001 Decommissioning Cost Estimate") and a Decommissioning Cost Estimated prepared by ABZ dated July 2005 (the "2005 Decommissioning Cost Estimate") as the bases for its requests to the CPUC for the authority to collect nuclear decommissioning costs in rates. The Company also used the ABZ decommissioning cost estimates, along with the decisions by the

CPUC based on such estimates, in its prior requests for schedules of ruling amounts from the Service under section 468A. The 2001 Decommissioning Cost Estimate and the 2005 Decommissioning Cost Estimate are attached hereto as Exhibit E and Exhibit F, respectively.

In obtaining the Prior Schedules, the Company submitted CPUC Decisions 07-01-003,[5] and 03-10-015[6] (the "Prior CPUC Decisions"). The assumptions used in the Prior CPUC Decisions were based on the 2001 Decommissioning Cost Estimate and the 2005 Decommissioning Cost Study. Both the 2001 Decommissioning Cost Estimate and the 2005 Decommissioning Cost Estimate included severance payments and activity costs consistent with the Severance Payments and Pre-Dismantlement Decommissioning Costs described herein. Copies of the relevant pages from the detailed cost schedules relating to the decommissioning of the Units for the 2001 Decommissioning Cost Study (the "2001 Supporting Schedules") are attached hereto as Exhibit G-1 and Exhibit G-2, for SONGS 2 and SONGS 3, respectively. Copies of the relevant pages from the detailed cost schedules relating to the decommissioning of the Units for the 2005 Decommissioning Cost Study (the "2005 Supporting Schedules") are attached hereto as Exhibit H-1 and Exhibit H-2, for SONGS 2 and SONGS 3, respectively.

For the Company's current nuclear decommissioning cost triennial proceeding, ABZ prepared a Decommissioning Cost Estimate 2013 Scenario in connection with the permanent retirement of the Units in 2013, dated July 11, 2013, and attached hereto as Exhibit I (the "2013 Decommissioning Cost Estimate").[7] The Company's share of the total estimated

[5] D.07-01-003, dated January 11, 2007, in Application 05-11-008.
[6] D.03-10-015, dated October 2, 2003, in Application 02-03-039.
[7] The 2013 Decommissioning Estimate is an update of the Decommissioning Cost Estimate prepared by ABZ dated December 14, 2012, which reflected a retirement of the Units in 2022. *See* Exhibit I, pages 3-4.

decommissioning cost for each Unit (in 2011 dollars) is its 20 percent responsibility for the decommissioning liability for each Unit. The 2013 Decommissioning Cost Estimate includes the Severance Payments and Pre-Dismantlement Decommissioning Costs described herein. Copies of the relevant pages from the detailed cost schedules relating to the decommissioning of the Units from the 2013 Decommissioning Cost Estimate (the "2013 Supporting Schedules") are attached hereto as Exhibit J-1 and J-2, for SONGS 2 and SONGS 3, respectively.

C. Nature of the Request

1. Severance Payments

In order to fully decommission, dismantle, and remove a nuclear power plant, and to also restore the site to its regulatory and legally required condition, highly skilled and knowledgeable personnel will be required throughout the entire process to ensure that all of these activities are performed in a safe and orderly manner and in accordance with regulatory and other legal requirements. As part of the decommissioning process, personnel are needed to: (1) plan and design all of the logistical and technical aspects required to take a nuclear power plant from an operational-ready status to a fully dismantled and restored site; (2) ensure the safe and orderly transition of the plant from an operational-ready status to a non-operational decommissioning status; (3) maintain the plant in a safe condition during the actual dismantling of the unit; and (4) dismantle, remove and restore the site to the condition required by laws and regulation. All of the costs associated with providing these services are required as part of the decommissioning process. As an owner of a 20 percent minority interest in the Units, as noted above, the Company will be invoiced by the Operator for its 20 percent share of the Operator's relevant

personnel-related costs incurred during the decommissioning of the Units. These costs will include payments to the Operator's On-Site Pre-Dismantlement Employees, Off-Site Support Employees, and On-Site Dismantling Employees in their capacities associated with providing the services described above as part of the decommissioning process. During the decommissioning process, the Operator will also pay its On-Site Pre-Dismantlement Employees for decommissioning planning and for the safe and orderly transition of the Units from their operational-ready status to a safe shutdown non-operational status. The Operator will also pay its Off-Site Support Employees for providing logistical support to personnel during the decommissioning process of taking the Units from their operational-ready status to a safe shutdown non-operational status, and from a safe shutdown non-operational status to a fully dismantled and restored site. The Operator will also pay its On-Site Dismantling Employees for any decommissioning planning, maintaining the plant in a safe state of condition during the decommissioning process, and dismantling and restoring the site.

As each of these decommissioning processes are completed by the three categories of employees (i.e., On-Site Pre-Dismantlement Employees, Off-Site Support Employees and On-Site Dismantling Employees) and other personnel (i.e., contractors), the Company anticipates that many of the Operator's employees and contractors will be released from their services. Included in these costs for services performed by employees in their respective decommissioning process will be Severance Payments, which include one-time payments and medical and outplacement related services. These Severance Payments are made consistent with the California Pub. Util. Code requirements for the decommissioning of nuclear facilities. Section

8322(g) of the California Pub. Util. Code states that "[d]ecommissioning nuclear facilities causes electric utility employees to become unemployed through no fault of their own, and these employees are entitled to reasonable job protection the costs of which are properly includable in the costs of decommissioning." In addition, Section 8330 of the California Pub. Util. Code states:

> 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 costs, if any, of compliance with this section.

The Company has complied with the decommissioning requirements of the California Pub. Util. Code for purposes of collecting amounts for its Funds, and, as noted above, the Company will be responsible for its 20 percent share of Severance Payments for the Operator's employees throughout the decommissioning process.

2. **Pre-Dismantlement Decommissioning Costs**

The Operator is currently incurring Pre-Dismantlement Decommissioning Costs related to the process of taking its Units, after the commencement of the decommissioning period on the Permanent Retirement Date (pursuant to 10 C.F.R. § 50.82(a)(3)), from an operational-ready status to a non-operational decommissioning status just prior to the commencement of the physical dismantling of major components of the Units. The Company will be invoiced by the Operator for its 20 percent share of such Pre-Dismantlement Decommissioning Costs. These Pre-Dismantlement Decommissioning Costs include costs related to (1) planning and designing the logistical and technical aspects required to take the Units from an operational-ready status to

a fully dismantled and restored site, (2) ensuring the safe and orderly transition of the plants from an operational-ready status through to a non-operational decommissioning status, and (3) maintaining the plants in a safe condition prior to the physical dismantling of the major components of the Units.

Costs that will qualify as Pre-Dismantlement Decommissioning Cost activities can be grouped into several categories including, but not limited to: (1) preparation for physical decommissioning of the Units; (2) consolidation and restoration of the facilities comprising SONGS 2 and SONGS 3 and the site upon which they are located; (3) security for the Units and the surrounding site; (4) communication with affected communities regarding the permanent retirement of the Units and plans for the physical decommissioning of the Units; and (5) staffing costs incurred as a result of the permanent retirement and prior to the commencement of physical dismantlement of major components of the Units. Some specific examples of these costs include:

1. Preparation for Physical Dismantlement

   - Planning for decommissioning and managing the safe shutdown of the Units by various teams of Operator and Company personnel;
   - Removing fuel from the Units;
   - Flushing, draining and de-energizing various systems of the Units;
   - Removing oil and chemicals from the Units; and
   - Terminating supply and other contracts, implementing regulatory requirements and modifying the performance evaluation criteria and corrective action program for the Units.

2. Consolidation and Restoration

- Reducing inventory and reducing and terminating plant modification projects;
- Relocating administration building(s), warehouse, information technology and telecom facilities and related personnel;
- Demolishing unnecessary administrative, petrol and non-radioactive waste facilities and restoring affected areas as required by related leases or regulatory authorities;
- Reducing the transportation pool; and
- Adjusting maintenance projects and procedures for the Units.

3. Security

- Increasing security personnel due to reduced operating personnel on site.

4. Communication

- Circulating information about the changes at the Units to surrounding residents and businesses; and
- Liaising with appropriate community groups and local governing bodies.

5. Staffing

- Paying salaries and benefits to remaining employees and consultants supporting the above described decommissioning process; and
- Paying fees associated with modifications to collective bargaining agreements caused by the permanent shutdown of the Units.

6. Tax, Insurance and Lease Payments

- Paying property taxes, insurance and lease payments with respect to the Units.

Although the foregoing list is extensive, it is only intended to illustrate the types of Pre-Dismantlement Decommissioning Costs, and is not all-inclusive.

3. Reimbursement from the Funds

Pending the Service's ruling in this request, the Company will use its general funds to make payments on invoices from SCE in connection with its 20 percent share of any Severance Payments and Pre-Dismantlement Decommissioning Costs. However, upon receipt of a favorable ruling from the Service on the issues addressed herein, the Company will seek reimbursement from the Funds with respect to such payments, or the Company will direct the Funds to make payments on invoices in connection with the Company's share of any Severance Payments and Pre-Dismantlement Decommissioning Costs directly to SCE or the party hired to decommission the Units (the "Decommissioning Agent").

II. RULINGS REQUESTED

With respect to costs incurred in connection with the permanent retirement and decommissioning of the Units, the Company respectfully requests that the Service issue the following rulings:

1. Severance Payments constitute "nuclear decommissioning costs" within the meaning of section 468A and Treas. Reg. § 1.468A-1(b)(6), and therefore can be paid out of the Funds for their related Units;

2. Pre-Dismantlement Decommissioning Costs incurred on or after the Permanent Retirement Date constitute "nuclear decommissioning costs" within the meaning of section 468A and Treas. Reg. § 1.468A-1(b)(6), and therefore can be paid out of the Funds for their related Units;

3. Reimbursement by the Funds to the Company or SCE of Severance Payments and Pre-Dismantlement Decommissioning Costs represents a permissible use of the Funds under

section 468A(e)(4) and Treas. Reg. §§ 1.468A-5(a)(3)(i) and 1.468A-5(b)(2)(i), and is not a prohibited self-dealing transaction under Treas. Reg. § 1.468A-5(b)(1); and

4. Severance Payments and Pre-Dismantlement Decommissioning Costs are specified liability losses under section 172(f), and to the extent that they are taken into account in computing a NOL of the Company in taxable years 2013 and beyond, the specified liability losses attributable to the Severance Payments and Pre-Dismantlement Decommissioning Costs are eligible to be carried back to each of the taxable years starting with 1984 and ending with the taxable year preceding the loss year.

III. STATEMENT OF LAW AND DISCUSSION

A. Section 468A – Definition of "Nuclear Decommissioning Costs"

Section 468A provides a deduction for amounts contributed to a qualified fund. Section 468A(e)(4) and Treas. Reg. § 1.468A-5(a)(3)(i) provide that the assets of a qualified fund can only be used to (i) satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates; (ii) pay administrative costs and other incidental expenses of the nuclear decommissioning fund; and (iii) the extent that the assets of the qualified fund are not currently required for the purposes described in paragraph (i) or (ii), to make investments.

The term "nuclear decommissioning costs" is defined in Treas. Reg. § 1.468A-1(b)(6), and includes:

> [A]ll otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant, whether that nuclear power plant will continue to produce electric energy or has permanently ceased to produce electric energy. *Such term includes all otherwise deductible expenses to*

> *be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses*, and all otherwise deductible expenses to be incurred with respect to the plant after the actual decommissioning occurs, such as physical security and radiation monitoring expenses.

(Emphasis added.) There is no additional guidance in the Code, related Treasury Regulations, and other formal guidance issued by the Service providing further specifics on the definition of "nuclear decommissioning costs." However, the "emphasis added" portion highlighted in the definition above indicates a reasonable allowance for nuclear decommissioning costs to include costs that are "in connection with the preparation for decommissioning" and for "other planning expenses." As such, "preparation for decommissioning" should include costs associated with safely and systematically bringing a nuclear unit, after its permanent retirement and during its decommissioning period pursuant to 10 C.F.R. § 50.82(a), from an operational-ready status to the point that the physical dismantling of the unit may begin. "Other planning expenses" should include planning and designing all of the logistical and technical aspects required to take a nuclear power plant from an operational-ready status to a fully dismantled and restored site.

The Service recognized the broad interpretation of the term "nuclear decommissioning costs" in Chief Counsel Advice 200931007[8] ("CCA") and recognized the importance of the role of the public utility commission in the determination of what constitutes decommissioning costs for purposes of section 468A.[9] In the CCA, the Service stated that the regulation "has always been given a broad reading." The Service further stated that the broad interpretation of nuclear decommissioning costs encompasses costs incurred to remove components while the plant

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[8] Mar. 11, 2009.

[9] The Treasury regulation citations in the CCA are to the temporary regulations issued in T.D. 9374, 72 Fed. Reg. 74175 (Dec. 28, 2007). As noted above, the definition in Treas. Reg. § 1.468A-1(b)(6) expanded and clarified the definition of "nuclear decommissioning costs" that was contained in former Treas. Reg. § 1.468A-1(b)(5).

remains operational "is in accord with the generally understood meaning of [nuclear decommissioning costs] as used by public service commissions or other regulators of the nuclear industry in calculating the amount that utilities are allowed to recover from taxpayers." Moreover, the Service explicitly rejected a narrow interpretation of the predecessor to Treas. Reg. § 1.468A-1(b)(6) in the CCA, stating that it recognized that the predecessor regulation "can be read more strictly, . . . and that the ambiguity in those regulations may cause uncertainty. However, we believe that the conclusion reached herein is more in concert with the principles underlying 468A and the common practice of the nuclear industry." This broad interpretation should equally apply to a nuclear power plant that has permanently ceased operations. The Service also recognized the broad interpretation of nuclear decommissioning costs in Private Letter Ruling 200711015,[10] stating that such costs are "defined broadly to include expenses incurred before, during, and after the actual decommissioning process of the nuclear power plant that has ceased operations."

Treas. Reg. § 1.468A-3 requires taxpayers to receive a schedule of ruling amounts from the Service before the taxpayers may deduct contributions made to a qualified nuclear decommission fund. Treas. Reg. § 1.468A-5(a)(3)(A) limits the assets in a qualified nuclear decommissioning fund to only amounts that would be used exclusively to satisfy, in whole or part, the liability of the taxpayer's "decommissioning costs" of the nuclear power plant. In determining whether the schedule of ruling amounts provides sufficient funding for a taxpayer's nuclear decommissioning costs, Treas. Reg. § 1.468A-3(a)(4) states that the "taxpayer bears the burden of demonstrating that the proposed schedule of ruling amount is consistent with the

[10] Nov. 30, 2006.

principles and provisions of this section and is based on reasonable assumptions." Thus, the taxpayer must demonstrate that its proposed nuclear decommissioning costs are reasonable and consistent with the principles of section 468A. The regulation states further that if "a public utility commission established or approved the currently applicable rates for the furnishing or sale by the taxpayer of electricity from the plant, the taxpayer can generally satisfy this burden of proof by demonstrating that the schedule of ruling amounts is calculated using the assumptions used by the public utility commission in its most recent order."

In establishing its Prior Schedules approved by the Service for both SONGS 2 and SONGS 3, the Company submitted with its ruling request the Prior CPUC Decisions that authorized applicable rates for the furnishing by the Company of electricity from its Units. These rates have been calculated to include the collection of funds for severance payments and activity costs consistent with the Severance Payments and the Pre-Dismantlement Decommissioning Costs described in this ruling request.[11]

The 2001 Decommissioning Cost Estimate and the 2005 Decommissioning Cost Estimate, citing to the California Pub. Util. Code, stated that the estimated decommissioning costs included "staff termination costs for displaced [Company] personnel after permanent cessation of operations, and after termination of decommissioning projects . . .."[12]

The Severance Payments resulting from the permanent retirement of the Units and the Pre-Dismantlement Decommissioning Costs each represents a type of cost that the CPUC has

[11] *See* the 2001 Supporting Schedules, Exhibit G-1 and Exhibit G-2; the 2005 Supporting Schedules, Exhibit H-1 and Exhibit H-2.
[12] *See* Exhibit E, page 14 and Exhibit F, page 15. The SONGS 2 Prior Schedule was calculated based on the 2005 Decommissioning Cost Estimate and the SONGS 3 Prior Schedule was calculated based on the 2001 Decommissioning Cost Estimate. Both estimates incorporated staff termination costs.

previously approved as part of a decommissioning cost estimate, consistent with California Pub. Util. Code Sections 8321 through 8330. The costs are also consistent with the definition of decommissioning and the principles of section 468A and its related regulations.

B. The California Pub. Util. Code

The California Pub. Util. Code provides the framework for the safe and prudent decommissioning of nuclear power plants located in California, and provides the CPUC with the authority to allow electrical corporations to collect sufficient revenue in rates to recover such costs.[13] The ability to collect costs related to decommissioning under the California Pub. Util. Code, combined with section 468A, allows taxpayers to make tax deductible contributions into qualified funds for the decommissioning of related plants. If the decommissioning of a nuclear power plant "causes electric utility employees to become unemployed through no fault of their own, . . . [then] these employees are entitled to reasonable job protection," and the California Pub. Util. Code provides that such costs shall be "includable in the costs of decommissioning."[14] Furthermore, the California Pub. Util. Code also provides that an electric utility that is involved in the decommissioning, closure, or removal of a nuclear power plant "shall provide assistance in finding comparable alternative employment opportunities for its employees who become unemployed as the result of decommissioning, closure, or removal."[15]

As noted above, California Pub. Util. Code Section 8322(g) provides that costs incurred in connection with the decommissioning of a nuclear power plant related to employees who become unemployed as a result of the decommissioning are treated as decommissioning costs.

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[13] CAL. PUB. UTIL. CODE § 8330.
[14] CAL. PUB. UTIL. CODE § 8322(g).
[15] CAL. PUB. UTIL. CODE § 8330.

In addition, California Pub. Util. Code Section 8330 provides that the CPUC shall authorize a utility to collect monies from customers to recover costs associated with assisting employees affected by a nuclear power plant closure or decommissioning to find alternative employment opportunities. The California Pub. Util. Code grants authority to the CPUC to include severance payments in decommissioning costs recoverable from customers.[16] The Service has acknowledged in its rulings, and consistent with Treas. Reg § 1.468A-3(a)(4), that it will follow the guidance of public service commissions such as the CPUC in determining whether certain costs are nuclear decommissioning costs for purposes of section 468A. For example, in the CCA, the Service recognized the role that public service commissions play in calculating the amount of decommissioning costs that utilities are allowed to recover from ratepayers. The Severance Payments described above are consistent with the California Pub. Util. Code, as authorized by the CPUC. For this reason, the Service should treat the Severance Payments consistent with the California Pub. Util. Code and the determinations of the CPUC and conclude that the Severance Payments are "nuclear decommissioning costs" for purposes of section 468A.

Accordingly, the Company's share of Severance Payments and Pre-Dismantlement Decommissioning Costs incurred by the Operator in connection with the permanent retirement of the Units should be treated as "nuclear decommissioning costs" under section 468A and Treas. Reg. § 1.468A-1(b)(6). Therefore, such Severance Payments and Pre-Dismantlement Decommissioning Costs can be paid out of the Funds for the Units

[16] CAL. PUB. UTIL. CODE § 8330.

C. Section 468A – Self-Dealing and Consequences of Self-Dealing

Section 468A and the regulations thereunder prohibit a qualified fund from engaging in certain self-dealing activities with a disqualified person. Section 468A(e)(5) and Treas. Reg. § 1.468A-5(b) provide that an act of self-dealing with respect to a qualified fund is any *direct* or *indirect act* described in section 4951(d) between the qualified fund and a disqualified person.

Section 4951(d)(1) defines "self-dealing" as including, among others, the following acts engaged in between a qualified fund and a disqualified person: (i) the lending of money or other extension of credit, (ii) the payment of compensation (or reimbursement of expenses), and (iii) the transfer to, or use by or for the benefit of, the income or assets of the trust.[17] Section 4951(e)(4) defines a "disqualified person" as including, among others, a contributor to the trust.[18]

However, Treas. Reg. § 1.468A-5(b)(2) provides for certain exceptions from the self-dealing rules such that if a qualified fund and a disqualified person engage in one of these acts, such act will not constitute an act of self-dealing. One such exception is a payment by a qualified fund for the purpose of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the qualified fund relates.[19]

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[17] Other acts of self-dealing described in section 4951(d)(1) include (i) the sale, exchange, or lease of real or personal property and (ii) the furnishing of goods, services, or facilities.

[18] The statute also provides that a "disqualified person" includes: (i) a trustee of the trust; (ii) an owner of more than 10 percent of the total combined voting power of a corporation, the profits interest in a partnership, or the beneficial interest of a trust or unincorporated enterprise that is a contributor to the trust; (iii) an officer, director, or employee of a person who is a contributor to the trust; (iv) a corporation in which persons described section 4951(e)(4)(A)-(D) own more than 35 percent of the total combined voting power; (v) a partnership in which persons described in section 4951(e)(4)(A)-(D) own more than 35 percent of the profits interest; and (vi) a trust in which persons described in section 4951(e)(4)(A)-(D) own more than 35 percent of the beneficial interest.

[19] Treas. Reg. § 1.468A-5(b)(2)(i). Other exceptions to the self-dealing rules, which are not applicable in this instance, are described in Treas. Reg. § 1.468A-5(b)(2).

As described above in this ruling request, the Severance Payments and the Pre-Dismantlement Decommissioning Costs are treated as "nuclear decommissioning costs" under section 468A and Treas. Reg. § 1.468A-1(b)(6). Thus, the reimbursement by the Funds to the Company (or directly to SCE or the Decommissioning Agent) of "nuclear decommissioning costs" such as the Severance Payments and Pre-Dismantlement Decommissioning Costs satisfies the exception under Treas. Reg. § 1.468A-5(b)(2). Therefore, the reimbursement by the Funds to the Company (or directly to SCE or the Decommissioning Agent) of Severance Payments and Pre-Dismantlement Decommissioning Costs should constitute a permissible use of the Funds under section 468A(e)(4) and Treas. Reg. §§ 1.468A-5(a)(3)(i) and 1.468A-5(b)(2)(i), and should not be a prohibited self-dealing transaction under Treas. Reg. § 1.468A-5(b)(1).

D. Section 172(f) – Specified Liability Losses

Under section 172, an NOL generally can be carried back two years and carried forward 20 years. However, if the NOL is a "specified liability loss," the loss can be carried back 10 years.[20]

Section 172(f)(1) defines a "specified liability loss" as including certain amounts to the extent they are taken into account in computing a NOL for a taxable year. An item that may be included as a specified liability loss is any amount that is allowable as a deduction under chapter 1 of the Code (other than Section 468(a)(1) or 468A(a)) which is in satisfaction of a liability

[20] Section 172(b)(1)(C).

under a federal or state law requiring the decommissioning of a nuclear power plant (or a unit thereof).[21] Section 172(f)(1)(B)(ii) provides that a liability shall be taken into account only if –

> (I) the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, and
>
> (II) the taxpayer used an accrual method of accounting throughout the period or period during which such act (or failure to act) occurred.

In any event, the amount of a specified liability loss for any taxable year cannot exceed the amount of the NOL for such year.[22] The act (or failure to act) that gives rise to liabilities for decommissioning a nuclear power plant arises in the year in which the plant's operating license is granted.[23]

Section 172(f)(3) further extends the normal 10 year carryback period for specified liability losses attributable to amounts incurred in decommissioning a nuclear power plant or a unit thereof. Specifically, such losses can be carried back to each of the taxable years beginning with the later of taxable year 1984 or the taxable year in which the plant or unit was "placed in service." Section 172(f)(3) does not have a provision that limits specified liability losses attributable to nuclear decommissioning costs from being carried back to a taxable year prior to 1984. However, such language appears in the enacting statute that led to the enactment of

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[21] Section 172(f)(1)(B)(i)(II). Other items includable as a specified liability loss include (i) amounts allowable as a deduction under section 162 or 165 which are attributable to product liability or expenses incurred in the investigation or settlement of, or opposition to, claims against the taxpayer on account of product liability, and (ii) amounts allowed as a deduction which are in satisfaction of a liability under a Federal or state law requiring – (a) the reclamation of land, (b) the dismantlement of a drilling platform, (c) the remediation of environmental contamination, or (d) a payment under any workers compensation act (within the meaning of section 461(h)(2)(C)(i)).

[22] Section 172(f)(2).

[23] *See* PLR 200711015, *supra* note 10. In the ruling, the taxpayer incurred nuclear decommissioning costs in Year 1. The Service stated that the taxpayer's nuclear decommissioning costs "were incurred during the Year 1 tax year, which was more than 3 years after the licenses to operate the plants were granted and the liabilities arose." Thus, the Service ruled that the taxpayer satisfied all of the section 172(f) requirements and that the taxpayer's NOL attributable to the nuclear decommissioning costs qualify as section 172(f) specified liability losses.

section 172(f)(3).[24] Therefore, such limitation is applicable and specified liability losses attributable to nuclear decommissioning costs cannot be carried back to a taxable year prior to 1984.

As discussed above in this ruling request, the Severance Payments and Pre-Dismantlement Decommissioning Costs are "nuclear decommissioning costs" under section 468A and Treas. Reg. § 1.468A-1(b)(6). In several private letter rulings, the Service recognizes the nexus between "nuclear decommissioning costs" for purposes of section 468A and "amounts incurred in the decommissioning of a nuclear power plant" for purposes of section 172(f).

For example, in Private Letter Ruling 9409011,[25] the Service stated:

> The phrase "amounts incurred in the decommissioning of a nuclear power plant" should be interpreted to have the same meaning as the term "nuclear decommissioning costs" under section 468A because both sections 172(f)(3) and 468A were added to the Code in 1984, and both sections were intended to provide relief to the nuclear powerplant industry. See generally H. Rep. No. 861, 98th Cong., 2d Sess. 877 (1984). Accordingly [taxpayer's] expenses in decommissioning the power plant that are deductible under chapter 1 of the Code are "amounts incurred in the decommissioning of a nuclear power plant" under

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[24] Section 172(f)(3) regarding specified liability losses attributable to nuclear decommissioning costs was added to the Code by Section 11811(b)(2)(A) of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508 (Nov. 5, 1990) (the "1990 Act"). Section 11811 of the 1990 Act eliminated and redesignated certain provisions of section 172. Specifically, Section 11811(b)(1) of the 1990 Act eliminated subsections (g), (h), (i), and (k) from section 172, and redesignated subsections (j), (l), (m), and (n) as, respectively, subsections (f), (g), (h), and (i). Section 11811(b)(2)(A) of the 1990 Act then amended redesignated section 172(f) to provide rules relating to specified liability losses. Prior to its amendment, redesignated section 172(f) (former section 172(j)) provided rules relating to product liability losses, but did not contain special rules relating to losses attributable to decommissioning a nuclear power plant. Additionally, Section 11811(b)(2)(B) of the 1990 Act provides:

> The portion of any loss which is attributable to a deferred statutory or tort liability loss (as defined in section 172(k) of the Internal Revenue Code of 1986 as in effect on the day before the date of the enactment of [the 1990 Act]) *may not be carried back to any taxable year beginning before January 1, 1984, by reason of the amendment made by [Section 11811(b)(2)(A)].*

(Emphasis added.)

[25] Nov. 24, 1993.

> section 172(f)(3) of the Code to the extent they are amounts described in section 1.468A-1(b)(5)[26] of the regulations

(Emphasis added.) Similarly, in Private Letter Ruling 200711015,[27] the Service examined costs associated with (i) storing spent nuclear fuel assemblies onsite, (ii) purchasing canisters for such storage, (iii) operating and securing independent spent fuel storage installation facilities, and (iv) removing steam generators and reactor vessel heads, and stated:

> As discussed above, the costs described herein are nuclear decommissioning costs under §1.468A-1(b)(5). *Thus, such costs are amounts incurred in the decommissioning of a nuclear power plant under § 172(f).*

(Emphasis added.)

Accordingly, because the Severance Payments and Pre-Dismantlement Decommissioning Costs are "nuclear decommissioning costs" for purposes of section 468A, they are costs "incurred in the decommissioning of a nuclear power plant," eligible for extended carryback treatment under section 172(f) if the other requirements of section 172 are satisfied.

The Severance Payments and Pre-Dismantlement Decommissioning Costs are deductible as ordinary and necessary business expenses under section 162 or as abandonment losses under section 165. Therefore, they satisfy the requirement of section 172(f)(1)(B)(i) that they be deductible under chapter 1 of the Code (other than section 468(a) or 468A(a)).

Further, the Severance Payments and Pre-Dismantlement Decommissioning Costs are incurred at least three years after the NRC issued operating licenses for the Units,[28] which gave rise to these decommissioning liabilities. Finally, the Company has used and is using the accrual

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[26] Treas. Reg. § 1.468A-1(b)(6) now embodies earlier Treas. Reg. §1.468A-1(b)(5).
[27] *Supra*, note 10.
[28] 1982 for both Units.

method of accounting for all relevant taxable years. Therefore the Severance Payments and Pre-Dismantlement Decommissioning Costs satisfy the requirements of section 172(f)(1)(B)(ii).

SONGS 2 was placed in service in 1983 and SONGS 3 was placed in service in 1984. Accordingly, to the extent that the Severance Payments and Pre-Dismantlement Decommissioning Costs are taken into account in computing a NOL of the Company in taxable years 2013 and beyond, they are eligible as specified liability losses to be carried back to each of the taxable years starting with 1984 and ending with the taxable year preceding the loss year.

IV. PROCEDURAL MATTERS

A. Revenue Procedure 2013-1 Statements

1. The Company represents that, to the best knowledge of the Company and the Company's representatives, no earlier return of the Company (or of a related taxpayer within the meaning of section 267 or of a member of an affiliated group of which the Company is also a member within the meaning of section 1504) that would be affected by the requested letter ruling is under examination, before Appeals, or before a Federal court.

2. The Company represents that, to the best knowledge of the Company and the Company's representatives, the Service has not previously ruled on the same or a similar issue for the Company (or a related taxpayer within the meaning of section 267 or of a member of an affiliated group of which the Company is also a member within the meaning of section 1504) or a predecessor.

3. The Company represents that, to the best knowledge of the Company and the Company's representatives, none of the Company, a related taxpayer of the Company, a predecessor of the Company, or any representative of the Company has previously submitted a

request (including an application for change in accounting method) involving the same or a similar issue to the Service and withdrawn the same before a ruling was issued.

4. The Company represents that, to the best knowledge of the Company and the Company's representative, none of the Company, a taxpayer related to the Company, or a predecessor of the Company has previously submitted a request (including an application for change in accounting method) involving the same or a similar issue to the Service in a ruling request which is currently pending with the Service.

5. The Company represents that, to the best knowledge of the Company and the Company's representatives, none of the Company, a taxpayer related to the Company, or a predecessor of the Company, at the same time of this request, is presently submitting another ruling request (including an application for change in accounting method) involving the same or a similar issue to the Service.

6. The law in connection with this ruling request is certain, and the issues discussed herein are adequately addressed by relevant authorities.

7. The Company represents that the Company and the Company's representatives have no knowledge as to any legislation or pending legislation, Treasury Regulations, revenue rulings, revenue procedures, court decision, or other authority that are contrary to the position advanced in this ruling request.

8. A conference on the issues involved in this ruling is hereby respectfully requested in the event that you reach a tentative adverse conclusion.

9. If you have any questions or need additional information regarding this ruling request, pursuant to the enclosed Power of Attorney, please contact Martha G. Pugh at (202) 756-8368.

10. The Company hereby requests that any document related to this request, including the ruling itself, and any written requests for additional information be sent by facsimile transmission (in addition to being mailed) and waive any disclosure violation resulting from such facsimile transmission. Please fax the ruling and any written requests to Ms. Pugh at (202) 756-8087. Please mail the ruling and any written requests to Martha G. Pugh, McDermott Will & Emery LLP, 500 North Capitol Street, N.W., Washington, DC, 20001.

B. Administrative

The following are enclosed:

1. A check payable to the Internal Revenue Service in the amount of $18,000.00 in payment for the user fee for this request as set forth in Appendix A of Revenue Procedure 2013-1.

2. The required penalties of perjury statements.

3. The deletions statement required by Revenue Procedure 2013-1.

4. The checklist as required by Revenue Procedure 2013-1.

5. A Power of Attorney.

Sincerely,

Martha Groves Pugh

ATTACHMENT B

IRS's March 31, 2014 Private Letter Ruling

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Number: 468A.01-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
Patrick S. Kirwan, ID No. 1000219435

Telephone Number:
(202) 317-6853

Refer Reply To:
CC:PSI:B6
PLR-147158-13

Date: MAR 3 1 2014

Robert Schlax
Vice President, Controller and CFO
San Diego Gas & Electric Company
8306 Century Park Court
San Diego, CA 92123

LEGEND:

Taxpayer	=	San Diego Gas & Electric Company (EIN: 95-1184800)
Parent	=	Sempra Energy (EIN: 33-0732627)
Plant A	=	San Onofre Nuclear Generating Station – Unit Two
Plant B	=	San Onofre Nuclear Generating Station – Unit Three
Location	=	San Diego County, California
Commission	=	California Public Utility Commission
State	=	California
Year A	=	1983
Year B	=	1984
Date 1	=	February 16, 2022
Date 2	=	November 15, 2022
Date 3	=	June 7, 2013
P	=	20%
D	=	20%
Fund	=	Nuclear Decommissioning Fund
Director	=	Industry Director, Natural Resources and Construction

Dear Mr. Schlax:

This letter responds to your request, dated November 8, 2013, for rulings concerning whether certain payments made to employees and certain payments of "pre-dismantlement costs" constitute "nuclear decommissioning costs" as defined in § 468A of the Internal Revenue Code and § 1.468A-1(b)(6) of the Income Tax Regulations. In addition, you ask whether these payments generate a specified liability loss under § 172(f), and if so, what is the earliest taxable year to which such a loss may be carried.

Taxpayer represents the facts and information relating to its request for rulings as follows:

Taxpayer, a corporation, is wholly-owned (through an additional corporation) by Parent. Taxpayer owns a P percent interest in both Plant A and Plant B and is responsible for D percent of the cost of decommissioning each Plant. The Plants are at Location and the amended operating license of Plant A is scheduled to expire on Date 1 and the operating license of Plant B is scheduled to expire on Date 2. On Date 3 Taxpayer notified the Nuclear Regulatory Commission (NRC) that both Plants had permanently ceased operations. With respect to nuclear decommissioning costs that are included in the Taxpayer's cost of service for ratemaking purposes as well as for other matters, Taxpayer is subject to regulation by Commission. Taxpayer maintains a separate Fund for each of the Plants. Commission has authorized collections of amounts for decommissioning from ratepayers and the Service has approved schedules of ruling amounts for contributions to these Funds.

In the transition of the Plants from operational status to a safe shutdown and then to physical dismantlement of the Plants and restoration of the site as required by Commission and the Nuclear Regulatory Commission, the operational workforce of the Plants will be reduced overall. The Taxpayer has broadly described the types of tasks to be performed by employees during the decommissioning process as follows: (1) to plan and design all of the logistical and technical aspects required to take a nuclear power plant from an operational-ready status to safe shutdown and non-operational status to a fully dismantled and restored site; (2) to ensure the safe and orderly transition of the Plants from an operational-ready status to safe shutdown and non-operational status; (3) maintain the Plants in a safe condition during the actual dismantlement of the Plants; and (4) dismantle, remove, and restore the site to its regulatory and legally required condition. When employees are no longer needed for operation and or any phase of the decommission process, those employees are released from service with the Taxpayer. Rules of the Commission allow the collection of decommissioning amounts for the severance and other assistance payments to separated employees who become unemployed as a result of decommissioning.

In addition to the severance payments described above, Taxpayer will incur "pre-dismantlement costs." These costs are described by the Taxpayer broadly as follows: (1) preparation for physical decommissioning of the units; (2) consolidation and restoration of the facilities of the Plants and the site upon which they are located; (3) security for the Plants and the surrounding site; (4) communication with affected communities regarding the permanent retirement of the Plants and plans for decommissioning of the Plants; and (5) staffing costs incurred as a result of the permanent retirement and prior to the commencement of physical dismantlement of major components of the Plants.

For reasons of administrative necessity, many of the costs described above will be paid initially, either by an unrelated company that owns the remainder of Plant A and

Plant B not owned by Taxpayer, or by Taxpayer. These costs will then be reimbursed to the unrelated company or to Taxpayer by the Fund.

Taxpayer requests the following rulings:

(1) Severance payments as described in the Taxpayer's request constitute "nuclear decommissioning costs" within the meaning of § 468A and § 1.468A-1(b)(6), and therefore can be paid out of the Funds for the related Plant.

(2) Pre-dismantlement decommissioning costs as described above constitute "nuclear decommissioning costs" within the meaning of § 468A and § 1.468A-1(b)(6), and therefore can be paid out of the Funds for the related

(3) Reimbursement by the Funds to the unrelated company or to the Taxpayer of severance payments and pre-dismantlement decommissioning costs represent a permissible use of the Funds under § 468A(c)(4) and §§ 1.468A-5(a)(3)(i) and 1.468A-5(b)(2)(i), and is not a prohibited self-dealing transaction under § 1.468A-5(b)(1).

(4) May deductions for the Severance Payments described in Issue 1 and the Pre-Dismantlement Decommissioning Costs described in Issue 2 generate a specified liability loss under § 172(f), and if so, what is the earliest taxable year to which such a loss may be carried?

LAW AND ANALYSIS

Issues 1, 2, and 3

Section 468A(a) was added to the Code in 1984 by Deficit Reduction Act of 1984, Pub. L. No. 98-369. Section 468A(a) allows owners/operators of nuclear power plants to currently deduct the future costs of decommissioning a nuclear power plant by making contributions to a Fund prior to when economic performance occurs.

Section 468A(c)(1) and § 1.468A-2(d)(1) generally require the owner/operator to include in gross income amounts that are distributed from a Fund. In addition to any deduction under section 468A(a) for contributions to a Fund, section 468A(c)(2) recognizes that an owner/operator may deduct otherwise deductible nuclear decommissioning costs, (such as under § 162), for which economic performance (within the meaning of section 461(h)) occurs during a taxable year.

Section 468A(e)(4) limits the use of the amounts in a Fund to satisfying any liability of any person contributing to the Fund for the decommissioning of a nuclear power plant, the payment of administrative and other incidental expenses of the Fund, and making investments.

Section 1.468A-1(b)(6) states, in part, that "nuclear decommissioning costs" means "all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant, whether that nuclear power plant will continue to produce energy or has permanently ceased to produce electric energy. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to the plant after the actual decommissioning occurs, such as physical security and radiation monitoring expenses."

Section 162 generally allows a deduction for the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

Section 468A(e)(5) provides that, under regulations prescribed by the Secretary, for purposes of § 4951 the Fund shall be treated in the same manner as a trust described in § 501(c)(21). This section is implemented by §1.468A-5(b). Section 1.468A-5(b)(1) states that the excise taxes imposed by § 4951 apply to each act of self-dealing between the Fund and a disqualified person.

In part, § 1.468A-5(b)(2) defines "self-dealing" for purposes of § 468A and the regulations thereunder as any act described in section 4951(d) except: (i) A payment by a nuclear decommissioning fund for the purpose of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates.

Section 1.468A-5(b)(3) provides that the term "disqualified person" includes each person described in § 4951(e)(4) and § 53.4951-1(d). Section 4951(e)(4) of the Code provides the term "disqualified person," with respect to a trust, includes a contributor to the trust and a trustee of the trust.

Section 1.468A-5(c)(1)(i) provides that if at any time during the taxable year a qualified nuclear decommissioning fund does not satisfy a requirement of section 1.468A-5(a), the Service may, in its discretion, disqualify all or a portion of the fund as of the date that the fund does not satisfy such requirements.

Section 1.468A-5(c)(3) provides that, if all or any portion of a qualified nuclear decommissioning fund is disqualified under section 1.468A-5(c)(1), the portion of the qualified nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of the disqualification. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the qualified nuclear decommissioning fund. In addition, the electing taxpayer must include in gross income for the taxable year that includes the date of disqualification an amount equal to the product of the fair market value of the assets of the fund determined as of the date of disqualification (reduced by certain amounts including any tax that is (1) imposed on

the income of the fund, (2) is attributable to income taken into account before the date of the disqualification or as a result of the disqualification, and (3) has not been paid as of the date of the disqualification) and the fraction of the qualified nuclear decommissioning fund that was disqualified under section 1.468A-5(c)(1).

We have examined the representations and information submitted by the Taxpayer in relation to the requirements set forth in § 468A and the regulations thereunder. Based solely upon these representations of the facts, we conclude that severance payments and pre-dismantlement decommissioning costs are nuclear decommissioning costs within the meaning of § 468A and § 1.468A-1(b)(6). The expenses, as broadly described by Taxpayer, are incurred in connection with the entombment, decontamination, dismantlement, removal, and disposal of the structures, systems, and components of a nuclear power plant. We note that we are not ruling on any particular expense but on broad categories of expense and emphasize that each specific expense must satisfy the tests in § 468A and the regulations thereunder.

Regarding the reimbursement by the Funds of severance payments and predismantlement decommissioning costs, these amounts fall into two groups: (1) those paid initially by the unrelated company and then invoiced to Taxpayer and paid by the Funds and (2) those paid initially by the unrelated company, invoiced and paid by Taxpayer and then reimbursed by the Funds to Taxpayer. In both cases, we conclude that such payments are a permissible use of the Funds and that the reimbursements are within the exception to the self-dealing rules contained in § 1.468A-5(b)(2)(i). That section defines "self-dealing" for purposes of § 468A and the regulations thereunder as any act described in section 4951(d) except "(i) A payment by a nuclear decommissioning fund for the purpose of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates." Here the reimbursement of severance payments and pre-dismantlement decommissioning costs made by the Funds are made for the purpose of satisfying the liability of Taxpayer for decommissioning costs of the nuclear power plant to which the Fund relates and are therefore not "self-dealing." Thus, the reimbursement by the Funds to the unrelated company or to Taxpayer of severance payments and pre-dismantlement decommissioning costs represent a permissible use of the Funds. This reimbursement constitutes an amount distributed from a Fund as described in § 468A(c)(1) and § 1.468A-2(d)(1). We note that this ruling applies only to reimbursement of the amounts paid for the severance payments and the pre-dismantlement decommissioning costs by the Taxpayer, and not any additional amounts such as "service fees" or any other amounts not solely to reimburse Taxpayer for decommissioning costs actually paid.

Issue 4

Section 172(a) allows a deduction for the taxable year equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. With certain modifications, § 172(c) defines a net operating

loss as the excess of the deductions allowed by Chapter 1 of the Code over the gross income.

Section 172(b)(1)(A) generally provides that a net operating loss (NOL) for any taxable year is carried back to each of the 2 taxable years preceding the taxable year of the loss and carried forward to each of the 20 taxable years following the year of the loss. However, § 172(b)(1)(C) provides a special carryback period for the portion of any NOL that qualifies as a specified liability loss.

Section 172(f)(1)(B)(i) defines a specified liability loss, in part, as any amount allowable as a deduction under Chapter 1 of the Code (other than §§ 468(a)(1) or 468A(a)) which is in satisfaction of a liability under a federal or state law requiring the decommissioning of a nuclear power plant (or any unit thereof) that is taken into account in computing the NOL for the taxable year. Section 172(f)(1)(B)(ii) provides that a deduction for a liability may only generate a specified liability loss if (I) the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, and (II) the taxpayer used an accrual method of accounting throughout the period or periods during which such act (or failure to act) occurred.

Section 172(f)(3) provides that, except as provided in regulations, that portion of a specified liability loss which is attributable to amounts incurred in the decommissioning of a nuclear power plant (or any unit thereof) may, for purposes of subsection (b)(1)(C), be carried back to each of the taxable years during the period (A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and (B) ending with the taxable year preceding the loss year.

Section 1.446-1(c)(1)(ii)(A) provides that under an accrual method of accounting, a liability is incurred and generally taken into account for federal income tax purposes in the year in which all the events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred with respect to the liability.

Section 461(h) makes clear that generally the all events test is not treated as having been met any earlier than the taxable year in which economic performance has occurred with respect to a liability. See also section 1.461-4(a)(1) of the regulations.

Section 461(h)(2)(B) provides that in the case of a liability that requires the taxpayer to provide services, economic performance occurs as the taxpayer provides the services. Section 1.461-4(d)(4) of the regulations provides that economic performance occurs with respect to such service liabilities as the taxpayer incurs costs in connection with the satisfaction of the liability.

The phrase "amounts incurred in the decommissioning of a nuclear power plant" should be interpreted to have the same meaning as the term "nuclear decommissioning costs" under § 468A because the relevant language contained in both §§ 172(f)(3) and

468A was added to the Code by the same section of the Tax Reform Act of 1984 (the 1984 Act), and both sections were intended to provide relief to the nuclear power plant industry. See generally H. Rep. No. 861, 98th Cong., 2d Sess. 877 (1984). Accordingly, a taxpayer's expenses in decommissioning the power plants that are deductible under Chapter 1 of the Code are "amounts incurred in the decommissioning of a nuclear power plant" under section 172(f)(3) to the extent they are amounts described in section 1.468A-1(b)(6) of the regulations.

Moreover, the act or failure to act giving rise to such liabilities has occurred at least 3 years prior to the beginning of the taxable year when such liabilities will be deductible. In the case of pre-dismantlement decommissioning costs, the act giving rise to the liability occurred when licenses to operate the Plants were granted and the Plants were placed in service. In the case of the liability for severance payments, the act giving rise to such liability was when State enacted a statute which could be interpreted to allow such costs and the Commission approved such costs as decommissioning expenses. Finally, the Taxpayer uses the accrual method of accounting. Consequently, to the extent deductions for nuclear decommissioning costs generate an NOL, that portion of the NOL will qualify as a specified liability loss as defined in § 172(f).

The remaining issue concerns the taxable years to which such a loss may be carried. As a general rule, § 172(b)(1)(C) allows the unabsorbed portion of a specified liability loss to be carried back to each of the 10 taxable years preceding the taxable year of the loss, with the 10th preceding taxable year being the first year to which the loss is carried. However, as noted above, § 172(f)(3) generally permits the portion of a specified liability loss attributable to nuclear decommissioning expenses to be carried back to each of the taxable years during the period (A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and (B) ending with the taxable year preceding the loss year.

This special rule for NOLs generated by nuclear decommissioning costs and the economic performance requirements of section 461(h) for accrual method taxpayers were both originally enacted in the same section of the 1984 Act. In adding § 172(k) to the Code, the 1984 Act provided for an extended carryback period for such losses. However, former § 172(k)(4) did not allow carrybacks to taxable years beginning before January 1, 1984, unless the loss could be carried back to those years without the benefit of special rules for deferred statutory or tort liability losses.

In section 11811 of the Omnibus Budget Reconciliation Act of 1990 (the 1990 Act), Congress reorganized the provisions in section 172. Congress placed the 10-year carryback for product liability losses and what had previously been called deferred statutory or tort liability losses under the same subsection of § 172, namely § 172(f), labeling such losses specified liability losses. After striking certain sections of § 172, in section 11811(b)(2)(A) of the 1990 Act Congress enacted a new § 172(f). Included in section 11811(b)(2)(B) of the 1990 Act is the following savings provision which continued the carryback limitation originally contained in the 1984 Act:

The portion of any loss which is attributable to a deferred statutory or tort liability loss (as defined in § 172(k) of the Internal Revenue Code of 1986 as in effect on the day before the date of the enactment of this Act) may not be carried back to any taxable year beginning before January 1, 1984, by reason of the amendment made by subparagraph (A).

In section 3004 of the Tax and Trade Relief Extension Act of 1998 (the 1998 Act), Congress restricted the types of liabilities the deduction of which could generate a specified liability loss to five enumerated liabilities (in addition to product liability losses), including federal or state law liabilities to decommission a nuclear power plant (or any unit thereof). Prior to the 1998 Act, a specified liability loss could be based on any deduction arising out of a federal or state law provided the additional requirements of the statute were satisfied.

In contrast to the prior acts, in the 1998 Act Congress did not enact a savings provision prohibiting the carryback of specified liability losses to any taxable year beginning before January 1, 1984. Plant A was placed in service in Year A, but Plant B was placed in service in Year B. This raises the question of whether the portion of any specified liability loss attributable to expenses to decommission Plant A may be carried back to Year A, a taxable year beginning before January 1, 1984.

In the 1998 Act Congress only amended the definition of a specified liability loss. Congress did not amend the Code sections that addressed the taxable years to which such losses could be carried back. Congress did not amend section 172(f)(3) which contains the special carryback rule for specified liability losses attributable to deductions for nuclear decommissioning costs. Consequently, the savings provision contained in the 1990 Act continues to apply to section 172(f)(3) after the purely definitional changes that Congress made in the 1998 Act. Therefore, the first taxable year that any specified liability loss attributable to decommissioning Plant A may be carried back to is Year B. The first taxable year that the portion of any specified liability loss attributable to decommissioning Plant B may be carried back to is also Year B.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. We note that, even though the granting of the license by the NRC is the act giving rise to the liability, the liability is not incurred until economic performance occurs – when the actual decommissioning takes place. The taxpayer may apply § 172(f) after such time.

This ruling is directed only to the Taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. In accordance with the

power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives. We are also sending a copy of this letter ruling to the Director.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)

ATTACHMENT C

Declaration of Diana Day Regarding Confidentiality of Certain Data

BEFORE THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF CALIFORNIA

DECLARATION OF DIANA DAY REGARDING CONFIDENTIALITY OF CERTAIN DATA

I, DIANA DAY, do declare as follows:

1. I am the Vice President of Enterprise Risk Management and Compliance for San Diego Gas & Electric Company ("SDG&E"). I have reviewed the testimonies addressing SDG&E's 2013 and 2014 Nuclear Fuel Contract Cancellation Costs (Exhibit SDGE-06) submitted concurrently herewith in the consolidated proceeding concerning SCE's and SDG&E's Applications for Reasonableness Determination and Recovery of their 2014 SONGS costs. (A.15-01-014/15-02-006). In addition, I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with Decision ("D.") 16-08-024 to demonstrate that the confidential information ("Protected Information") provided in Exhibit SDGE-06 submitted concurrently herewith and as described in specificity in paragraph 3 and Exhibit 1 to this document, is within the scope of data protected as confidential under applicable statutory provisions including, but not limited to, Public Utilities Code ("PUC") § 583 and General Order ("GO") 66-C.

3. Listed below are the data for which SDG&E is seeking confidential protection and the bases for SDG&E's confidentiality request.

Location of Confidential Data	Pages (if available)	Description of Information that is Confidential	Basis for SDG&E's Confidentiality Claim
SDGE-06	Throughout the volume	Contract cancellation settlement amounts and settlement terms	GO 66-C, section 2.2(b) (see Exhibit 1)
SDGE-06	Throughout the volume	Analysis of dispute	GO 66-C, section 2.2(b) (see Exhibit 1)
SDGE-06	Throughout the volume	Original contract values and terms	GO 66-C, section 2.2(b) (see Exhibit 1)

4. Some of the information for which SDG&E now requests confidential protection was inadvertently made public before SDG&E was informed by SCE that the information was confidential. For example, some of the Protected Information was inadvertently disclosed in a non-redacted version of supplemental testimony served on October 30, 2015 in this proceeding (SDGE-04). SDG&E requested that all parties in receipt of that document destroy it immediately once it discovered the error. No party objected to SDG&E's request. SDG&E assumes all parties complied with its request.

5. The Protected Information cannot be provided in a form that can be further aggregated, redacted, summarized, masked, or otherwise protected in a manner that would allow partial disclosure of the data while still protecting confidential information.

6. In accordance with the provisions described herein, the Protected Information should be protected from public disclosure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 16 day of February 2017, at San Diego, California.

Diana Day
Vice President, Enterprise Risk Management and Compliance

Exhibit 1

SDG&E Identification of Confidential Information in Exhibit SDGE-06 (SDG&E's 2013 and 2014 Nuclear Fuel Contract Cancellation Costs)

SDG&E has identified confidential information in Exhibit SDGE-06 and has marked the information accordingly. The identified information is protected as detailed below.

Exhibit SDGE-06 discusses the cancellation of contracts between Southern California Edison Company (SCE) as operating agent of SONGS and two nuclear fuel vendors, and costs associated with the cancellations. The contract cancellation costs (and the details of the underlying settlements) have not been made public.

1. Information about contract price and unit price of fuel and fuel reprocessing is market sensitive information, the disclosure of which could place SDG&E (and SCE) at an unfair business disadvantage. SCE and SDG&E still possess fuel inventory that will be re-sold in the fuel market. If information regarding SCE's nuclear fuel contract and termination settlement quantities and pricing terms were publicly disclosed without protection, market competitors could misuse the information during negotiations for quantities being re-sold to the detriment of SCE and SDG&E. For example, if a competitor seeking to purchase existing inventory knew the termination/settlement quantity and price terms, they would have an opportunity to adjust their bid prices. Because customers of SDG&E and SCE benefit under the SONGS OII Settlement Agreement (Section 4.7), approved by the Commission in D.14-11-040, from the re-sale of nuclear fuel, public disclosure of this information could also disadvantage those customers.

2. Exhibit SDGE-06 also contains information about the utilities' assessments of the cancellation disputes and potential settlement amounts. Public disclosure of this information could place SDG&E (and SCE) at an unfair

business disadvantage because they reveal the utilities' settlement analysis and approaches. Public release of this information could hinder SDG&E's (and SCE's) flexibility in future negotiations to cancel supply contracts at SONGS.

3. The SONGS 2 and 3 nuclear fuel contracts and termination/settlement agreements between SCE and the vendors contain confidentiality clauses identifying commercially sensitive information. Some of the Protected Information is considered sensitive information under those contracts and agreements and public dissemination is prohibited. Therefore, SDG&E is obligated to protect the information from public disclosure.

For these reasons, SDG&E maintains that the information about the original contracts, the utilities' analysis of the dispute and resulting contract cancellation costs contained in Exhibit SDGE-06 are market sensitive information which should remain confidential under GO 66-C Section 2.2(b) ("unfair business advantage"). In addition, SDG&E maintains that the contracts and settlement agreements executed by SCE and the vendors shall not be publicly disclosed. Therefore, the information required confidential treatment under GO 66-C Section 2.8 ("Information obtained in confidence from other than a business regulated by this Commission where the disclosure would be against the public interest.")