# Concurrence of Commissioner Grueneich

## October 14, 2010 Business Meeting, Agenda ID #9734, Item 37

I support the decision because it provides adequate safeguards to ensure that SCE's past and future investments in the four corners power plant comply with senate bill 1368, the greenhouse gas emissions performance standard for baseload generation. Of particular importance is our commitment to review the cumulative impact of all of SCE's investments in determining whether the spirit and the letter of the law has been met, and the requirement that SCE conduct a feasibility study on continuing its ownership interest in four corners.

However, I disagree strongly with the decision not to open an investigation into a potential rule 1.1 violation by SCE. That rule – which is titled "ethics" - requires any person appearing before this commission to never "mislead the commission or its staff by an artifice or false statement of fact or law."

In its petition for modification, SCE made representations regarding the scope of its contractual liability and the nature of its decision-making role under the four corners operating agreement. However, SCE failed to submit the agreement with its petition, even though rule 16.4 requires petitioners to support any factual allegation with specific citations to the record in the proceeding or matters that may be officially noticed.

Upon request of my office, SCE was required to submit the agreements for review. The so-called "new information" lead to the withdrawal of the original decision in this case and the preparation of a new decision based on the "new information".

Let me emphasize that the "new information" SCE submitted was <u>not</u> new; it was information that SCE had in its possession when it prepared and filed its petition

for modification, a petition that its attorneys verified. This information showed that SCE had the right to request modification of the operating agreement to reflect changes in California law, including SB 1368, even though SCE claimed in its petition that it had little "discretion or choice" over its financial obligations under the operating agreement. On the facts before us – literally a change in the original proposed decision to a new proposed decision - SCE's statements and omissions were material to the outcome of this case.

Despite these facts, the proposed decision declines to open an investigation because SCE has apologized, submitted its own consultant's report on SCE's actions in this case, and promised to train its employees better. The decision does not even slap SCE on the wrist; instead it praises SCE for hastily conducting its own investigation which concluded that the petition was not misleading.

However, the facts lead to the conclusion that the commission was mislead, since the result was a new decision.

The obligation of the regulated utilities to be truthful is critical to this commission's ability to effectively oversee and regulate the actions of the utilities. In many, many areas of regulation, this commission relies on the self-reporting of the utilities and accords a great deal of discretion to the utilities to comply with our rules. This type of oversight is effective only if we can rely on the utilities to be truthful. And we guarantee truthfullness by sending strong, clear, consistent messages that any form of misrepresentation will not be tolerated.

In this case we have statements that, in SCE's own words, led to "misunderstandings and confusion as to the fundamental bases of the requested relief" and which were material to the outcome of the case. Yet we decline to exercise our jurisdiction to investigate and impose sanctions as appropriate.

I disagree with this course of action.

/s/ DIAN M. GRUENEICH
Dian M. Grueneich
Commissioner