

October 16, 2012

U.S. Nuclear Regulatory Commission
Office of Secretary of the Commission
Sixteenth Floor
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Re: NRC Proceeding San Onofre 50-361-CAL and 50-362-CAL. Request that the NRC Decide Petition to Intervene and Application by Friends of the Earth to Stay Any Decision to Restart Units 2 or 3 at the San Onofre Nuclear Generating Station

To Commissioners of the Nuclear Regulatory Commission:

This letter is submitted on behalf of Petitioner Friends of the Earth in the proceeding to address major safety issues with the replacement steam generators at San Onofre Nuclear Generating Station Units 2 and 3, docket numbers 50-361 and 50-362.

Background

On June 18, 2012, Friends of the Earth filed a petition requesting that the Nuclear Regulatory Commission (NRC or “Commission”) hold an adjudicatory hearing on the issue of whether Southern California Edison (Edison) is entitled to a license amendment to operate the San Onofre Nuclear Generating Station Units 2 and 3 with replacement steam generators. At the same time, Friends of the Earth also filed an application to stay any decision to restart Units 2 or 3 pending the conclusion of a license amendment proceeding required by NRC regulations.¹ All responses and reply briefs in this matter were completed by July 20, 2012.

More than three months have now passed since Friends of the Earth requested that the Commission stay the restart of either unit 2 or 3, and commence the adjudicatory hearing required in the amendment process. In that time, the Commission has failed even to place either issue on its agenda, much less rule on Petitioner’s requests—a failing all the more striking now that Edison has submitted its plan to restart Unit 2.² Edison has given no indication that it intends to seek a license amendment, nor the Commission to require one.

¹ 10 C.F.R. § 50.59 (requiring a licensee to seek a license amendment when it makes modifications to a facility that trigger the safety criteria enumerated in this section).

² Press Release, Southern California Edison, Southern California Edison Submits Response to Confirmatory Action Letter and Unit 2 Restart Plans to Nuclear Regulatory Commission (Oct. 4, 2012) (on file with Friends of the Earth).

The Commission Must Decide Petitioner's Petition

NRC rules clearly spell out a licensing process for the replacement of major components such as steam generators when they include changes in design that adversely affect safe operation of the unit.

This is the case here. It is a fact that San Onofre's defective replacement steam generators are the uncontested reason that both Units 2 and 3 have been kept shut for eight months. As detailed in the Petition to Intervene, it is also a fact that these steam generators differ from the ones they replaced in the following key respects:

- (1) Edison added 400 extra tubes to the replacement steam generators;
- (2) To accommodate the extra tubes, Edison removed the stay cylinder, which served as a necessary structural support; and
- (3) Edison replaced the egg crate tube supports with a new broached plate design that provided insufficient damping from vibration, causing the tubes to wear at a rapid rate.³

It is also beyond dispute that the design changes Edison made resulted in steam generators that replaced equipment that had lasted twenty-eight years with ones that were so defective that they had to be shut down after less than twenty-eight *months* of operation. The excessive deterioration of the tubes in the new steam generators is proof that the replacement generators altered the safety analysis for the plant, requiring a licensing proceeding. To suggest the replacement steam generators were "like for like" replacements of the original steam generators would be to ignore the difference between equipment that functions and equipment that malfunctions.

Edison's plan to restart Unit 2 at reduced power is further evidence of the disparity between the replacement and original steam generators.⁴ Surely equipment that can only operate safely at reduced power cannot be accurately described as an "in-kind" replacement of equipment that operated at full power safely for almost three decades.

The failure, to date, of the Commission to grant an adjudicatory hearing in this matter contrasts starkly with the process in an almost identical situation at the Palo Verde Nuclear Generating Station, where the Edison Company was a partial owner but not the operator. At that plant, the utility in 2002 replaced two steam generators at Unit 2 that were of similar design to San Onofre. They also added four hundred tubes but enlarged the unit somewhat so that they were able to retain the stay cylinder and egg crate tube support.

At Palo Verde, the utility, as required, applied for a license amendment and went through the public license amendment and hearing process that Friends of the Earth seeks in this case.

³ Petition to Intervene, at 17–18.

⁴ Press Release, Southern California Edison, Southern California Edison Submits Response to Confirmatory Action Letter and Unit 2 Restart Plans to Nuclear Regulatory Commission (Oct. 4, 2012) (on file with Friends of the Earth).

The NRC correctly requires that when utilities replace major equipment with a revised design that affects the unit's safe operation, the licensee must obtain a license amendment. Palo Verde did—San Onofre has not. It cannot be lawful for utilities to pick and choose the process they undergo. Petitioner seeks only that this Commission enforce its own rules in an even-handed manner.

In light of these facts, it is not surprising that even Elmo Collins, NRC's Regional Administrator for Region IV, has publicly stated that it is an "open question" whether a license amendment is required.⁵ We submit that, consistent with its decision on the Palo Verde plant, its own regulations, and the Atomic Energy Act, the Commission, not the staff, must decide the point and must grant the petition filed by Friends of the Earth and convene a licensing proceeding to amend formally the license for San Onofre.

The Commission Must Decide Petitioner's Stay Application Now

It is of great concern to Friends of the Earth that the Commission has also failed to act on its stay application. Friends of the Earth filed an application for a stay—as well as for a temporary *emergency* stay—more than three months ago. Now that SCE has presented a plan for restarting the damaged reactor and requested the NRC allow restart, the need for a stay to preserve the status quo while the Commission determines our petition to require a hearing in the context of a licensing amendment proceeding, as requested by Friends of the Earth, is all the more obvious. The stay serves a critical public safety function: it ensures that the plant will not be restarted before serious safety issues have been resolved and before Edison has fully complied with the NRC's process, which exists precisely to ensure that plants are operating safely. And yet, none of these protections are in place.

The irony here is that these defective replacement steam generators are a dramatic example of why the NRC rules require a public adjudicatory hearing and detailed, independent scrutiny of equipment that differs from the equipment being replaced.

The NRC staff's private review of the safety of these replacement steam generators is not a substitute for the open license amendment process that permits testimony from independent experts, cross-examination of witnesses, and a decision by an independent panel with no previous involvement in the case.

To permit Edison to restart these defective steam generators without the rigorous public scrutiny afforded by the license amendment process—which Edison should have been required to undergo in the first place—would clearly violate the Atomic Energy Act and the NRC's own regulations. Statements by the NRC to the effect that review of Edison's restart plan will take months⁶ do not provide Petitioner and the public with any assurance that the plant will not restart without a proper license amendment.

Specifically, the NRC must require Edison to go through the formal license amendment process, which will ensure that:

⁵ Oral statement made during a press conference in San Juan Capistrano, Oct. 9, 2012.

⁶ *Id.*

- (1) A true root cause analysis will have been performed prior to the NRC approving restart;
- (2) The critical safety problems present at the plant will have been resolved; and
- (3) Notice, and an opportunity for a public adjudicatory hearing, will be given to the public prior to the NRC authorizing restart.

Conclusion

Time is being wasted. The hearing associated with the license amendment process needs to commence at once, not only to satisfy the rule of law and the interest of the public, but so that the restart of the plant is not unduly delayed if Edison's restart plan is found to meet the safety-first goal of the NRC after securing a license amendment.

We thus reiterate our request that the Commission immediately grant the stay requested by Friends of the Earth while the Commission considers Friends of the Earth's request for an adjudicatory hearing in the context of a formal relicensing proceeding. The Commission's three-month delay in deciding our application for a temporary emergency stay, and stay, is unreasonable.

Regards,

/s/ Richard E. Ayres

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