

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)

SOUTHERN CALIFORNIA EDISON COMPANY)

(San Onofre Nuclear Generating Station))

Docket Nos. 50-361 and 50-362

October 23, 2012

**SOUTHERN CALIFORNIA EDISON COMPANY’S RESPONSE TO 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**

I. INTRODUCTION

On June 18, 2012, Friends of the Earth (“FOE”) filed both a Stay Petition¹ and a Hearing Request² with the U.S. Nuclear Regulatory Commission (“NRC”) regarding the San Onofre Nuclear Generating Station (“SONGS”) Units 2 and 3 steam generators that had been installed at SONGS during 2009-2011. The Stay Petition and Hearing Request provided FOE’s opinions about these steam generators, and requested that the NRC stay any restart decision for the units and hold a hearing regarding the need for a license amendment with respect to those steam generators.

On October 16, 2012, FOE sent a letter to the Commission, entitled “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” (“Letter”). The Letter characterizes the Commission’s consideration of the Stay Petition and Hearing Request as

¹ Application to Stay Any Decision to Restart Units 2 or 3 at the San Onofre Nuclear Generating Station Pending Conclusion of the Proceedings Regarding Consideration of the Safety of the Replacement Steam Generators (June 18, 2012) (“Stay Petition”).

² Petition to Intervene and Request for Hearing by Friends of the Earth (June 18, 2012) (“Hearing Request”).

resulting in an “unreasonable” delay, and requests that the Commission “immediately grant” the Stay Petition and commence a hearing associated with the license amendment process “at once.”³

For the reasons explained below, the FOE Letter contradicts the governing statutory authority, NRC regulations, and NRC precedent, and should be dismissed without any further consideration. Nonetheless, out of an abundance of caution and to fully reserve its rights, Southern California Edison Company (“SCE”) submits this response to the FOE Letter.

In summary, the FOE Letter is an unauthorized filing because there is no adjudicatory proceeding in which to file the Letter. Even assuming a proceeding exists, the Letter fails to satisfy other governing requirements as either an amendment or supplement to FOE’s earlier filings or as a motion. Additionally, the FOE Letter does not cure any of the numerous, independent and fatal defects that SCE already identified with the Stay Petition and Hearing Request. Finally, the Letter incorrectly claims that SCE has not obtained license amendments for the SONGS steam generator replacements, and new information in the Letter is not only mischaracterized, but actually supports rejection of the Stay Petition and Hearing Request. For these reasons, the FOE Letter should be rejected along with the Stay Petition and Hearing Request.

II. BACKGROUND

SCE completed replacement of the SONGS Unit 2 steam generators in January 2010, and the Unit 3 steam generators in January 2011.⁴ SCE requested and obtained license amendments for certain issues related to the steam generator replacements (*e.g.*, changes to Technical

³ Letter at 4.

⁴ See Letter from E. Collins, NRC, to P. Dietrich, SCE, Confirmatory Action Letter – San Onofre Nuclear Generating Station, Units 2 and 3, Commitments to Address Steam Generator Tube Degradation, CAL 4-12-001, at 2 (Mar. 27, 2012) (“CAL”), *available at* ADAMS Accession No. ML12087A323.

Specifications),⁵ but a license amendment was unnecessary for other issues associated with the replacements based on SCE's evaluation of those issues under 10 C.F.R. § 50.59.⁶

On January 31, 2012, SCE identified a leak in a tube in one of the SONGS Unit 3 steam generators.⁷ This leak was well below allowable limits in the Technical Specifications, and presented no hazard to the public health and safety.⁸ Pursuant to established procedures, SCE shut down Unit 3.⁹ At the time, SONGS Unit 2 was already shutdown and undergoing a refueling outage.¹⁰ SCE initiated an investigation into the cause of the leakage at Unit 3.

On March 23, 2012, SCE sent a letter to the NRC committing to take certain actions to determine and address the causes of the leak and identified instances of tube wear prior to restart of the SONGS units.¹¹ The NRC memorialized its understanding of the actions planned by SCE in a March 27, 2012 Confirmatory Action Letter ("CAL"), which confirmed the actions to be taken prior to restarting either unit.¹² The CAL also stated that permission for the SONGS units to resume power operations would be provided by the NRC in writing.¹³ SCE informed the NRC

⁵ Letter from J. Hall, NRC, to R. Ridenoure, SCE, San Onofre Nuclear Generating Station, Units 2 and 3 – Issuance of Amendments Re: Technical Specification Changes in Support of Steam Generator Replacement (TAC Nos. MD9160 and MD9161), at 1 (June 25, 2009), *available at* ADAMS Accession No. ML091670298 ("SONGS Steam Generator License Amendment").

⁶ Letter from Chairman G. Jaczko, NRC, to Senator B. Boxer, at 1 (June 11, 2012), *available at* ADAMS Accession No. ML12152A131 ("NRC regulations at 10 CFR 50.59 and associated guidance in Regulatory Guide 1.187 include criteria for a licensee to determine when a license amendment is required for proposed changes to a facility. Historically, RSGs [replacement steam generators] have been evaluated against these criteria and no license amendment was required. SCE's evaluation for the SONGS RSGs was consistent with these past practices and supported by all NRC inspections to date.").

⁷ Letter from P. Dietrich, SCE, to E. Collins, NRC, Steam Generator Return-to-Service Action Plan, San Onofre Nuclear Generating Station, at 1 (Mar. 23, 2012), *available at* ADAMS Accession No. ML12086A182.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2-3; *id.*, Attachment 1.

¹² *See* CAL at 1-3.

¹³ *Id.* at 2.

on October 3, 2012 that it had completed the CAL actions for SONGS Unit 2.¹⁴ SCE has not requested any license amendment to support restart of the SONGS units.

In the interim, on June 18, 2012, FOE submitted the Stay Petition and Hearing Request. SCE and the NRC Staff both submitted answers opposing the Stay Petition on June 28, 2012¹⁵ and answers opposing the Hearing Request on July 13, 2012.¹⁶ FOE submitted its Reply on July 20, 2012.¹⁷ FOE then filed the October 16, 2012 Letter that is the subject of this response.

III. THE LETTER SHOULD BE REJECTED

A. The Letter Is an Unauthorized Filing

As SCE demonstrated in its answers to the Stay Petition and Hearing Request, FOE's requests are unauthorized filings that are contrary to the NRC Rules of Practice. With the Letter, FOE continues this practice.

Although FOE pretends otherwise,¹⁸ there is no "proceeding" to stay and no "proceeding" in which to request a hearing, as SCE has repeatedly explained. Section 189(a)(1)(A) of the Atomic Energy Act of 1954, as amended ("AEA"), allows for hearing requests in proceedings "for the granting, suspending, revoking, or amending of any license."¹⁹ SCE has not requested, and the NRC has not instituted, any proceeding to grant, suspend, revoke,

¹⁴ Letter from P. Dietrich, SCE, to E. Collins, NRC, Confirmatory Action Letter – Actions to Address Steam Generator Tube Degradation, at 1 (Oct. 3, 2012), *available at* ADAMS Accession No. ML12285A263.

¹⁵ Southern California Edison's Answer Opposing Friends of the Earth's Application to Stay Any Decision to Restart Units 2 or 3 at the San Onofre Nuclear Generating Station (June 28, 2012) ("SCE Stay Petition Answer"); NRC Staff's Answer to Friends of the Earth's Application to Stay Any Decision to Restart Unit 2 or 3 at the San Onofre Nuclear Generating Station Pending Conclusion of the Proceedings Regarding Consideration of the Safety of the Replacement Steam Generators (June 28, 2012).

¹⁶ Southern California Edison Company's Answer Opposing Friends of the Earth's Hearing Request and the Natural Resources Defense Council Response Regarding San Onofre Nuclear Generating Station Units 2 and 3 (July 13, 2012) ("SCE Hearing Request Answer"); NRC Staff's Answer to Petition to Intervene and Request for Hearing by Friends of the Earth on the Restart of the San Onofre Reactors (July 13, 2012).

¹⁷ Reply to SCE's and NRC Staff's Answer to Petition to Intervene and Request for Hearing by Friends of the Earth (July 20, 2012).

¹⁸ *See, e.g.*, Letter at 1 ("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." (Emphasis added)).

¹⁹ *See* 42 U.S.C. § 2239(a)(1)(A) (2011).

or amend *any* license. The Commission has ruled that intervention is not available when there is no pending “proceeding” of the sort specified in AEA Section 189(a).²⁰ SCE has further explained that SCE’s Section 50.59 evaluations for the replacement steam generators do not provide an opportunity to request a hearing,²¹ and there are no NRC proceedings or hearing rights associated with the CAL for the steam generators.²²

For these reasons, there is no proceeding in which FOE can submit its Stay Petition or Hearing Request, and, therefore, FOE has no right to attempt to litigate these issues. Accordingly, FOE’s Letter complaining about the timing of the Commission’s ruling on its requests likewise is an unauthorized filing, and should be rejected.

Additionally, even if it is assumed that a proceeding does exist, FOE’s Letter requesting that the Commission issue a ruling faster still does not comport with any pleading form contemplated by the NRC Rules of Practice. If the Letter was intended to be an amendment or a supplement to the Hearing Request, it fails to satisfy the timeliness or substantive requirements in 10 C.F.R. § 2.309.²³ If the Letter was intended to be a motion, it is late under 10 C.F.R. § 2.323(a) because it was not filed within ten days of any “occurrence or circumstance from which the motion arises,” and it would violate 10 C.F.R. § 2.323(b) because FOE did not consult

²⁰ See *New Jersey* (Dep’t of Law & Public Safety’s Requests Dated October 8, 1993), CLI-93-25, 38 NRC 289, 292 (1993); see also *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 677-78 (2008) (rejecting a request to hold a hearing and concluding “the AEA’s guarantee of a hearing on material issues is not without limitation” and the “hearing right provided in section 189(a) is not automatic”). NRC regulations further explain that “[a] proceeding commences when a notice of hearing or a notice of proposed action under § 2.105 is issued.” 10 C.F.R. § 2.318(a). Citing these regulations, the Commission explained in *Millstone* that “issuance of a ‘notice of hearing’ or a ‘notice of proposed action’ is a prerequisite to the initiation of a ‘proceeding.’” See *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-04-12, 59 NRC 237, 240 (2004). There has been no notice of hearing or notice of proposed action related to the SONGS units. Moreover, the Commission has clearly ruled that “a person cannot intervene in a proceeding before the proceeding actually exists.” *Id.* at 239. The D.C. Circuit has further explained that there is no “automatic right of intervention upon anyone.” *BPI v. AEC*, 502 F.2d 424, 428 (D.C. Cir. 1974).

²¹ See SCE Hearing Request Answer at 11.

²² See *id.* at 12.

²³ See, e.g., 10 C.F.R. § 2.309(c) (requiring petitioners filing requests after the deadline to demonstrate good cause).

with SCE before submitting the Letter. Either way, these failures alone support rejection of the Letter.

B. The Letter Does Not Cure the Deficiencies in the Stay Petition and Hearing Request

Although the FOE Letter purports to criticize the Commission for delay in issuing a decision on FOE's requests, and otherwise attempts to misconstrue the SONGS steam generator licensing issues, it in no way cures the numerous deficiencies in the Stay Petition and Hearing Request.

As SCE demonstrated in its answer to the Stay Petition, this request is fatally deficient for numerous reasons and should be rejected in its entirety.²⁴ First, there is no existing proceeding in which to file the Stay Petition, and FOE cannot create such a proceeding by filing a Stay Petition.²⁵ Second, FOE does not have the right to file a Stay Petition under 10 C.F.R. § 2.342 because there is no proceeding, no presiding officer has issued a decision, FOE is not a party, and there is no pending or anticipated request for NRC Commission review.²⁶ Third, FOE lacks standing to file the Stay Petition.²⁷ Finally, even if the Stay Petition were permissible, FOE has failed to satisfy the standard prerequisite to issuance of a stay, as set forth in 10 C.F.R. §§ 2.342(e) and (f).²⁸ The FOE Letter does not cure any of these deficiencies, and so the outcome of the Stay Petition remains the same—it should be rejected.

Similarly, as SCE demonstrated in its answer to the Hearing Request, this request suffers from a multitude of independent, fatal deficiencies. First and foremost, there is no NRC

²⁴ SCE Stay Petition Answer at 2.

²⁵ *Id.* at 2, 5.

²⁶ *Id.* at 2, 5-6.

²⁷ *Id.* at 2, 6-7.

²⁸ *Id.* at 2, 7-9.

proceeding in which to request a hearing.²⁹ Second, the Hearing Request is untimely due to the absence of any event specified in the NRC regulations that can trigger a hearing request.³⁰ Third, FOE lacks standing to file the Hearing Request, because there is no pending proceeding and FOE cannot show an actual or threatened injury that is traceable to a challenged NRC action.³¹ Finally, even if the Hearing Request is somehow deemed permissible, FOE has not submitted a proposed contention that satisfies the admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1).³² The FOE Letter does not cure any of these deficiencies, and so the outcome of the Hearing Request remains the same—it should be rejected.

C. The Letter Makes Incorrect Statements and Supports Rejection of the Stay Petition and Hearing Request

As discussed below, the information in the FOE Letter makes incorrect statements and supports SCE's position that the Stay Petition and Hearing Request should be rejected.

In the Letter, FOE continues to conflate two separate license amendment questions. The first license amendment question FOE raises is whether there should have been a license amendment prior to replacing the SONGS steam generators.³³ In an attempt to support its position, FOE claims that SONGS should have to go through the same license amendment process as Palo Verde Unit 2 for replacement steam generators.³⁴ FOE states: "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

²⁹ SCE Hearing Request Answer at 2, 9-12.

³⁰ *Id.* at 2, 13.

³¹ *Id.* at 2, 13-14.

³² *Id.* at 2, 14-17.

³³ *See, e.g.*, Letter at 2 (alleging that the past steam generator replacements were not "like for like" replacements and required a license amendment).

³⁴ *See id.* at 2-3.

Onofre has not.”³⁵ *This statement is factually incorrect.* SCE did obtain license amendments for the SONGS replacement steam generators.³⁶

Even beyond this incorrect statement, FOE’s reliance on the Palo Verde Unit 2 precedent also does not support its position. The SONGS license amendments for the replacement steam generators revised the units’ Technical Specifications to reflect changes to inspection and repair criteria and revised peak containment post-accident pressure.³⁷ The Palo Verde Unit 2 license amendment referenced by FOE included similar types of changes to the unit’s Technical Specifications to reflect changes due to the replacement steam generators, such as a revised peak containment post-accident pressure.³⁸ The Palo Verde Unit 2 license amendment included some additional changes because the steam generator replacement amendment was submitted with a simultaneous uprate amendment, which was not the case for the SONGS units.³⁹ A license amendment for a power uprate is standard practice, because the maximum power level is specified in a unit’s license. Therefore, the fact that Palo Verde sought a license amendment for the power uprate was fully to be expected, and does not serve as a precedent for the SONGS steam generator replacements. Moreover, the Palo Verde Unit 2 amendment was not needed for the entire set of design changes to the Palo Verde steam generators. As in other instances of steam generator replacement, the steam generator replacement as a whole was performed under 10 C.F.R. § 50.59, and Palo Verde Unit 2 sought a license amendment for the steam generators only for limited changes to the Technical Specifications.

³⁵ *Id.* at 3.

³⁶ SONGS Steam Generator License Amendment at 1.

³⁷ *See id.*, Enclosure 3, at 1.

³⁸ *See* Letter from B. Pham, NRC, to G. Overbeck, Arizona Public Service Company, Palo Verde Nuclear Generating Station, Unit 2 (PVNGS-2) – Issuance of Amendment on Replacement of Steam Generators and Up-rated Power Operations (TAC No. MB3696), Enclosure 2, at 2-3 (Sept. 29, 2003), *available at* ADAMS Accession No. ML032720538. FOE provides no references to any documents related to the Palo Verde Unit 2 steam generators; however, SCE believes this is the license amendment FOE discusses.

³⁹ *See id.*

FOE has identified no specific license amendment changes for the Palo Verde Unit 2 steam generator replacements that should have been made, but were not, for the SONGS steam generator replacements.⁴⁰ Because SCE already has completed license amendments for Technical Specifications changes similar to those for Palo Verde Unit 2, SONGS has undergone the same “public license amendment and hearing process” as Palo Verde Unit 2 that was raised by FOE.⁴¹ Citation to the Palo Verde Unit 2 precedent does not support FOE’s argument that a license amendment is needed for the entire steam generator replacement under 10 C.F.R. § 50.59, because Palo Verde Unit 2 did not seek a license amendment for its entire steam generator replacement, but only for limited changes to its Technical Specifications. Thus, this Palo Verde Unit 2 precedent actually lends support for rejection of the FOE Letter and the Hearing Request.

In any event, FOE’s request is now moot, because the steam generators have been replaced. If FOE disputes the scope or the content of the license amendments obtained by SCE for the steam generator replacements, then it should have contested SCE’s actions in 2008.⁴² FOE did not do so. Any challenge to these issues now is untimely. The request for hearing by FOE is not the appropriate forum for these issues, and FOE’s attempts to create a new proceeding should be rejected.

The second license amendment question FOE raises is whether there should be a license amendment prior to restarting the SONGS units.⁴³ This issue currently is under review by the

⁴⁰ See Letter at 2-3.

⁴¹ *Id.* at 2.

⁴² See Biweekly Notice; Applications and Amendments to Facility Operating Licensing Involving No Significant Hazards Consideration, 73 Fed. Reg. 54,862 (Sept. 23, 2008). At that time, FOE could have submitted a petition under 10 C.F.R. § 2.206 requesting an NRC determination of whether SONGS needed additional or broader license amendments.

⁴³ See, e.g., Letter at 1 (discussing whether a license amendment is needed before restarting Unit 2).

NRC Staff.⁴⁴ If a license amendment is needed, then it will have a separate hearing opportunity associated with it, and FOE can submit a hearing request if it so desires.⁴⁵ If FOE desires to challenge a determination that a license amendment is not needed prior to restart, then the appropriate mechanism would be through a 10 C.F.R. § 2.206 petition. Either way, the Hearing Request is not the appropriate mechanism for seeking a restart license amendment, and it should be rejected.

IV. CONCLUSIONS

For the numerous reasons discussed above, FOE's most recent attempt to subvert the NRC Rules of Practice should be rejected. The FOE Letter is an unauthorized filing that merely accuses the Commission of unreasonable delay and continues FOE's earlier attempts to create an adjudicatory proceeding where none exists. Additionally, the Letter does not cure the numerous defects in the earlier Stay Petition and Hearing Request, and so the reasons for rejecting these requests remain. Finally, the Letter not only makes incorrect statements, but its citation to Palo Verde Unit 2 actually supports rejection of the Stay Petition and Hearing Request, not granting them. For these reasons, and the reasons set forth by SCE in earlier filings, the Commission should reject the Letter along with the Stay Petition and Hearing Request.

⁴⁴ FOE itself states that "Elmo Collins, NRC's Regional Administrator for Region IV, has publicly stated that it is an 'open question' whether a license amendment is required." *Id.* at 3.

⁴⁵ *See* 10 C.F.R. § 2.105.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

Signed (electronically) by Paul M. Bessette

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Dated in Washington, DC
this 23rd day of October 2012

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of	)	
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SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361 and 50-362
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(San Onofre Nuclear Generating Station)	)	October 23, 2012
	)	

CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of “Southern California Edison Company’s Response to 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” was filed through the E-Filing system in the above-captioned matter.

Signed (electronically) by Stephen J. Burdick

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