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Title: Southern California Edison Company
San Onofre Station Units 2 and 3

Docket Number: 50-361-CAL and 50-362-CAL

Location: (telephone conference)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

TELECONFERENCE

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In the Matter of: : Docket No.

Southern California Edison : 50-361-CAL

Co. San Onofre Nuclear :

Generating Station, Units :

2 and 3 : 50-362-CAL

(American Centrifuge Plant :

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Monday, December 3, 2012

The teleconference came to order at 2:00 p.m.
Eastern Standard Time. E. Roy Hawkens, Chairman,
Presiding.

BEFORE:

E. ROY HAWKENS, Chair

GARY ARNOLD, Administrative Judge

ANTHONY BARATTA, Administrative Judge

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P R O C E E D I N G S

2:02 p.m.

JUDGE HAWKENS: On the record. Good afternoon. This is again Judge Hawkens. This is a telephone conference call that has been convened for the Southern California Edison Company case referred by the Commission in CLI 12-20.

I'm joined by my fellow judges, Dr. Anthony Baratta and Dr. Gary Arnold. And we're also joined here by our law clerk, Ms. Onika Williams and an administrative assistant, Ms. Karen Valloch.

Would the counsel for the parties please introduce themselves for the record starting with Petitioner, Friends of the Earth.

MR. AYRES: Yes, Judge. My name is Richard Ayres. I'm counsel for the Petitioners, Friends of the Earth. And my co-counsel Jessica Olson and Kristin Gladd are here with me.

JUDGE HAWKENS: Thank you. Respondent Southern California Edison.

MR. FRANTZ: This is Steve Frantz from the law firm of Morgan Lewis & Bockius. We represent Southern California Edison.

JUDGE HAWKENS: Thank you, Mr. Franz.

NRC staff.

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1 MR. ROTH: David Roth, R-O-T-H, for NRC
2 staff. Also speaking today will be Cathy Kanatas.
3 There is an addition, a number of attorneys and staff
4 who may be in and out of the conference call. But
5 none will be speaking.

6 JUDGE HAWKENS: Thank you.

7 And finally supporting the Petitioner.

8 MR. FETTUS: Thank you, Your Honor. This
9 is Jeffrey Fettus, G-E-O-F-F-R-E-Y, Fettus, F as in
10 Frank-E-T-T-U-S for NRDC, the Natural Resource Defense
11 Council.

12 JUDGE HAWKENS: Thank you. And for the
13 benefit of the court reporter, he would be grateful as
14 would I if you would identify yourself before
15 speaking.

16 At the outset, Judge Gary Arnold would
17 like to read a statement concerning a two-year period
18 of employment he had with Southern California Edison
19 some 30 years ago. I will now turn it over to Dr.
20 Arnold.

21 JUDGE ARNOLD: This is Judge Arnold. As
22 stated in my biography on the NRC's public website
23 from 1981 to 1983 I worked for Southern California
24 Edison as a start-up engineer. I participated in fuel
25 load initial criticality, physics testing and power

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1 ascension testing at San Onofre Nuclear Generating
2 Station Unit 2.

3 In 1983 I left SCE to pursue educational
4 opportunities. Since then, I have not returned to the
5 San Onofre Nuclear Generating Station. I have not
6 maintained any contacts with Southern California
7 Edison either financially, professionally or
8 otherwise. And I have not maintained contacts with
9 any of my former Edison colleagues.

10 I wanted to make sure the parties were
11 aware of my prior contact with Southern California
12 Edison. And I wanted to assure them that this short
13 period of contact that ended nearly 30 years ago will
14 not affect my ability to act impartially in this
15 proceeding.

16 However, if any party believes that the
17 foregoing facts warrant my recusal they shall file a
18 motion to that effect within seven days. That is no
19 later than Monday, December 10th.

20 JUDGE HAWKENS: Thank you, Dr. Arnold.
21 Does anybody have any questions on that matter?
22 Petitioner?

23 MR. AYRES: No.

24 JUDGE HAWKENS: Respondent?

25 MR. FRANTZ: No.

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1 JUDGE HAWKENS: NRC Staff?

2 MR. ROTH: David Roth for the Staff. No,
3 Your Honor.

4 JUDGE HAWKENS: All right. Thank you very
5 much.

6 The Commission in CLI 12-20 in addition to
7 directing the staff to determine whether the
8 replacements of the steam generators for Units 2 and
9 3 required a license amendment. Also directed the
10 Licensing Board to consider two issues: (1) whether
11 the NRC's confirmatory action letter constitutes a de
12 facto license amendment that would be subject to a
13 hearing opportunity; and, if so, the (2) second issue
14 would be whether the petition submitted by Friends of
15 the Earth meets the standing and contention
16 admissibility requirements of Section 2.309.

17 The Board has reviewed the record and
18 determined that additional briefing on these issues
19 would be beneficial especially with regard to Issue
20 No. 1.

21 Our preliminary view is that resolving the
22 first issue will involve addressing whether the
23 proposed actions in the confirmatory action letter
24 satisfy the criteria in Section 50.59 requiring a
25 license amendment. In our view, this presents a

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1 combined issue of law and fact. And to the extent
2 that the parties' briefs they're going to submit
3 pursuant to a briefing schedule we will announce here
4 address factual matters. They should provide an
5 affidavit, if appropriate, in support of any factual
6 assertions.

7 Later this week, the Board will issue an
8 order that will include specific questions we'd like
9 the parties to address. And it will also provide a
10 briefing schedule that we will discuss later in this
11 conference call.

12 We anticipate some of our questions will
13 require the parties to address issues of safety
14 significance as well as the analysis in support of the
15 CAL. Examples of the -- Excuse me. In addressing
16 those factual issues, we anticipate that the Board and
17 the parties will require access to proprietary
18 versions of documents already in the record or cited
19 in the record.

20 Examples of those documents include the
21 steam generator tube wear analysis for Units 2 and 3,
22 the SONGS Unit 2 return-to-service report, the SONGS
23 steam generator operational assessment for tube-to-
24 tube wear and the tube-to-TSP wear depth diagram for
25 Units 2 and 3. And these documents all will be

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1 identified in the order we will be issuing this week.

2 But the fact that they include proprietary
3 information will require the execution of non
4 disclosure agreement. So the first order of business
5 will be the preparation and execution of such a non
6 disclosure agreement.

7 And our instinct is that Respondent may be
8 the best entity to be the crew chief for the
9 preparation, coordination and execution of such a
10 document. Mr. Frantz, do you agree?

11 MR. FRANTZ: Before we even get there,
12 Judge Hawkens, let me express an extreme reservation
13 on this approach. I don't believe that these
14 documents are necessary to resolve the issue raised by
15 the Commission in CLI 12-20. The Commission has not
16 asked the Board and has not directed the Board to
17 consider the safety of restart. That's well beyond
18 the scope of the order. Instead, I thought the order
19 was very clear that it only wanted the Board to
20 consider whether the CAL letter is de facto amendment.

21 These other documents just are not related
22 to that question. And therefore I guess we would
23 object to such a broad scope inquiry by the Board.

24 JUDGE BARATTA: Mr. Frantz, this is Judge
25 Baratta here. Our understanding is that the

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1 Commission expects us to determine whether or not a
2 license amendment is required. In order to do that,
3 we turn to 50.59 which then looks at the impact on
4 safety of any proposed changes. These document do in
5 fact discuss that impact.

6 MR. FRANTZ: I understand, Judge Baratta.
7 But I don't believe the Commission asked the Board to
8 consider whether the restart actions constitute any
9 need for license amendment under 50.59. It is not at
10 all unusual for plants to have adverse conditions.
11 And the fact typically there are hundreds, if not
12 thousands, of condition reports issued each year by a
13 licensee.

14 And obviously there is just no need for a
15 license amendment on these board types of issues.
16 It's routine for licensees to take corrective action.

17 The sole issue I think according to the
18 specific orders by the Commission are whether the CAL
19 constitutes a license amendment, not whether all these
20 other activities require a license amendment under
21 50.59. If the Commission had wanted the Board to make
22 that kind of inquiry, it could have said so in its
23 order. And it did not.

24 MR. AYRES: Your Honor, this is Mr. Ayres.
25 We agree in general with the post suggested by the

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1 Board. In our view, the question here is as the
2 Commission has posed is to look at whether the changes
3 made by Southern California Edison in the proposed
4 response to the CAL constitute a proceeding that
5 should be a licensing amendment proceeding.

6 When we look at Edison's response, what we
7 see is a number of documents that are heavily redacted
8 and some documents that are cited but that are not
9 available publicly. For example, the response relies
10 heavily on benchmarking against other reactors, but
11 does not identify the other reactors. In our view, it
12 would be impossible for us to prepare a brief based on
13 the questions presented by the Commission without
14 access to these withheld and redacted documents.

15 Indeed, we have been preparing a list of
16 documents that we would like to submit to the Board
17 which we think should be made available to the
18 Petitioners so that we can address the question
19 presented by the Commission.

20 JUDGE HAWKENS: Could I please heard from
21 either Mr. Roth or Ms. Kanatas on this issue?

22 MR. ROTH: Certainly, Your Honor. This is
23 David Roth for the Staff. I note the word of the
24 Commission's order is specifically directing the Board
25 to consider whether the confirmatory action letter

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1 constitutes a de facto license amendment. By
2 contrast, Commission referred the 50.59 issue and the
3 alleged violation of 50.59, a steam generator
4 replacement, to the Staff. And thus when presented
5 with this issue to the Staff it appears that the issue
6 was very limited. It's a very narrow issue of whether
7 the CAL issued NCE constitutes a de facto license
8 amendment.

9 Absent seeing the order, I can't speak as
10 to what use the documents would or would not be that
11 Your Honors are referring to. But, in any event, the
12 Commission order is a very narrow order and it
13 shouldn't be extended to a broad inquiry into other
14 topics.

15 JUDGE BARATTA: You're quite correct that
16 we're not involved in the 2.206 issue that the Staff
17 is. However, these documents that we're asking for
18 are referenced in the CAL as attachments to it. And
19 therefore we believe are part of the appropriate items
20 to be looked at and determine whether or not as the
21 Commission asks us to do to CAL issued NCE constitutes
22 a de facto license amendment. That should be subject
23 to the hearing opportunity under Section 189(a).

24 MR. AYRES: Your Honors, we certainly
25 understand that the station under separate 2.206

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1 proceeding that the Commission has put into play and
2 likewise we don't challenge at all the Commission's
3 ability to use CAL. We think the question that the
4 Board has put here or that the Commission has put here
5 is whether in this instance the proposed response from
6 Edison and its support put this particular proceeding
7 into a category requiring a license amendment rather
8 than simply a CAL in response.

9 JUDGE HAWKENS: And that was Mr. Frantz
10 speaking, correct? This is Judge Hawkens.

11 MR. AYRES: I'm sorry.

12 JUDGE HAWKENS: Please remember to
13 introduce/identify yourself before speaking.

14 MR. AYRES: I beg your pardon, Judge
15 Hawkens. It was Richard Ayres speaking.

16 JUDGE HAWKENS: Oh, I'm sorry.

17 MR. FRANTZ: This is Steve Frantz speaking
18 in this case. The CAL itself does not reference any
19 particular documents. In fact, the documents that the
20 Board referred to post date the CAL itself. And
21 therefore again we don't believe that it's within the
22 scope of the CAL in terms of what has to be decided by
23 this Board.

24 JUDGE HAWKENS: Does anybody wish to
25 address the issue before the Licensing Board goes

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1 offline for a moment?

2 Mr. Ayres, anything else to say on this?

3 MR. AYRES: No, I don't think so, Your
4 Honor.

5 JUDGE HAWKENS: Mr. Frantz?

6 MR. FRANTZ: No, I don't.

7 JUDGE HAWKENS: Ms. Kanatas or Mr. Roth?

8 MR. ROTH: David Roth for the Staff. No,
9 Your Honors.

10 JUDGE HAWKENS: Thank you. The Licensing
11 Board will go offline for a moment and, Mr.
12 Hendrixson, we'll let you know when we return. Thank
13 you. Off the record.

14 (Whereupon a short recess was taken.)

15 JUDGE HAWKENS: On the record. Mr.
16 Hendrixson, this is Judge Hawkens. We're back online
17 now.

18 We understand Mr. Frantz and Mr. Roth's
19 statements that the Board is bound in its scope of its
20 inquiry by the Commission's directive. But in order
21 to determine whether the confirmatory action letter
22 constitutes a de facto license amendment. We need to
23 determine and take into account the subsequent actions
24 which were authorized by that letter. And that means
25 taking a look at some of the documents including the

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1 proprietary information that were in those documents.
2 In our subsequent order, it will direct the
3 preparation of a non disclosure agreement.

4 Mr. Frantz, assuming that a non disclosure
5 agreement will be required, is this something that you
6 wish to act as crew chief for?

7 MR. FRANTZ: I will, Judge Hawkens. May
8 I request that the Board at least certify this
9 question to the Commission? I think this is a
10 tremendous expansion of the scope of what the
11 Commission intended.

12 JUDGE HAWKENS: We respectfully disagree
13 with you, Mr. Frantz. We don't object if you seek to
14 have this issue appealed. But we view this as
15 squarely within the scope of the issue we're directed
16 to address and resolve.

17 Having said that, we are going to ask if
18 such a non disclosure agreement could be prepared by
19 week's end. What's your view at this point on that,
20 Mr. Frantz? And you may want to talk to your
21 colleagues to discuss how you want to proceed.

22 MR. FRANTZ: The non disclosure agreement,
23 there are many forms out there that have been used in
24 the past under other proceedings. So that should be
25 a relatively simple matter to prepare.

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1 MR. AYRES: Your Honor. Because of other
2 commitments, it would be difficult for me to --

3 JUDGE HAWKENS: Who is speaking please?

4 MR. AYRES: I am sorry. It's Richard
5 Ayres. Because of other commitments this week, it
6 would be difficult for me to complete by the end of
7 the week. But certainly by early next week we should
8 be able to.

9 JUDGE HAWKENS: In other words, coordinate
10 with Mr. Frantz and make sure you're on board with the
11 contents of the non disclosure agreement.

12 MR. AYRES: Yes. I think --

13 JUDGE HAWKENS: You shouldn't need more
14 than a week.

15 MR. AYRES: I think so, Your Honor.

16 JUDGE HAWKENS: What date would you be
17 looking at?

18 MR. AYRES: Perhaps next Wednesday.

19 MR. FRANTZ: This is Steve Frantz, Your
20 Honor. Again, I don't think that's reasonable to
21 string this out for a week and a half. As you may be
22 aware, Edison has submitted a return-to-service plan
23 to the NRC Staff. That's under active consideration
24 by the NRC Staff. As soon as we get approval from the
25 Staff, we plan to restart.

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1 I'm sure the Friends of the Earth will
2 argue that we should not be allowed to restart until
3 this proceeding is over. I don't believe that's a
4 valid argument, but I certainly understand if they say
5 that. Therefore, to prevent any potential for impact
6 upon restart, we would like this proceeding to go off
7 as expeditiously as possible.

8 JUDGE HAWKENS: I concur with you, Mr.
9 Frantz. And, Mr. Ayers, although I sympathize the
10 fact that you're busy I know you do have other
11 attorneys working with you. These non disclosure
12 agreements are fairly standard. In fact, there's a
13 model non disclosure agreement in 65 NRC at 420. It's
14 one provided by the Commission.

15 But these, as you will know, are fairly
16 routine and I would not anticipate coming to agreement
17 of the contents of one should be that difficult. So
18 I will ask the parties to work together and endeavor
19 to have one as soon as possible and no later than this
20 Friday, the 6th of December.

21 MR. FETTUS: Your Honor, this is Geoffrey
22 Fettus of NRDC. Am I wrong in presuming that we would
23 be part of this non disclosure agreement? And I could
24 commit to being done by Friday.

25 JUDGE HAWKENS: Thank you, but, yes, you

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1 are wrong. Under our regulations and case law, the
2 right of access under non disclosure agreements is for
3 the Board and the parties to the proceeding. So
4 unless Mr. Frantz were willing to include you in this,
5 you ordinarily would not be entitled to access.

6 I should also mention -- I said that it
7 would be Friday, the 6th of December. I meant Friday,
8 the 7th of December.

9 MR. FETTUS: Thank you, Your Honor. This
10 is -- I understand that, but this is such an unusual
11 proceeding. I was wondering if in the process of
12 whatever you would be sending out this week if there
13 was something you were contemplating in terms of an
14 on-ramp for parties that would like to participate in
15 this proceeding. As you may recollect from our
16 response in June, we expressed a significant interest
17 in being able to participate and would happily follow
18 whatever strictures that Board sees fit in allowing
19 that on-ramp for parties to participate appropriately
20 without undue delay to any of the parties or
21 prejudice.

22 JUDGE HAWKENS: We will provide an on-ramp
23 for NRDC to participate in support of Friends of the
24 Earth, Mr. Fettus. And I'll address that a little bit
25 later when I talk about the scheduling of the

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1 briefing.

2 MR. FETTUS: Thank you very much, Your
3 Honor.

4 JUDGE HAWKENS: Moving on, one of the
5 issues the Board is wondering about is who has the
6 burden of persuasion on the first issue. Hopefully,
7 that's not an issue we'll have to struggle with.

8 We'd only be confronting that if at the
9 end of the day all the arguments and the evidence
10 resulted in absolute equipoise. But I'm wondering if
11 at this juncture any of the parties have a view on the
12 issue of who has the burden of persuasion on the first
13 issue.

14 Mr. Ayres.

15 MR. AYRES: Your Honor, I will say I
16 haven't thought about this. But it does seem to me as
17 if to move to Friday of starting the reactor is
18 Edison. And since what's involved here is whether
19 this process is the appropriate one perhaps they
20 should have the burden of establishing that it is.

21 JUDGE HAWKENS: Your position does not
22 surprise us. It's not an unreasonable one. I'd like
23 to hear from Mr. Frantz.

24 MR. FRANTZ: Yes, Judge Hawken. We're
25 still at the pleading stage. We haven't admitted any

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1 parties yet. The Board has not yet ruled on the
2 standing or contentions submitted by Friends of the
3 Earth. At this stage of the proceeding, it's always
4 the burden on the Petitioner to present enough
5 information to substantiate that the Petitioner has
6 met its 2.309 of the regulations. And that's the
7 standard case law.

8 JUDGE HAWKENS: Thank you.

9 Mr. Roth, do you have any view you'd like
10 to share with us at this point?

11 MR. ROTH: David Roth for the Staff.
12 Certainly, the movement who in this case is not the
13 movement. It's the Petitioner for the hearing has the
14 burden of proof so that the issued CAL is a license
15 amendment.

16 JUDGE HAWKENS: All right. That will be
17 just be one of the legal issues we will ask the
18 parties to brief.

19 Another of the issues that we would like
20 briefed would be if the Staff's Section 2.206 inquiry
21 leads them to the conclusion that the steam generator
22 replacements require license amendments. What impact,
23 if any, that would have on this proceeding before the
24 Licensing Board?

25 And rather than soliciting curbstone

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1 reaction to the parties, I'll just throw that out
2 there and say that's one of the issues that we will be
3 interested in having the parties to address as well.

4 Let's move on now to briefing schedule.
5 And Mr. Frantz indicated earlier that the Respondent
6 would like this proceeding to move with dispatch and
7 the Licensing Board shares that view.

8 We also realize we're approaching a
9 holiday season. And all the parties as well as the
10 Board will be benefit by good comprehensive, thorough
11 briefing of the issues presented.

12 I know the parties at this point are at
13 somewhat in the dark insofar as we haven't issued our
14 order identifying questions we want addressed. Nor do
15 they have the benefit of access to the proprietary
16 information.

17 Having said that, the Board's view is that
18 we should hear first from the Petitioner, give several
19 days for the amicus to provide any supporting views,
20 but not any time that would result in undue delay to
21 the briefing schedule. Within a period of time, we
22 would want Respondent and then the NRC to provide a
23 response. And then we would give a short period of
24 time to hear a reply from the Petitioner.

25 MR. AYRES: Your Honor, this is Richard

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1 Ayres. I share the company's concern about time and
2 yours as well. And we do not -- I want to assure you
3 -- want to drag this proceeding out. We think it's
4 important to get a decision expeditious and hopefully
5 a good one.

6 We do think though that given that there
7 are a number of documents which we haven't seen and
8 which we need to see in order to brief it that the
9 Board needs to provide some time for the exchange of
10 documents and analysis and perhaps for preparation of
11 expert reports or reports anyway that summarize the
12 facts for the Board and for the parties. So we would
13 insert a period of time for that factual element
14 before we got to the briefing.

15 MR. FRANTZ: Judge Hawkens, this is Steve
16 Frantz. That is paramount to a hearing even before
17 the petition to intervene has been accepted. Under
18 traditional NRC regulations and practice, there is no
19 wait to obtain discovery until the Board has ruled on
20 the petition and has admitted at least one contention.
21 The Board has not done that yet. So this idea of
22 getting documents and then preparing expert reports is
23 just simply premature at this stage.

24 MR. AYRES: Your Honor, we look at the
25 regulations. This is Mr. Ayres again. We don't see

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1 any regulations that apply as to this procedure that
2 apply in their terms. So we feel that the Board is
3 appropriately fashioning its own procedure here from
4 using templates that are in the regulations.

5 Our argue is that what you need to do is
6 to set up a schedule and a series of actions that will
7 in fact reach the right conclusion and give you what
8 you need to reach the right conclusion rather than
9 being hung up by trying to find exact replicas of this
10 process which don't exist in the regulations.

11 JUDGE HAWKENS: Could I please hear from
12 the staff on this matter? Mr. Roth?

13 MR. ROTH: Certainly. David Roth for the
14 Staff. As the Commission's order notes, we only need
15 consider the issues for contention admissibility under
16 2.309 if the Board concludes that issued CAL was a de
17 facto amendment. So until that first issue is fully
18 briefed, it's really premature to consider issues
19 beyond that.

20 And again, it's just the Commission's
21 plain language of its order is the confirmatory action
22 letter issued to SCE. And so that's the topic that
23 should really be subject to the first round of
24 briefing. And that shouldn't really have any
25 proprietary document access ease to fully brief that.

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1 JUDGE HAWKENS: Well, once again as we
2 said earlier, Mr. Roth, we disagree with you on
3 whether it would require access of proprietary
4 information. Whether we would rely on it is another
5 matter. But we don't know what's in there. And
6 looking at that will give meaning to the confirmatory
7 action letter.

8 Without that, what we're left with is a
9 very broad statement. But without any factual it
10 provides very little factual understanding for the
11 Board and certainly insufficient factual understanding
12 for us to comply with the Commission's directive in
13 resolving Issue No. 1.

14 And that's a threshold issue. We don't
15 have to resolve Issue No. 2 if we resolve Issue No. 1
16 in the negative. But Issue No. 1 has been placed
17 before us. It's not like your typical standing and
18 contention admissibility issue.

19 We essentially have entities who have
20 status as parties before us which is the Petitioner
21 Friends of the Earth, Respondent Southern Cal Edison
22 and the NRC Staff. We want to hear from them. We want
23 to receive full briefing on the matter that will
24 inform us and allow us to provide a reasoned decision
25 for the parties and for the Commission's benefit if

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1 that's necessary.

2 MR. FRANTZ: Judge Hawkens, this is Steve
3 Frantz again. I might also add that the Commission or
4 the Board does not need to decide Issue No. 1 if it
5 rules against Friends of the Earth on Issue No. 1.
6 And Southern California Edison has objected to the
7 standing and contentions submitted by Friends of the
8 Earth and to its timeliness. So if the Board rules in
9 favor of us on any of those three issues, the Board
10 doesn't even need to reach the first question.

11 JUDGE HAWKENS: Thank you, but we think
12 you're flatly wrong on that based on the language used
13 by the Commission in framing the issues presented to
14 us, Mr. Frantz. We believe we have to resolve Issue
15 No. 1 and then if we resolve that in the affirmative
16 address Issue No. 2. We think the Staff is correct in
17 their assessment of that.

18 We had originally -- The Board had talked
19 about moving expeditiously. We had talked about, we
20 had contemplated the following schedule. And let me
21 say this was what we initially contemplated. It's not
22 written in stone.

23 We had talked about 14 days from the
24 issuance of our scheduling order or no later than
25 December 21 for the Petitioner to provide its brief.

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1 We're contemplating seven days after the Petitioner
2 submitted its brief for the amicus to submit their
3 brief or no later than December 28th.

4 We had contemplated giving the Respondent
5 and the NRC Staff ten days from receipt of the amicus
6 brief or no later than January 7th for submission of
7 their brief. And then replying providing seven days
8 for the submission of a reply by Petitioner to amicus
9 or no later than January 14.

10 Having said that, I think Mr. Ayres makes
11 sense in saying it's very difficult to determine
12 whether that time frame will be adequate given the
13 fact that you don't know yet precisely the scope of
14 the issues we're interested in and don't have access
15 to all the documents that may be relevant to the
16 resolution of those issues.

17 So keeping in mind that the Board is as
18 anxious as Southern Cal Edison for this to move
19 forward promptly. I'd like the parties after they
20 receive our scheduling order to get together and agree
21 upon a proposed briefing schedule and then submit that
22 joint proposed briefing schedule for the Board's
23 consideration.

24 I'll first ask Respondent, Mr. Frantz.
25 When do you think would be reasonable time for the

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1 submission of such a joint proposed order?

2 MR. FRANTZ: Judge Hawkens, I think the
3 schedule you laid out was an excellent schedule,
4 namely to have the Petitioners submit their brief on
5 December 21st and the other parties proceed based upon
6 that.

7 To have the Board issue an order and then
8 have the parties get together, you're presuming that
9 we can reach agreement on a schedule. I wouldn't be
10 so optimistic.

11 JUDGE HAWKENS: I have great confidence in
12 you, Mr. Frantz. You should have it in yourself as
13 well.

14 MR. FRANTZ: I have confidence in myself,
15 Judge. I'm not sure if I have confidence in the
16 ability of all the parties to agree on a schedule.

17 JUDGE HAWKENS: All right.

18 MR. FRANTZ: And then to have a filing on
19 that. Then the Board has to issue another order. And
20 we're already well into January or February before the
21 briefs I think eventually get filed.

22 JUDGE HAWKENS: Let me hear from Mr. Ayres
23 please.

24 MR. AYRES: Judge Hawkens, I think the
25 idea of our at least attempting to develop a schedule

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1 it is a very good one. I am confident Mr. Frantz has
2 good negotiating skills and I hope mine are as good.

3 JUDGE HAWKENS: And I think everybody's
4 cooperative skills will match their other skills in
5 this I would hope.

6 MR. AYRES: Absolutely, yes.

7 JUDGE HAWKENS: Is that correct, Mr.
8 Ayres?

9 MR. AYRES: Absolutely.

10 JUDGE HAWKENS: Let me hear from the Staff
11 please on this scheduling matter.

12 MR. ROTH: David Roth for the Staff. We
13 believe we can achieve a January 7th schedule. We
14 know that we have to verify people's holiday coverage
15 to be absolutely certain. But we believe that's
16 doable for a brief from the Staff.

17 JUDGE HAWKENS: And if Mr. Ayres
18 determined that additional time is needed once he
19 receives our order, does the NRC staff believe it can
20 work in cooperation with them to come up with a
21 mutually agreeable proposed briefing schedule?

22 MR. ROTH: David Roth for the Staff.
23 Certainly, Your Honor.

24 JUDGE HAWKENS: All right. Thank you.

25 What the Licensing Board will do then is

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1 lay out what it has said today, indicate in its order
2 its hope that this case will move promptly and
3 expeditiously, but also indicate that if a party
4 believes that this schedule is unworkable, that party
5 will advise the other parties and the parties then
6 will work together jointly to provide the Board with
7 a joint motion containing a revised schedule.

8 The Licensing Board will instruct the
9 parties in its order. It would like the briefs to be
10 standalone briefs such that they will not incorporate
11 anything by reference and that they will also provide
12 an appendix in which the parties include all documents
13 that provide material support for any particular
14 argument.

15 And if they are relying on a lengthy
16 document but only need a small extract from that
17 document, they should feel free just to include a
18 shortened version of it. But as I say we like the
19 appendix to include all documents that are material to
20 the arguments being advanced by the parties.

21 Any questions from any of the parties?

22 MR. AYRES: Judge Hawkens, this is Richard
23 Ayres again. As I mentioned earlier, we have been
24 going through the response to the CAL and then
25 developing a list of documents to which either are not

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1 included or are heavily redacted. I think we would
2 like to file that list with the Board because we'd
3 like you to consider ordering that the Licensee and/or
4 Staff make those documents available to us
5 expeditiously. Would that be okay with the Board?

6 JUDGE HAWKENS: How soon could you get
7 that list to us, Mr. Ayres?

8 MR. AYRES: I think by the end of the
9 week.

10 MR. FRANTZ: This is Steve Frantz. Again,
11 we would strongly object to this process. The rules
12 simply do not provide any opportunity for discovery
13 prior to admission of the contention. And what Mr.
14 Ayres is proposing is simply backwards. He wants to
15 have a hearing and discovery before even making a
16 threshold determination on the petition.

17 JUDGE HAWKENS: Mr. Frantz, the Board
18 understands your position. But it's important for all
19 the participants to this proceeding and the Board to
20 have access to material that's relevant to the
21 substantive issue posed to us by the Commission. And
22 to the extent there is information in subsequent
23 documents that give meaning to the confirmation action
24 letter that's material that the Board needs and
25 materials the parties must have access to in order to

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1 make their arguments to the Board.

2 Mr. Ayres, rather than providing me with
3 a list that will hold the issuance of the Board's
4 order, the Board will issue its order. The parties
5 will work together to agree and execute a non
6 disclosure agreement at the earliest possibility.

7 Once the non disclosure agreement has been
8 executed and put in the docket, there is no reason why
9 Friends of the Earth should not be entitled to the
10 relevant information that has a bearing on the
11 confirmatory action letter and will give meaning to
12 that letter and meaning to whether that letter
13 constitutes a de facto license amendment.

14 So I would expect that again once the non
15 disclosure agreement is executed you should be able to
16 work with Mr. Ayres in obtaining access to those
17 documents that are material. And that would not
18 constitute discovery.

19 JUDGE BARATTA: Mr. Frantz. This is Judge
20 Baratta here. I refer you to the October 3rd letter
21 that was sent to Mr. Callege (phonetic) which is part
22 and partial to the CAL. And I think you need to read
23 that to understand where we're headed.

24 MR. FRANTZ: Judge Baratta, I'm fully
25 familiar with that document. I was involved in the

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1 process of developing it.

2 JUDGE BARATTA: It outlines the actions
3 that were taken as part of the CAL. I cannot
4 understand how you can say it's not a part of the CAL.

5 MR. FRANTZ: Judge Baratta, the CAL itself
6 just says that Edison shall determine the causes and
7 implement actions to prevent loss of the tube
8 integrity, including establishing a protocol of
9 inspections and operational intersection (phonetic) or
10 outages for further inspections.

11 To me that's very straightforward. It
12 does not under the governing standards establish any
13 new authority for Edison. And that's the standard for
14 whether or not there's a need for a license amendment
15 as well as whether the action in question establishes
16 new licensing authority not previously held by Edison.

17 This imposes more restrictions on us.

18 JUDGE BARATTA: That's why we're here to
19 be determine that if I recall correctly.

20 MR. FRANTZ: I'm sorry, Judge Baratta.

21 JUDGE BARATTA: I believe that's what
22 we're here to determine, isn't it?

23 MR. FRANTZ: I don't believe that you are
24 here to determine whether our restart actions require
25 a license amendment under 50.59 of the regulations.

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1 I believe you're here to determine whether the CAL
2 actions constitute a license amendment and using
3 governing precedent which states that if an action
4 expands the licensing authority of the licensees that
5 then requires a license amendment or constitutes a de
6 facto license amendment.

7 In fact, the Commission's order cites
8 cases where that very principle was evaluated. And in
9 particular I believe it's the Millstone case. And
10 that is I think a very straightforward and simple
11 question.

12 I don't think the Board needs to look at
13 whether every action we're taking is a 50.59 type of
14 an action. That's a staff compliance matter.

15 JUDGE BARATTA: You misinterpreted what I
16 said earlier. We'll find out in your brief.

17 JUDGE ARNOLD: This is Judge Arnold. We
18 seem to be not necessarily focusing on the same
19 interpretation of what the Commission has told us to
20 determine on the first issue. I myself am not -- I
21 will not be swayed very much by a determination that
22 the original steam generator replacement should or
23 should not have been done under 50.59.

24 I'm looking at the present circumstances
25 where Unit 2 has the same design steam generators as

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1 Unit 3. Unit 3 steam generators have demonstrated a
2 failure mechanism with safety implications.

3 So the question I have is does Unit 2
4 require a license amendment in order to restart with
5 steam generators that are currently installed that
6 could potentially demonstrate the same failure
7 mechanism as seen in Unit 3. That's what I would like
8 to see in the briefs, something about that.

9 MR. ROTH: Your Honor, David Roth for the
10 Staff. In reviewing page four of the Commission's
11 order, the Commission notes reliance on 2.206 and
12 notes that if Friends of the Earth prevails in a 2.206
13 argument and SCE needs a license amendment, then it
14 may be able to obtain the adjudicatory hearing that it
15 seeks. So with respect to 50.59 and license amendment
16 whether it's needed or not, I think that's separate
17 from what the Commission has put before the Board in
18 reviewing whether the Staff's CAL was a de facto
19 license amendment.

20 JUDGE ARNOLD: If we can determine that
21 starting up Unit 2 right now with those steam
22 generators in there is something that would require a
23 licensing amendment and if this is going to be done
24 using a process that has been initiated by the CAL,
25 then that process started by the CAL is in fact

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1 intended to accomplish that license amendment.

2 MR. ROTH: David Roth for the Staff.
3 Again the CAL was issued prior to any proposal with
4 respect to whether a 50.59 violation might occur,
5 would occur, did occur, whether a license is needed or
6 not. The Staff is actively reviewing that right now.
7 And again the issue before the Board is just whether
8 the Staff's CAL is a de facto amendment.

9 MR. AYRES: Judge Arnold, this is Richard
10 Ayers. I think you are identifying exactly the issue
11 as we see it that's before the Board. And it is
12 because the response to the CAL is a critical part of
13 deciding whether this is a proceeding that should be
14 covered as a license amendment that we think it's
15 important to have a chance to review these documents.
16 Appreciate the Board's agreement in that and we will
17 follow the process outlined by Judge Hawkens.

18 JUDGE ARNOLD: This is Judge Arnold again.
19 One of the things this CAL process is attempting to
20 determine is what is the power that you can operate
21 safely at. Now that's certainly not a standard of
22 what you think of as a safety limit, what power can
23 the steam generators take for steady state operation.
24 But it does seem to be something that might require --
25 It's putting a tighter control on operations than

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1 specified in the technical specifications. And I
2 would think that we'd have to consider whether that,
3 if it's temporary modification, is in fact the type of
4 thing that requires a license amendment.

5 MR. FRANTZ: This is Steve Frantz. And,
6 Judge Arnold, in response to that, if we're operating
7 within our technical specifications, then by
8 definition we don't need a license amendment for
9 operating at a reduced power level. Plants operate at
10 reduced power levels all the time.

11 JUDGE ARNOLD: So you're saying you would
12 feel confident to operate at 99 percent power with
13 those steam generators.

14 MR. FRANTZ: I do not say that, Judge
15 Arnold.

16 JUDGE ARNOLD: You said at reduced power.

17 MR. FRANTZ: What I said that operation at
18 70 percent power is within our existing operating
19 authorization under the tech specs and the license.
20 And therefore we don't need a license amendment to
21 operate at 70 percent power.

22 MR. AYRES: This is Mr. Ayres. I view
23 that as whether a license amendment is needed depends
24 on why the operation is limited to a lower percentage.
25 So while it's certainly true that a plant is running

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1 along swimmingly at 100 percent and wants to reduce to
2 80 percent under its existing license, that would be
3 permitted. It's a lot less clear to us that a plant
4 which has had the problems that this one has which
5 then comes and asks for 70 percent limit on its
6 operation whether that is within the license or
7 whether that's really asking for an amendment to the
8 license.

9 JUDGE HAWKENS: Those are fair questions
10 and I think those are the types of questions that will
11 receive briefing by the parties and we will look at
12 very closely whether we should be guided solely by the
13 case law as suggested by Mr. Frantz or whether we will
14 be guided also by the criteria in Section 50.59 in
15 determining whether a license amendment was required
16 in this case.

17 Let me give one final opportunity for any
18 further inquiries or observations by the parties. Mr.
19 Ayers.

20 MR. AYRES: I do not think so, Judge
21 Hawkens. We appreciate the session and we'll work to
22 try to make sure we get this thing moving quickly.

23 JUDGE HAWKENS: Thank you.

24 Mr. Frantz.

25 MR. FRANTZ: I have nothing further to add

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1 with what's been already said.

2 JUDGE HAWKENS: Thank you, Mr. Frantz.

3 Mr. Roth.

4 MR. ROTH: David Roth for the Staff.

5 Beyond reemphasizing our narrow view of what the
6 Commission has and noting the 70 percent proposal did
7 not exist at the time the Staff issued its CAL, we
8 have nothing further to add.

9 JUDGE HAWKENS: Thank you.

10 Mr. Fettus, I'll give you an opportunity
11 here in closing if you have any questions or comments.

12 MR. FETTUS: No, Your Honor. I have some
13 concerns regarding our amicus in terms of how we will
14 effectively contribute if we don't have access to any
15 of the documents. I'm sure I will be quite capable
16 and as you probably know I'm an experienced NRC
17 practitioner. But it is an unusual situation as you
18 and the fellow members of the Board have acknowledged.

19 And I'm happy to try and make sure we
20 comply with any schedule that you set out. And I
21 appreciate the opportunity to weigh in. But I'm
22 trying to figure out precisely how we will weigh in
23 without access to a lot of the documents that are at
24 issue here.

25 JUDGE HAWKENS: Thank you. I understand.

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1 And with that, we will now close. Thank you very
2 much. Off the record.

3 (Whereupon, at 2:55 p.m., the above
4 entitled matter was concluded.)
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