

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SOUTHERN CALIFORNIA EDISON COMPANY)	Docket Nos. 50-361-CAL & 50-362-CAL
)	
(San Onofre Nuclear Generating Station,)	December 7, 2012
Units 2 and 3))	
)	

JOINT MOTION FOR ENTRY OF A PROTECTIVE ORDER

On November 8, 2012, the Commission issued decision CLI-12-20 referring to the Atomic Safety and Licensing Board Panel a portion of Friends of the Earth’s (FOE) June 18, 2012 intervention petition related to a March 27, 2012 Confirmatory Action Letter (CAL) issued by the Nuclear Regulatory Commission (NRC) to Southern California Edison Company (SCE). On December 3, 2012, the participants in this proceeding, SCE, FOE, and the NRC Staff, participated in a conference call with the Licensing Board established for this proceeding to discuss scheduling and management issues.

One of the issues discussed during the conference call was a Protective Order and Non-Disclosure Agreement to be used for sharing proprietary documents in this proceeding. A copy of a proposed Protective Order and Non-Disclosure Agreement agreed upon by SCE and FOE is attached. These documents are based on protective orders and non-disclosure agreements adopted in other NRC adjudicatory proceedings, as necessarily modified to reflect issues unique to this proceeding. SCE and FOE request that the Licensing Board issue this proposed Protective

Order to cover any protected information (as defined therein) disclosed as part of this proceeding.¹

Signed (electronically) by Stephen J. Burdick

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Executed in Accord With 10 CFR § 2.304(d)

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Counsel for Friends of the Earth

Dated in Washington, D.C.
this 7th day of December 2012

¹ Because the NRC Staff would not be directly affected by the Protective Order, the Staff has elected not to participate in this Joint Motion, but does not oppose it.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

E. Roy Hawkens, Chairman
Dr. Anthony J. Baratta
Dr. Gary S. Arnold

In the Matter of

SOUTHERN CALIFORNIA EDISON CO.

(San Onofre Nuclear Generating Station,
Units 2 and 3)

Docket Nos. 50-361-CAL, 50-362-CAL

ASLBP No. 13-924-01-CAL-BD01

December __, 2012

MEMORANDUM AND ORDER
(Protective Order)

Upon consideration of the December 7, 2012 Joint Motion for Entry of a Protective Order of Friends of the Earth (FOE) and Southern California Edison Company (SCE), and the proposed Protective Order submitted as an attachment to the Joint Motion, we GRANT the Joint Motion and issue this Protective Order to govern the disclosure of any Protected Information as part of the adjudication of the issues referred by the Commission (CLI-12-20) to the Atomic Safety and Licensing Board (ASLB) on November 8, 2012 regarding a March 27, 2012 Confirmatory Action Letter (CAL) issued by the Nuclear Regulatory Commission (NRC) to SCE. The terms of the Protective Order are as follows:

1. This Protective Order shall govern the recipient's use of all Protected Information produced by, or on behalf of, SCE (and its third-party vendors, contractors, and consultants), FOE, and/or the NRC Staff in this proceeding. "Protected Information" consists of information

designated by SCE (and its third-party vendors, contractors, and consultants), FOE, or the NRC Staff as proprietary information under 10 C.F.R. § 2.390(a)(4). This Protective Order shall remain in effect until specifically amended or terminated by a subsequent order issued by the ASLB or the Commission, or an order terminating this proceeding that is no longer subject to judicial review.

2. The following individuals shall be entitled to have access to the Protected Information in documents provided by another participant (or on behalf of another participant's third-party vendors, contractors, and consultants), if they execute and file the attached Non-Disclosure Affidavit: SCE's and FOE's designated legal counsel that have entered a notice of appearance in this proceeding and legal staff under their supervision; any employees, experts, or consultants engaged or retained by or on behalf of SCE or FOE, whether or not for a fee. Any individual that does not execute and file the Non-Disclosure Affidavit is not authorized to receive access to the Protected Information.

3. The terms of this Protective Order do not apply to the NRC Staff, NRC contractors, or NRC legal counsel. The NRC Staff's use of Protected Information is governed by NRC regulations and policies as well as other applicable law.

4. Protected Information shall be treated as confidential by SCE and FOE. Protected Information shall not be used except as necessary for the conduct of this proceeding regarding the CAL. SCE and FOE may make copies of and take notes of Protected Information, but such copies and notes become Protected Information subject to the terms of this Order. SCE and FOE shall take all reasonable precautions to ensure that Protected Information is not distributed to unauthorized persons.

5. SCE and FOE shall maintain all Protected Information in a secure location, and shall not provide the Protected Information to anyone not authorized to receive it pursuant to this Order. Each document that contains or reveals Protected Information shall be marked “Contains Protected Information – Confidential and Proprietary – Distribution Restricted per Protective Order” in a conspicuous manner on the cover and every page.

6. Legal counsel for SCE and FOE that have entered a notice of appearance and have signed and filed the Non-Disclosure Affidavit may allow their legal staff under their supervision access to the Protected Information as necessary in the course of their representation. Counsel shall be responsible for ensuring that their staff complies with the terms of this Order and the Non-Disclosure Affidavit and will be subject to sanctions for any violations by their staff.

7. SCE and FOE shall maintain a log of all copies of materials that contain Protected Information within their possession or control. Upon an order terminating this proceeding that is no longer subject to judicial review or upon order by the ASLB or Commission, SCE and FOE shall return all materials containing Protected Information to the participant from which it received the Protected Information or destroy the materials, except that copies of filings, official transcripts, exhibits, and notes may be redacted so that only those portions containing Protected Information are destroyed. Each recipient of Protected Information shall execute an affidavit stating that the Protected Information within its possession or control has been returned or destroyed, and shall serve a copy of the executed affidavit upon the other participants to this proceeding within 15 days.

8. Any recipient of Protected Information who has reason to suspect that Protected Information may have been lost or misplaced, or that Protected Information has otherwise

become available to unauthorized persons, shall promptly notify the ASLB of those suspicions and the reason for them.

9. The ASLB may alter or amend this Protective Order and resolve disputes arising from it. SCE, FOE, or the NRC Staff may seek amendments to this Order or the Non-Disclosure Affidavits by filing a motion for amendment.

10. Pleadings or other documents for filing that contain information protected pursuant to this Order shall be filed electronically using the E-Filing system. The person filing the document must properly choose the option “Non-Public Submission” to prevent the document from being filed in the public docket. Only members of the ASLB, NRC Staff counsel, counsel for the participant disclosing the Protected Information, and other authorized persons should be “checked” as recipients on the electronic service list. If any participant to this proceeding intends to submit an exhibit, testimony, or pleading containing Protected Information without using the E-Filing system, the participant shall notify the ASLB prior to such filing. Nothing in this Order shall preclude a participant to this proceeding from objecting to the use of an exhibit, testimony, or a pleading because it contains Protected Information. The ASLB may issue additional orders concerning the use of Protected Information at any hearing.

11. Nothing in this Order shall preclude any person from seeking public disclosure of Protected Information in accordance with NRC regulations. Nothing in this Order shall preclude any person from seeking through discovery in any other administrative or judicial proceeding, information protected by this Order.

12. Protected Information shall not be disclosed to any third party without the express written consent of the participant that produced the Protected Information (the “Producing Party”). In the event that a recipient of Protected Information (the “Subpoenaed Party”) receives

a subpoena or other compulsory document production device in a judicial, administrative, regulatory or other governmental proceeding seeking the Protected Information, the Subpoenaed Party or its representatives may make such disclosure provided that to the extent the disclosure includes Protected Information received from a Producing Party, the Subpoenaed Party shall provide immediate written notice to the Producing Party of the circumstances surrounding the request and shall take appropriate steps to maintain confidential treatment of the Protected Information, requesting that such Protected Information be filed under seal. The Subpoenaed Party shall also consult with the Producing Party on the advisability of taking steps to challenge or narrow the request, and shall cooperate with any efforts by the Producing Party to challenge or narrow the scope of the disclosure.

13. Any violation of this Protective Order or of any Non-Disclosure Affidavit executed hereunder may result in the imposition of sanctions as the ASLB or the Commission may deem to be appropriate. Nothing in this Order restricts or waives the participants' rights to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Information. The participants agree that any actual or anticipated unauthorized disclosure of Protected Information constitutes immediate and irreparable harm entitling the participant producing the Protected Information to an injunction and other equitable remedies. The participants further agree that the participant effectuating the actual or anticipated unauthorized disclosure shall be liable to the participant producing the Protected Information for legal damages, including but not limited to attorneys' fees and costs.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

E. Roy Hawkins
CHAIRMAN

Rockville, Maryland
December __, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
SOUTHERN CALIFORNIA EDISON CO.
(San Onofre Nuclear Generating Station,
Units 2 and 3)

Docket Nos. 50-361-CAL, 50-362-CAL

ASLBP No. 13-924-01-CAL-BD01

December __, 2012

NON-DISCLOSURE AFFIDAVIT

I, _____, being duly sworn, state:
(Print Name)

1. I have read the December __, 2012 Atomic Safety and Licensing Board (ASLB) Protective Order for this proceeding on the issues referred by the Commission (CLI-12-20) to the ASLB on November 8, 2012 regarding a March 27, 2012 Confirmatory Action Letter issued by the Nuclear Regulatory Commission to the Southern California Edison Company, Docket Nos. 50-361-CAL and 50-362-CAL, and will comply in all respects with its terms and conditions regarding the Protected Information produced in connection therewith. I will protect and keep confidential all Protected Information in accordance with the terms of this Non-Disclosure Affidavit.
2. I will not disclose Protected Information to anyone except an authorized person. I will protect documents containing or revealing Protected Information in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents that contain or reveal such Protected Information), so that the Protected Information contained therein remains at all times under the control of an authorized person and is not revealed to anyone else.
3. When not under my direct control or the direct control of another authorized person, I will keep and protect all documents containing or revealing Protected Information (including, without limitation, transcripts, pleadings that I may generate, and any notes and copies that I may make) in a secure locked place such as a filing cabinet, closet, or other storage container. I will not transmit by facsimile transmission any material containing Protected Information.
4. Each document that contains or reveals Protected Information shall be marked "Contains Protected Information – Confidential and Proprietary – Distribution Restricted per Protective Order" in a conspicuous manner on the cover and every page.

5. Neither during nor after this proceeding, will I publicly reveal any Protected Information that I receive by virtue of this proceeding as long as the information remains Protected Information and is not otherwise a matter of public record.

6. I acknowledge that any violation of the terms of this affidavit or the ASLB's Protective Order, which incorporates the terms of this affidavit, may result in the imposition of such sanctions on me that the ASLB or the Commission may deem to be appropriate, or any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Information.

WHEREFORE, I do solemnly agree to protect and keep confidential such Protected Information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit.

(Name)

Subscribed to and sworn before me this ____ day of _____, ____.

Notary Public

My commission expires: _____

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(San Onofre Nuclear Generating Station,))))	December 7, 2012
Units 2 and 3)))))	

CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of “Joint Motion for Entry of a Protective Order” was filed through the E-Filing system.

Signed (electronically) by Stephen J. Burdick
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