

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 31, 2012

ORDER

(Dismissing Objection by Citizens Oversight, Inc.)

On November 8, 2012, the Commission in CLI-12-20 referred to the Atomic Safety and Licensing Board Panel a portion of the June 18, 2012 intervention petition filed by Friends of the Earth (Petitioner) challenging a Confirmatory Action Letter (CAL) issued by the NRC to Southern California Edison Company (SCE) on March 27, 2012. See CLI-12-20, slip op. at 5.¹

On December 7, 2012, we issued an Order that summarized the Board's December 3, 2012 conference call,² directed further briefing, and provided instructions relating to briefing.³ In particular, our December 7 Order, inter alia, directed SCE, in coordination with Petitioner, to

¹ The issues referred by the Commission were (1) whether the CAL issued to SCE constitutes a de facto license amendment that would be subject to a hearing opportunity, and (2) whether Petitioner's hearing request meets the agency's standing and contention admissibility requirements. See CLI-12-20, slip op. at 5.

² See Licensing Board Order (Scheduling Conference Call) (Nov. 26, 2012) (unpublished).

³ See Licensing Board Order (Conference Call Summary and Directives Relating to Briefing) (Dec. 7, 2012) (unpublished) [hereinafter Licensing Board December 7 Order]. On December 20, 2012, we issued an order clarifying the scope of document disclosure required by our December 7 Order and extending the briefing schedule. See Licensing Board Order (Granting in Part and Denying in Part Petitioner's Motion for Clarification and Extension) (Dec. 20, 2012) (unpublished).

prepare and to execute a Joint Non-Disclosure Agreement and a proposed Protective Order regarding certain proprietary documents that appear to be relevant to the issue of whether the CAL constitutes a de facto license amendment. See Licensing Board December 7 Order at 2-4.

On December 10, 2012, the Board granted Petitioner's and SCE's joint motion for entry of a Protective Order and Non-Disclosure Agreement.⁴

On December 11, 2012, Citizens Oversight, Inc. (also known as Citizens Oversight Projects or COPS) filed an objection to "the use of nondisclosure agreements" by SCE to protect proprietary documents.⁵ In its objection, COPS asks this Board to (1) set aside the December 10, 2012 Protective Order, and (2) direct SCE to publically disclose information in this proceeding it deems to be proprietary unless SCE can "show that actual, and not hypothetical, injury will occur if the information is released" See COPS Objection at 1.

On December 14, 2012, SCE filed an answer opposing COPS' objection on the grounds that (1) COPS is not a party to this proceeding, and it therefore has no right to object to the Protective Order, and (2) the parties' use of a Protective Order in this case is permitted by agency regulations and practice.⁶

On December 19, 2012, the NRC Staff filed an answer opposing COPS' objection, arguing that (1) COPS is not a party to this proceeding, and its effort to file an objection contravenes agency regulations and case law, and (2) COPS' objection fails to advance a sufficient legal basis for releasing the information in question in any event.⁷

⁴ See Licensing Board Order (Granting Joint Motion for Entry of a Protective Order and Non-Disclosure Agreement) (Dec. 10, 2012) (unpublished).

⁵ See Objection by Citizens Oversight to the Use of Nondisclosure Agreements to Withhold Information from the Public by Southern California Edison (Dec. 11, 2012) at 1 [hereinafter COPS Objection].

⁶ See [SCE's] Answer Opposing [COPS'] Objection to the Board's December 10, 2012 Protective Order (Dec. 14, 2012) at 2-3 [hereinafter SCE's Answer].

⁷ See NRC Staff's Answer to [COPS'] Objection to the Use of Nondisclosure Agreements (Dec. 19, 2012) [hereinafter Staff's Answer].

We conclude that COPS' objection must be dismissed. COPS is not a party in this proceeding, and pursuant to NRC regulations (10 C.F.R. § 2.315(a)), a "person who is not a party" is not permitted to participate in an adjudicative proceeding aside from making a "limited appearance statement" expressing "his or her position on the issues" in accordance with limits and conditions prescribed by the presiding officer.⁸ COPS' filing is not a limited appearance statement. Rather, it is the functional equivalent of a motion seeking to (1) nullify the Nondisclosure Agreement between SCE and Petitioner, and (2) require the public disclosure of information that SCE deems to be proprietary in nature. Section 2.315(a) does not authorize a non-party to seek such relief. As the Commission has squarely held, an "[entity] who has not been admitted as a party to a proceeding . . . is not entitled to make a motion in an ongoing proceeding." U.S. Dep't of Energy (High-Level Waste Repository), CLI-10-10, 71 NRC 281, 285 n.20 (2010); accord Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-76-18, 4 NRC 470, 471 n.1 (1976). That holding governs here.

⁸ Commission regulations and practice also provide an opportunity for non-parties to participate in a proceeding as an amicus curiae (see 10 C.F.R. § 2.315(d); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-862, 25 NRC 144, 150 (1987)), but an amicus curiae "necessarily takes the proceeding as it finds it. . . [and] can neither inject new issues . . . nor alter the content of the record developed by the parties." Seabrook Station, ALAB-862, 25 NRC at 150.

We therefore dismiss COPS' filing.⁹

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Issued at Rockville, Maryland
this 31st day of December 2012.

⁹ We note that COPS' filing suffers from another fatal procedural defect; namely, in derogation of 10 C.F.R. § 2.323(b), it fails to certify that COPS made a sincere effort to contact the parties and resolve the subject matter of the filing. See High-Level Waste Repository, CLI-10-10, 71 NRC at 285 n.20.

The NRC Staff correctly observes (see Staff's Answer 4-7) that, even if COPS' objection were properly before us, it does not provide sufficient legal basis for the relief sought because it fails to address the relevant standards in 10 C.F.R. § 2.390 for withholding and releasing information that is alleged to be proprietary. See also SCE's Answer at 3-4.

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(San Onofre Nuclear Generating Station -) 50-362-CAL
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Dismissing Objection by Citizens Oversight, Inc.)** have been served upon the following persons by Electronic Information Exchange and by electronic mail as indicated by an asterisk*.

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San Onofre Nuclear Generating Station, Units 2 and 3, Docket Nos. 50-361 and 50-362-CAL
ORDER (Dismissing Objection by Citizens Oversight, Inc.)

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[Original signed by Herald M. Speiser _____]
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Dated at Rockville, Maryland
this 31st day of December, 2012