

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

January 23, 2013

ORDER

(Directing Friends of the Earth and the NRC Staff
to File Expedited Answers to SCE's Motion for Sanctions)

On November 8, 2012, the Commission in CLI-12-20 referred to the Atomic Safety and Licensing Board Panel a portion of Friends of the Earth's June 18, 2012 intervention petition 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.

On December 3, 2012, this Licensing Board held a conference call¹ to discuss the procedural path forward, and on December 7, 2012, we issued an Order² that, inter alia, directed SCE, in coordination with Friends of the Earth, to submit a proposed Protective Order and Non-Disclosure Agreement regarding certain proprietary documents that appear to be relevant to the issue of whether the CAL constitutes a de facto license amendment.³

¹ See Licensing Board Order (Scheduling Conference Call) (Nov. 26, 2012) (unpublished).

² See Licensing Board Order (Conference Call Summary and Directives Relating to Briefing) (Dec. 7, 2012) (unpublished).

³ Id. at 4.

On December 10, 2012, we granted a joint motion from SCE and Friends of the Earth for entry of a Protective Order and Non-Disclosure Agreement.⁴

On December 12, 2012, SCE transmitted the proprietary documents to Friends of the Earth and this Board after certain individuals from Friends of the Earth submitted Non-Disclosure Affidavits.⁵

In accordance with this Board's December 20, 2012 Order,⁶ Friends of the Earth submitted proprietary and redacted versions of its opening brief and affidavits on January 11, 2013.

On January 22, 2013, SCE filed a motion for sanctions against Friends of the Earth, alleging that Friends of the Earth violated the Protective Order by inappropriately including proprietary information in a redacted version of one its affidavits.⁷ SCE requests that the Board (1) strike all protected information from Friends of the Earth's documents, (2) require all individuals that signed Non-Disclosure Affidavits to return or destroy all protected information, and (3) modify the Protective Order to prohibit further use of Protected Information in this

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Board Order (Granting Joint Motion for Entry of a Protective Order and Non-Disclosure Agreement) (Dec. 10, 2012) (unpublished).

⁵ Letter from Steven P. Frantz, SCE counsel, to Board, Transmittal of Proprietary Documents per Licensing Board's December 7, 2012 Order (Dec. 12, 2012).

⁶ See Licensing Board Order (Granting in Part and Denying in Part Petitioner's Motion for Clarification and Extension) (Dec. 20, 2012) (unpublished).

⁷ See [SCE's] Motion for Sanctions against Friends of the Earth for Violating the Protective Order (Jan. 22, 2013). On January 18, 2013, Friends of the Earth's counsel, Mr. Ayres, notified this Board that the affidavit of John Large (Large Affidavit), an attachment to its opening brief, "inadvertently described and/or included proprietary information" in a public version of the document. See Letter from Richard Ayres, Petitioner's counsel, to Board (Jan. 18, 2013). As corrective action, Mr. Ayres (1) notified the Board and the parties of the inclusion of protected information in a public document, (2) provided the Board and the parties with a corrected affidavit that does not include protected information subjected to the Protective Order and the Non-Disclosure Agreement, and (3) removed the offending Large Affidavit from the Friends of the Earth website and from the NRC's ADAMS database. See id.

proceeding.⁸ SCE represents that (1) Friends of the Earth opposes the motion, and (2) the NRC Staff does not oppose SCE filing the motion.⁹

In the interest of proceeding expeditiously, we direct Friends of the Earth and the NRC Staff to file their answers to SCE's January 22, 2013 motion no later than 12:00 noon Eastern Standard Time, Monday, January 28, 2013.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Issued at Rockville, Maryland
this 23rd day of January 2013.

⁸ See id. at 7.

⁹ Id. at 2 n.5.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
SOUTHERN CALIFORNIA EDISON CO.)
)
) Docket Nos. 50-361-CAL
(San Onofre Nuclear Generating Station -) 50-362-CAL
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Directing Petitioner and NRC Staff to File Expedited Answers to SCE's Motion for Sanctions against Petitioner)** 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 (Directing Petitioner and NRC Staff to File Expedited Answers to SCE's Motion
for Sanctions against Petitioner)**

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Dated at Rockville, Maryland
this 23rd day of January, 2013

[Original signed by Herald M. Speiser _____]
Office of the Secretary of the Commission