



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

February 19, 2013

SECRETARY

Mr. Erich Pica, President  
Friends of the Earth  
1100 15<sup>th</sup> Street, NW  
11<sup>th</sup> Floor  
Washington, D.C. 20005

Dear Mr. Pica:

The Commission received your letter, dated February 4, 2013, addressing the then-upcoming February 7, 2013, public Commission meeting on steam generator tube degradation. Your letter raised concerns that, because of ongoing NRC proceedings regarding the San Onofre Nuclear Generating Station (SONGS), this public Commission meeting would violate NRC's own regulations on *ex parte* communications.

As you are aware, the Commission decided to proceed with the meeting, holding it as scheduled on February 7th. The purpose of the meeting was to address, generically, the issue of steam generator tube degradation. A complete webcast of the meeting is available for viewing on NRC's public website at <http://video.nrc.gov/>.

The agency took precautions to ensure that the meeting would not address pending disputed issues involving SONGS. First, on February 5, 2013, the Office of the Secretary advised the meeting participants in writing that they must not address either of the two pending disputed issues being addressed by an Atomic Safety and Licensing Board, namely: (1) whether NRC's March 27, 2012, Confirmatory Action Letter to Southern California Edison regarding SONGS constitutes a *de facto* license amendment that would trigger a hearing opportunity under the Atomic Energy Act, and (2), if the letter is a *de facto* license amendment giving rise to a hearing opportunity, whether your organization's pending intervention petition satisfies the procedural requirements for a petition to intervene. Second, at the outset of the February 7<sup>th</sup> meeting, the NRC Chairman reiterated this reminder, again specifying the pending disputed issues and cautioning participants not to discuss them.

Nonetheless, if there were an *ex-parte* communication, the agency would be required to serve the parties in the adjudicatory proceeding with a copy of the communication. 10 C.F.R. § 2.347(c). Out of an abundance of caution, the Office of the Secretary will be serving the NRC transcript of the February 7<sup>th</sup> public meeting on all the parties to the SONGS proceeding to address any *ex parte* concerns.

Sincerely,

A handwritten signature in black ink that reads "Annette Vietti-Cook".

Annette L. Vietti-Cook



February 4, 2013

Honorable Allison Macfarlane, Chair  
United States Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike, Sixteenth Floor  
Rockville, MD 20852

Re: "Briefing on Steam Generator Tube Degradation" February 7, 2013

Dear Chair Macfarlane:

We recently learned that the Commission has scheduled a "Briefing" for this coming Thursday, February 7, 2013, regarding what is referred to as "steam generator tube degradation."

This briefing violates the NRC's regulations with regard to ex parte communications. Rather than addressing some general problem of the industry, the meeting offers Southern California Edison (Edison) a privileged opportunity to brief the Commission on matters currently pending before both the Atomic Safety and Licensing Board (ASLB) and a staff 10 C.F.R. 2.206 panel.

Specifically, this briefing violates the NRC's regulations on ex parte communications at 10 C.F.R. § 2.347. This provision states that "[i]n any proceeding under this subpart"<sup>1</sup>:

Commission adjudicatory employees<sup>2</sup> may not request or entertain from any interested person outside the agency or make or knowingly cause to be made to any interested person outside the agency, any ex parte communication relevant to the merits of the proceeding.

10 C.F.R. § 2.347(b). Under the NRC's ex parte regulation, the merits of the proceeding are defined to include "a disputed issue." 10 C.F.R. § 2.347(a)(2)(i). This briefing clearly relates to the merits of the ASLB and 2.206 proceedings in that the causes and implications of the tube degradation and wear mechanisms experienced at San Onofre are in dispute between the parties in both proceedings.

While the briefing is titled as if it addresses an industry-wide issue, so far as we know there is no industry-wide issue regarding premature degradation of steam tubes. The type of extensive premature degradation of steam tubes suffered at San Onofre is a problem limited to one nuclear power plant.<sup>3</sup>

The agenda for the meeting further reveals that the real subject of the briefing is the degradation of the steam generator tubes at San Onofre. San Onofre and Southern California Edison are mentioned six times in the agenda, while no other plant or American utility is mentioned at all. Moreover, the list of witnesses who will participate in the briefing are almost all associated with Southern California Edison either as employees or

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<sup>1</sup> Requests for a hearing under 10 C.F.R. § 2.309 are included under this subpart, Subpart C.

<sup>2</sup> The Commissioners and members of their personal staffs are "Commission adjudicatory employees" per 10 C.F.R. § 2.4.

<sup>3</sup> Only one other RSG has suffered a similar amount of tube degradation, but the Advisory Committee on Reactor Safety concluded that the tube wear at that plant is "different than the form of degradation" at San Onofre.

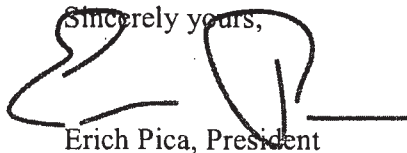


contractors who have worked on the steam generators of the San Onofre plant. These include speakers representing the following institutions:

- Southern California Edison – operator of the San Onofre power plant;
- Mitsubishi Heavy Industries – the company that built the faulty replacement steam generators that are now installed at San Onofre Units 2 & 3;
- AREVA, Inc. – consultant to Edison on the San Onofre steam generator problem;
- Michael Pettigrew – consultant on steam generators to Edison.

Because the issues involved in this briefing are “associated with the resolution of” a proceeding under this subpart, there is no exception for ex parte communications that regard generic issues involving public health and safety. 10 C.F.R. § 2.347(f)(4) (providing that the prohibitions on ex parte communications do not apply to “[c]ommunications regarding generic issues involving public health and safety...*not associated* with the resolution of any proceeding under this subpart pending before the NRC”) (emphasis added).

The scheduled meeting is a prohibited ex parte communication with the Commission on behalf of Edison. To have such an ex parte meeting whose subject matter is currently the subject of proceedings before an Atomic Safety and Licensing Board and a staff 2.206 panel is in violation of the Commission’s own regulations. For this reason, Friends of the Earth insists that the proposed “briefing” be cancelled; or, in the alternative, that another meeting be convened in which Friends of the Earth be permitted to provide witnesses regarding the steam generator degradation at San Onofre.

Sincerely yours,  
  
Erich Pica, President

Friends of the Earth

Cc: Members of the Commission

E. Roy Hawkens, Chairman  
Atomic Safety and Licensing Board

Anthony Baratta, Administrative Judge

Gary S. Arnold, Administrative Judge

Honorable Barbara Boxer

Honorable Diane Feinstein

Honorable Edward Markey

Honorable Henry A. Waxman

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**Joosten, Sandy**

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**From:** Richard E. Ayres [ayresr@ayreslawgroup.com]  
**Sent:** Monday, February 04, 2013 4:56 PM  
**To:** CHAIRMAN Resource; CMRSVINICKI Resource; CMRAPOSTOLAKIS Resource;  
CMRMAGWOOD Resource; CMROSTENDORFF Resource  
**Cc:** Hawkens, Roy; Baratta, Anthony; Arnold, Gary  
**Subject:** Ex Parte Communication with the Commission  
**Attachments:** 13-02-04 Letter to NRC.pdf

Members of the Commission,

Attached is a letter to the Members of the Commission from Erich Pica, President of Friends of the Earth, regarding ex parte communications in the form of a proposed briefing of the Commission on steam generator tube degradation.

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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 **Letter from the Secretary to Erich Pica of Friends of the Earth in Response to Mr. Pica's 2/4/13 Letter (also attached)** 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  
**Letter from the Secretary to Erich Pica of Friends of the Earth in Response to Mr. Pica's  
2/4/13 Letter (also attached)**

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Dated at Rockville, Maryland  
this 19<sup>th</sup> day of February, 2013

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