

May 14, 2013

**\*\*\* FOR THE RECORD \*\*\***

## **The Atomic Safety and Licensing Board's Decision in the San Onofre Confirmatory Action Letter Adjudication**

In March 2012, the NRC issued to Southern California Edison Company a Confirmatory Action Letter in which the NRC confirmed its understanding of several actions Edison would take with respect to its steam generators before restarting San Onofre Nuclear Generating Station, Units 2 and 3. Shortly thereafter, petitioner Friends of the Earth filed a hearing request that challenged aspects of the Confirmatory Action Letter. As part of its hearing request, Friends of the Earth had argued that the Confirmatory Action Letter process is a *de facto* license amendment that would be subject to a hearing opportunity under the Atomic Energy Act (AEA). Friends of the Earth also proposed at that time a related contention, arguing that San Onofre should not be allowed to restart without a license amendment and associated adjudicatory hearing.

Late last year, the Commission referred a portion of Friends of the Earth's hearing request to the Atomic Safety and Licensing Board Panel, directing the Panel to consider whether: (1) the Confirmatory Action Letter constitutes a *de facto* license amendment that would be subject to a hearing opportunity under the AEA; and, if so, (2) whether Friends of the Earth's hearing request satisfies the NRC's standing and contention admissibility requirements.

On Monday, May 13, a three-judge Atomic Safety and Licensing Board issued a decision resolving the issues referred to it by the Commission. In particular, the Board held that the Confirmatory Action Letter process in this case constitutes a *de facto* license amendment proceeding that is subject to a hearing opportunity. The Board also dismissed Friends of the Earth's contention. The contention sought a hearing opportunity which the Board found to be appropriate. The Board therefore found Friends of the Earth's contention to be "moot," since the Board's resolution of the first issue gave Friends of the Earth their requested relief.

The NRC is now considering the ramifications of the Board's newly-issued decision, and the path forward. Appeals of the Board's decision may be filed with the Commission within 25 days (by June 7, 2013), pursuant to the agency's rules of practice in 10 C.F.R. § 2.341. Also under the agency's rules, the Commission itself may review the decision on its own motion.