



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

PDR

January 11, 1985

The Honorable Donald Paul Hodel
Secretary of Energy
Washington, D. C. 20585

Dear Mr. Secretary:

In your letter of November 16, 1984 you commented on the proposal, then pending before the Commission, regarding the restart of San Onofre Unit 1 nuclear reactor. This is to advise you of the present status of that matter.

On November 21, 1984 the Commission determined, after a public meeting, that the proposed restart of San Onofre Unit 1 did not require a license amendment, and could, assuming that necessary safety findings were made by the NRC staff, be handled by the issuance of an order. The enclosed document describes the Commission's determination. Later the same day, the NRC staff issued a "Conditional Rescission of Suspension," authorizing restart of the facility. Operation of the plant resumed shortly thereafter.

On December 7, 1984 the Sierra Club and other petitioners requested the Commission to grant a hearing on the restart proposal, and to stay operation of the plant pending a decision on the matter. The issue is now pending before the Commission. In addition, the Sierra Club and others have filed a petition in the Ninth Circuit Court of Appeals for review of the Commission's actions of November 21, 1984.

Sincerely,

Nunzio J. Palladino

Enclosure:
As stated

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CORRESPONDENCE PDR

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555

November 21, 1984

REVISED 12/31/84

OFFICE OF THE
SECRETARY

MEMORANDUM FOR: William J. Dircks, Executive Director
for Operations
FROM: John E. Hoyle, Acting Secretary
SUBJECT: SECY-84-434 - OPTIONS FOR SAN ONOFRE 1

This is to advise you that the Commission (with Chairman Palladino and Commissioners Roberts, Bernthal and Zech agreeing) has reviewed the material provided by the staff on the restart of San Onofre 1 and believes that it may reasonably read its statutes to give it the legal authority to treat the August 1982 order either as an enforcement order amending the license or as an enforcement order which only suspended operation under the license.

Considering all relevant circumstances, the Commission has decided that the August 1982 order should not be read as having amended the license to operate the San Onofre 1 reactor. The essence of the rationale for this conclusion is:

First, the Commission believes that it needs the enforcement flexibility that orders give it, and it is concerned that treating the August 1982 order as an amendment will discourage the practice of making licensee commitments legally binding. Second, there is no contemporaneous information which suggests that the August 1982 order was intended to amend the license. Indeed, the order resulted from a voluntary agreement by the licensee to forego the submission of additional technical data demonstrating qualification of all safety systems to .5g and to instead modify the facility to a .67g level. Had this voluntary agreement not been offered and had the licensee submitted data confirming qualification of equipment to .5g, the normal SEP upgrading process would have gone forward without any necessity for a plant shutdown order. Thus, the order merely suspended authority to operate pending modifications to the facility and approval by the NRC to restart. No provision of the license itself was modified.

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The staff is directed to handle the restart matter procedurally according to the foregoing conclusion. The staff prior to authorizing restart must first make all of the required safety findings as it does in any other similar situation. The basis for approval of restart would be that continued suspension of the authority to operate is no longer required adequately to protect public health and safety.

Commissioner Asselstine subsequently indicated that he did not support this Commission decision. He provided the following statement of views:

"I do not support the Commission decision to allow San Onofre 1 to return to service at this time. I am in essential agreement with the points raised in the November 5, 1984 memorandum from the Office of the General Counsel regarding San Onofre 1 restart. Specifically, I believe that the changes to the operation and design of the plant that were included in NRC's confirmatory order of August 11, 1982 were so substantial that they must be considered an amendment to the license. Therefore, the subsequent order relaxing those changes must also be considered a license amendment. In addition, I am troubled by the Commission's reliance on the economic impact on the licensee of the California Public Utilities Commission's ruling as the basis for relaxing the safety requirements called for by the August 1982 confirmatory order. I believe that in the context of this case, reliance on such economic impacts to relax safety requirements is inappropriate. Finally, I am concerned about the reductions in the margin of safety for this plant that are involved in the relaxation of the August 1982 order."

The Commission has provided the following response to Commissioner Asselstine's comments:

"The Commission believes it is important that the basis for its decision on the procedural issue concerning restart of San Onofre 1 be accurately understood.

"The action of the majority is consistent with the advice given to the Commission by its Office of the General Counsel. That office advised the Commission, both orally and in writing at the public meeting of the Commission on November 21, that the Commission had the legal authority to decide the procedural issue (i.e., whether the August 1982 confirmatory order should be construed to be an amendment) as it chose to do as a matter of regulatory policy.

"As to the equities involved, given the California PUC order, the NRC was called upon in keeping with its broad statutory responsibilities and in fairness to the licensee, to determine promptly whether or not restart could be authorized consistent with protection of public health and safety. While the Commission was aware of the PUC action and the need for a timely NRC decision, the resumption of operations at San Onofre 1 was authorized by NRC on the basis of a technical judgment that there is reasonable assurance that such operation during completion of seismic reevaluation does not pose undue risk to public health and safety. The Commission decision on the procedural issue was grounded on policy considerations relevant to the Commission's licensing and enforcement responsibilities and, as noted above, the legal authority which was available in the circumstances.

"Finally, having made that legal and policy decision, the Commission directed that the staff, prior to authorizing restart, make all the required safety findings that it must in any similar situation. It is the Commission's understanding that staff is satisfied that all systems necessary to achieve a hot standby condition have been upgraded to 0.67g, thereby making the plant substantially safer than it was when originally licensed. As to the upgrade of remaining safety systems, while seismic evaluation continues, operation of San Onofre Unit 1 at this time rests on an NRC judgment similar to the judgment to be made in other Systematic Evaluation Program (SEP) cases. That SEP judgment addresses the question whether, under the specific circumstances of a particular case, operating authority must be suspended while issues concerning plant design are addressed.

"Staff has presented to the Commission its technical judgment that, consistent with protection of public health and safety, the margin of safety is reasonable and adequate to authorize restart of San Onofre 1 and that continued suspension of operating authority is not necessary. The Commission finds no basis upon which to contravene staff's technical finding favorable to that restart."

cc: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech
OGC
OPE
PDR - Advance
DCS - 016 Phillips