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Harold R. Denton, Director
Office of Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Re: San Onofre Nuclear Generating Station, Unit 1, Docket No. 50-206.

Dear Mr. Denton:

This letter is submitted by Southern California Edison Company and San Diego Gas & Electric Company ("Licensees"), as co-owners and co-licensees of San Onofre Nuclear Generating Station, Unit 1 ("Unit 1"), in response to the identical petitions (the "petitions") referred to in your "Notice of Receipt of Petition under 10 C.F.R. 2.206", in the above-referenced matter, published in the Federal Register (44 Fed. Reg. 75535) on December 20, 1979.

It is Licensees' position that the petitions should be denied. The petitions (1) fail to particularize any factual basis for their conclusions, (2) fail to raise any unreviewed substantial health or safety issue, and (3) call for improper reconsideration of issues previously resolved.

I.

THE PETITIONS FAIL TO SET FORTH PARTICULARIZED FACTS IN SUPPORT OF THEIR CONCLUSIONS.

The petitions are styled as pursuant to section 2.206(a) of the Commission's Rules of Practice. That section, on its face, requires any person requesting action pursuant to that regulation "to specify the action requested and set forth the facts that constitute the basis for the request." 10 C.F.R. § 2.206(a). In applying this section the Commission has held that the Director of Nuclear Reactor Regulation ("Director"):

> "is not required to accord presumptive validity to every assertion of fact, irrespective of its degree of substantiation, or to convene an adjudicatory proceeding in order to determine whether an adjudicatory proceeding is warranted." Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 432-33 (April 20, 1978).

Licensees submit that the factual basis for allegations made pursuant to 10 C.F.R. § 2.206 should be set forth with the same particularity required to state a contention in order to intervene under 10 C.F.R. § 2.714. The Commission has held with respect to intervention that "vague generalized assertions drawn without any particularized reference to the details of the challenged facility" do not meet its "particularity" requirement. Philadelphia Electric Company et al. (Peach Bottom Station, Units 2 and 3), CLI-73-10, 6 AEC 173, 174 (1973). The same standard should be applied to requests pursuant to 10 C.F.R. § 2.206.

The petitions in this case are virtually identical in form. The identical form of the petitions and the fact that each petitioner's input is limited to signing the petition suggests that the individual petitioners lack a personal knowledge of the factual basis for their requests and desire only to hamper operation of the facility. "Unjustified obstructionism," rather than a legitimate health or safety concern, based on the personal knowledge of the petitioner may be the primary motivation for each of the petitions. The United States Supreme Court in its landmark Vermont Yankee decision recently cautioned that

> "administrative proceedings should not be a game or a forum to engage in unjustified obstructionism by making cryptic and obscure reference to matters that 'ought to be' considered . . . ." Vermont Yankee Nuclear Power Corporation v. National Resources Defense Council, 435 U.S. 519, 553-54.

It is beyond argument that unless some threshold "particularity" requirement is required by the Director, petitions under 10 C.F.R. § 2.206 will become a primary vehicle for the very type of "unjustified obstructionism" condemned by

the Vermont Yankee court. Licensees submit that such is the purpose of the present petitions.

Focusing on the petitions themselves, they are solely based on factually unsupported conclusory statements, "cryptic and obscure references", and "vague generalized assertions drawn without any particularized reference to the details" of Unit 1. They are the type of allegations that have been found by the Commission and the Supreme Court not to require further administrative attention. (6 AEC, at 174; 435 U.S., at 553-54.)

The petitions claim that "new and relevant information is available" which calls into question the seismic safety of Unit 1. However, the petitions are silent as to the source or substance of this information, or how this information in any way relates to or alters the Unit 1 seismic design. The petitions also broadly question the siting of Unit 1 based on "population growth . . . more rapid and extensive than could have been anticipated." Again, no reference is provided to substantiate that the population growth anticipated at the time Unit 1 obtained permission to operate is significantly in error. Similarly, the petitions broadly conclude that nine million persons would have to be evacuated in the event of a serious radiological emergency at Unit 1. Again, no reference to any authority, nor any other explanation for the factual basis of this "generalized assertion" is given.

In judging whether the Director has abused his discretion in denying a petition under 10 C.F.R. § 2.206, the Commission has held that it will examine whether the "inquiry appropriate to the facts asserted has been made." (Northern Indiana Public Service Company, supra, 7 NRC, at 433, citing Consolidated Edison Company of New York (Indiana Point, Units 1, 2 & 3), CLI-75-8, 2 NRC 173, 176 (1975).) The petitions in this case assert no facts. Licensee's submit that the petitions should be denied on the ground they have failed to state facts sufficient to justify instituting an order to show cause proceeding.

II.

PETITIONERS HAVE FAILED TO ALLEGE FACTS SUFFICIENT TO RAISE ANY NEW ISSUES AFFECTING PUBLIC HEALTH AND SAFETY.

The Commission has held that the role of the Director upon receipt of a petition under 10 C.F.R. § 2.206 is to obtain and assess information he believes necessary to make a determination and

> "Provided he does not abuse his discretion, he is free to rely on a variety of sources of information, including staff analysis of generic issues, documents issued by other agencies, and the comments of the licensee on the factual allegations. Once that inquiry and assessment have been made, the standard to be applied in determining whether to issue a show-cause order is . . . 'whether substantial health or safety issues [have] been raised . . . . [A] mere dispute over factual issues does not suffice.' 2 NRC, at 176." 7 NRC, at 432-33.

An examination of the facts underlying the petitions' conclusion reveals that the allegations in the petitions utterly fail to raise a significant health or safety issue.

A.

Seismic Safety

The petitions allege that Unit 1 is not designed to withstand possible ground motions from the maximum earthquake on the Newport-Inglewood and Cristianitos faults. The allegation is substantively incorrect.

Both the Cristianitos and Newport-Inglewood faults were identified prior to the construction of Unit 1. As early as 1963, information relevant to the earthquake-producing potential of these faults was included in Section 1 of Amendment No. 3 to of the "Application for Construction Permit and For License" on file in the above-referenced docket. At that time, it was concluded that the Newport-Inglewood is an active fault and the Cristianitos is

an inactive one. Licensees know of no information that would change these conclusions and certainly none is revealed in the petitions. The passage of time, developments in the fields of geology and seismology, and exhaustive study of San Onofre geology and seismicity have not changed the ultimate conclusion that the Cristianitos fault is not capable.

The seismic design criteria adopted for construction of Unit 1 was based on geologic information which licenses still consider valid. The passage of time, developments in the fields of geology and seismology, and exhaustive study of San Onofre geology and seismicity have not changed Licensees' position that the Unit 1 seismic criteria are adequate to protect the public health and safety. At the same time, Licensees have taken added steps to increase the seismic safety of Unit 1. In 1977, Licensees completed significant improvements which upgraded the seismic withstand capability of the reactor coolant system of Unit 1. Licensees also completed an extensive reevaluation of the reactor building and containment structure which verified that they met the upgraded seismic withstand capability of Unit 1. Licensees are continuing to evaluate the seismic design of Unit 1 and will make further modifications if necessary to further improve the seismic design of Unit 1.

The Commission has consistently been aware of Licensees' position on these issues. The existence of these faults and the adequacy of the seismic design basis for Unit 1 are discussed in Section II.B and Appendix E of the Commission's Safety Evaluation Report, dated October 12, 1966. The Commission most recently confirmed its agreement concerning the Cristianitos fault in its Safety Evaluation Report for San Onofre Nuclear Generating Station, Units 2 and 3, dated October 20, 1972.

Licensees submit that in view of the absence of any geologic discoveries that would change the conclusion that the Cristianitos fault is inactive and the continuing activities to improve what Licensees consider an already adequate seismic safety level, the petitions do not reflect anything that would warrant a new proceeding to review the earthquake potential of the Cristianitos or Newport-Inglewood faults.

The petitions also make cryptic reference to alleged inadequacy of seismic design on the basis of inadequate data at the time of licensing for close-in earthquakes. The petitions fail to state the basis for such a conclusion. Certainly, since the time of licensing there have been additional earthquakes that have yielded additional information on close-in ground motion. However, the petitions fail to state any facts or any new information that would cast doubt on the validity of the Unit 1 seismic design criteria. It is not the purpose of 10 C.F.R., § 2.206 to provide a vehicle for investigating whether past determinations were correct or incorrect in the absence of facts that could be the basis for such a redetermination. There has been a normal and expected increase of data and knowledge on close-in ground motion associated with earthquakes occuring since Unit 1 became operational. This does not, in and of itself create a basis for a § 2.206 request. It is not the purpose of 10 C.F.R. § 2.206 to require a proceeding to determine whether a proceeding is necessary. (Northern Indiana Public Service Company, supra.) Accordingly, the petitions should not be granted and subsequent hearings held merely to review advancements in scientific knowledge without some showing that a substantial health or safety issue has been raised.

B.

Siting Suitability

The petitions attempt to challenge the suitability of the Unit 1 site on the unsupported allegation that population growth in the vicinity of San Onofre has been so much greater than anticipated at the time Unit 1 was issued its operating license that Unit 1 no longer complies with the Commission's siting criteria. In addition to the fact that the allegation is totally unsupported, this assumption is demonstrably incorrect.

In 1966, the Commission approved the suitability of the Unit 1 site based in part on a projected 1980 population of 40,000 for the City of San Clemente located at a distance of 2.5 miles from San Onofre. (Section II, Safety Evaluation Report, October 12, 1966.) Current population data in Section 2.1.3.5 of the Final Safety Analysis Report for San Onofre Nuclear Generating Station,

Units 2 and 3 confirms the conservatism of these projections.

The Commission's criteria for the siting of a nuclear power plant are contained in 10 C.F.R., Part 100. These criteria require consideration of the population density and use characteristics of the site environs, including the exclusion area, the low population zone, and the population center distance. (10 C.F.R. § 100.11.) The Commission's Division of Operating Reactors ("DOR") has recently reevaluated population density in the vicinity of San Onofre based on current demographic information. As a result of that review, DOR concluded by letter, of November 7, 1979, that Unit 1 currently complies with the Commission's siting criteria.

C.

Evacuation Planning

The petitions allege that evacuation planning for Unit 1 is inadequate and that State and local government is not prepared to evacuate the population in the vicinity of San Onofre. Again the facts do not sustain the unsupported conclusions in the petitions.

Unit 1 has a Commission-approved Emergency Plan and complies with all current NRC regulations. The Unit 1 plan incorporates detailed emergency plans developed pursuant to State law by the various State and local offsite assistance agencies that are required to respond to a radiological emergency with offsite consequences. The Unit 1 Emergency Plan also includes a detailed plan for evacuation of the population in the vicinity of San Onofre should such protective action be required. This evacuation plan has been jointly developed by the State and local offsite assistance agencies involved in cooperation with the Licensees. Periodic drills of the Unit 1 Emergency Plan based on a serious radiological emergency scenario have been and will continue to be jointly conducted by the Licensees and each of the State and local assistance agencies involved.

The Licensees are fully cooperating with the Commission's efforts to reevaluate all emergency plans in light of the lessons learned from the Three Mile Island incident

and the recent Commission policy to require emergency planning for an area up to ten miles away from the site. The Licensees have met with the Commission's Emergency Planning Task Force reviewing this matter and have provided the additional information requested by the Task Force. The Licensees plan to update the Unit 1 Emergency Plan as required or necessary.

The petitions allege there are approximately nine million people in the area that would have to be evacuated in the event of the most serious radiological accident at Unit 1. This allegation is completely misplaced. Based on current demographic data, approximately 68,000 persons live within 10 miles of Unit 1. Petitioners' figure of nine million persons roughly corresponds to the population within 50 miles of Unit 1 in the year 2020. Under current regulations, Licensees have an obligation to plan for evacuation of the low population zone. Even under currently proposed changes to these regulations, evacuation planning would only be necessary out to ten miles. Thus, there is absolutely no basis for the petitioners' assertion that evacuation planning for nine million persons is required at Unit 1.

III.

IMPROPER RECONSIDERATION OF ISSUES PREVIOUSLY RESOLVED

The Commission has recognized that "parties must be prevented from using 10 C.F.R. § 2.206 procedures as a vehicle for reconsideration of issues previously decided." 2 NRC, at 176. Thus, in Bailly, the Commission established the Director

> "properly has discretion to differentiate between those petitions which, upon examination, indicate that substantial issues have been raised warranting institution of a proceeding, and those which seek to reopen issues previously resolved, or which serve merely to demonstrate that in hindsight, even the most thorough and reasonable of forecasts will prove to fall short of absolute prescience." 7 NRC, at 434.

Applying this rule, the Commission in Bailly held it was not enough to assert the Final Environmental Statement was "in

error, out of date, or incomplete", rather it was necessary to specify the "changed circumstances" that would lead to "actual or demonstrated impacts of construction activities on the environment." (Id.) Licensees submit that application of this rule requires the denial of the petitions. The allegations in the petitions merely attempt to resurrect issues previously resolved in favor of the Licensees, without any articulation of the "changed circumstances" that suggest why the current Commission approval and regulation of the seismic safety, siting, or evacuation planning for Unit 1 has become inadequate to protect the public health or safety and require an order to show cause proceeding.

For each of the foregoing reasons, Southern California Edison Company and San Diego Gas & Electric Company request that the petitions discussed herein be denied.

Very truly yours,

David R. Pigott

David R. Pigott
Counsel for
Southern California Edison Company
and
San Diego Gas & Electric Company

cc: S. Burns
Office of Executive Legal
Director