



Southern California Edison Company

23 PARKER STREET
IRVINE, CALIFORNIA 92718

October 5, 1992

R. M. ROSENBLUM
MANAGER OF
NUCLEAR REGULATORY AFFAIRS

TELEPHONE
(714) 454-4505

U. S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D. C. 20555

Gentlemen:

Subject: **Docket No. 50-206**
Exemption from 10 CFR 171 "Annual Fee For Power Reactor Operating Licenses,"
San Onofre Nuclear Generating Station, Unit 1 (SONGS 1)

This letter requests an exemption for SONGS 1 from the annual operating fee specified by 10 CFR 171.11 for the 1993 Federal Fiscal Year (FY) that begins October 1, 1992. This request is based on our plan to permanently shutdown SONGS 1 following the current fuel cycle. The shutdown is planned for November 30, 1992.

10 CFR 171.11 permits a request for exemption from the annual operating fee when relevant matters justify reduction of the annual fee. Our decision to permanently shutdown SONGS 1 and our request to remove authority to operate SONGS 1 is justification for granting this exemption.

We are also requesting that payments of our annual operating fee be deferred pending the outcome of this request. We respectfully request that before October 23, 1992, the NRC confirm that we need not submit the first scheduled quarterly payment while deliberating our request for exemption.

BACKGROUND

Southern California Edison, San Diego Gas and Electric, and the California Public Utilities Commission have agreed to permanently shutdown San Onofre Nuclear Generating Station Unit 1 (SONGS 1) following the current fuel cycle. On April 2, 1992, we submitted an amendment application to remove our operating authority for SONGS 1.

10 CFR 171.15, states that each person licensed to operate a power reactor shall pay an annual fee for each power reactor unit for which the person holds an operating license at any time during the Federal FY in which the fee is due. Although we have requested termination of our Operating License and issuance of a possession only license (POL), this requirement applies to SONGS 1 for the 1993 FY since our possession only license is not expected to be issued until approximately November 1992.

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REGULATORY BASIS FOR ANNUAL OPERATING FEE

We have reviewed the regulatory history for the annual operating fee. We have concluded that the regulatory basis and intent of the regulations provide sufficient flexibility to exempt SONGS 1 from the annual operating fee because all future NRC services will be invoiced and collected under 10 CFR 170.

Currently, fees are collected under 10 CFR parts 170 and 171. As published in the Federal Register [56 FR 31472], "the annual fees [Part 171] recover NRC budgeted costs for generic regulatory activities related to these [power] licensees." Because of the permanent shutdown in November of this year, these generic services provided under Part 171 would be unrelated to SONGS 1 and exemption is appropriate.

Separate from the annual fee, the NRC also established a fee for a specific license action. These costs would be assessed under 10 CFR 170, "Fees for facilities, materials, import and export licenses, and other regulatory services under the Atomic Energy Act of 1954," for specific individually identifiable regulatory services. SONGS 1 would still be subject to these fees, even after defueling and issuance of the POL.

BASIS FOR EXEMPTION

Our bases for exemption are provided by 10 CFR 171.11(c)(1), (c)(2), (c)(4), and (c)(5). Specifically, our request is primarily based on 10 CFR 171.11(c)(5) which provides for "any other relevant matter which the licensee believes justifies the reduction of the annual fee." We believe that the premature and permanent shutdown of SONGS 1 resulting in its operating only two months into the 1993 Federal FY is relevant and justifies exemption from the annual operating fee.

Also, subparagraphs (c)(1) and (c)(2) allow consideration for an exemption based on age of the reactor and size of the reactor, respectively. By comparison to the majority of operating power reactors licensed by the NRC, SONGS 1 has substantially less generating capacity, and is among the oldest reactors presently operating. SONGS 1 initially received the Provisional Operating License, DPR-13, March 29, 1967, and is only operated at 390 megawatts electric. SONGS 1 will operate for only two months over the entire Federal fiscal year. This results in an equivalent capacity of only 65 megawatts electric.

This total generating capacity from SONGS 1 for two months of power operation is less than that of Big Rock Point (i.e., 69MWe) for an entire year. Big Rock Point's annual fees for 1991 and 1992 were \$225,100 and \$238,850 respectively. Therefore, we believe that SONGS 1 should be considered as a 25 year old unit with an equivalent capacity of 65 megawatts for the purposes of subparagraphs (c)(1) and (c)(2), and be required to pay a fee no greater than that assessed of Big Rock Point.

Furthermore, 171.11(c)(4) allows for consideration for exemption if the "net increase in kwh cost for each customer [is] directly related to the annual fee assessed under this part." Since SONGS 1 is to shutdown in November 1992, it

will only operate two months into the 1993 FY. Full assessment of an annual operating fee plus fees incurred under Part 170 would represent an inordinately disproportionate increase in Kwh cost for each customer.

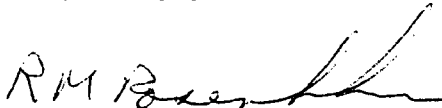
In summary, we requested removal of our authority to operate SONGS 1 in our amendment dated April 2, 1992. That amendment was our first step with the NRC to meet one of the provisions for exemption from 10 CFR 171. Our request to withdraw our operating authority was predicated on good faith with the intent that an agreement would be reached with the California Public Utilities Commission and power operations would be terminated during 1992. The agreement has since been reached.

Therefore, we request that the Commission grant us full exemption from Part 171 for FY 1993 and thereafter in this particular circumstance because:

- Assessment of an annual operating fee to cover the "authorized budgeted costs" would not serve the underlying purpose of the rule and provide regulatory services commensurate to the cost of those services, and that such an assessment would unfairly burden SCE (10 CFR 50.12);
- SONGS 1 will be permanently shutdown and defueled;
- SONGS 1 will only operate approximately 60 days in the 1993 Federal FY;
- SONGS 1 is smaller in generating capacity, and is older in design than most other NRC licensed operating plants, and will have an equivalent operating capacity of only 65 megawatts for the NRC 1993 Fiscal Year.

SCE requests immediate consideration for exemption from 10 CFR 171 for reasons stated in this letter. Should you or your staff have any questions regarding this exemption request, please do not hesitate to contact me.

Very truly yours,



cc: J. B. Martin, Regional Administrator, NRC Region V
George Kalman, NRC Senior Project Manager, San Onofre Unit 1
J. O. Bradfute, NRC Project Manager, San Onofre Unit 1
C. W. Caldwell, NRC Senior Resident Inspector, San Onofre Units 1, 2&3
R. F. Dudley, Jr., Section Chief, Non-Power, Decommissioning, and
Environmental Project, Directorate of Reactor Projects - 3, 4, and 5