

NUCLEAR REGULATORY COMMISSION
Docket Nos. 50-361 and 50-362; NRC-2014-0170
Southern California Edison Company
San Onofre Nuclear Generating Station, Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing exemptions in response to a February 13, 2014, request from Southern California Edison Company (SCE, or the licensee), representing itself and the other owners. The exemptions would permit the use of San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, decommissioning Trust funds for purposes other than decommissioning activities and would allow the licensee to use withdrawals from the decommissioning Trust funds without prior notification to the NRC. The NRC has reviewed the Trusts and determined that, at this time, there is reasonable assurance of sufficient financial resources in the Trusts to complete decommissioning activities.

ADDRESSES: Please refer to Docket ID NRC-2014-0170 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0170. Address questions about NRC dockets to Carol Gallagher;

telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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FOR FURTHER INFORMATION CONTACT: Thomas Wengert, Office of Nuclear Reactor Regulation, 301-415-4037; Thomas.Wengert@nrc.gov; U.S. Nuclear Regulatory Commission, Washington DC 20555-0001.

I. Background.

Southern California Edison Company (SCE), San Diego Gas & Electric Company, City of Riverside Utilities Department, and the City of Anaheim, California, (the licensees), are the holders of Facility Operating License Nos. NPF-10 and NPF-15, for SONGS, Units 2 and 3, respectively. SCE is authorized to act as the agent of the other owners. By letter dated June

12, 2013 (ADAMS Accession No. ML131640201), SCE submitted a certification to the U.S. NRC indicating it permanently ceased power operations at the SONGS Units 2 and 3 on June 7, 2013. By letters dated July 22, 2013 (ADAMS Accession No. ML13204A304), and June 28, 2013 (ADAMS Accession No. ML13183A391), respectively, SCE certified that it had permanently defueled the SONGS Units 2 and 3 reactor vessels.

The facility consists of two permanently shutdown and defueled pressurized-water reactors located in San Diego County, California.

II. Request/Action.

By letter dated February 13, 2014 (ADAMS Accession No. ML14051A632), SCE submitted a request for exemptions from Section 50.82(a)(8)(i)(A) and Section 50.75(h)(2) of Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR). The exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would permit withdrawal and the use of a portion of the funds in the SCE Decommissioning Trust Funds (Trusts) for financing irradiated fuel management and site restoration activities. The licensee's requested exemption from 10 CFR 50.75(h)(2) would permit Trust withdrawals to be made without prior notification of the NRC, in the same manner as withdrawals are made under 10 CFR 50.82(a)(8) for decommissioning activities. The licensee supplemented this exemption request by letter dated March 12, 2014 (ADAMS Accession No. ML14078A028).

The requirements of 10 CFR 50.82(a)(8)(i)(A) restrict the use of decommissioning Trust fund withdrawals to expenses for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2. The definition of "decommission" in 10 CFR 50.2 is as follows:

to remove a facility or site safely from service and reduce residual radioactivity to a level that permits-

- (1) Release of the property for unrestricted use and termination of the license; or
- (2) Release of the property under restricted conditions and termination of the license.

The definition does not include other activities, such as irradiated fuel management or site restoration activities. The requirements of 10 CFR 50.75(h)(2) also restrict the use of decommissioning Trust fund disbursements (other than for ordinary administrative costs and incidental expenses) to decommissioning expenses until final radiological decommissioning is completed. Therefore, exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) are needed to allow SCE to withdraw funds from the Trusts for activities other than decommissioning activities prior to completion of all radiological decommissioning activities.

The requirements of 10 CFR 50.75(h)(2) further provide that, except for decommissioning withdrawals being made under 10 CFR 50.82(a)(8) or for payment of ordinary and incidental expenses, no disbursement may be made from the Trust without written notice to the NRC at least 30 working days in advance. Therefore an exemption from 10 CFR 50.75(h)(2) is also needed to allow SCE to withdraw funds from the Trusts for activities other than decommissioning activities without prior NRC notification.

III. Discussion.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when 1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and 2) any of the special

circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things, the following:

a) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or

b) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

A. Authorized by Law

These exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would allow SCE to use a portion of the funds from the Trusts for activities other than decommissioning activities without prior notice to the NRC. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are authorized by law.

B. No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) are to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors. Based on the site-specific cost estimate and the cash flow analysis, use of the Trusts in the proposed manner will not adversely impact SCE's ability to complete radiological decontamination within 60 years and terminate the SONGS licenses. Furthermore, exemption from 10 CFR 50.75(h)(2) to allow the licensee to make withdrawals

from the Trusts without prior written notification to the NRC should not affect the sufficiency of funds in the Trusts to accomplish radiological decontamination of the site.

Based on the above, no new accident precursors are created by using the Trusts in the proposed manner. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. No changes are being made in the types or amounts of effluents that may be released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there is no undue risk to public health and safety.

C. Consistent with the Common Defense and Security

The proposed exemptions would allow SCE to use funds from the Trusts for irradiated fuel management and site restoration. Irradiated fuel management under 10 CFR 50.54(bb) is an integral part of the planned SCE decommissioning and final license termination process and will not adversely affect SCE's ability to physically secure the site or protect special nuclear material. This change to enable use of a portion of the funds from the Trusts for activities other than decommissioning activities will not alter the scope of, or availability of funding for the licensee's security program. Therefore, the common defense and security is not impacted by this exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purposes of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) are to provide reasonable assurance that adequate funds will be available for radiological

decommissioning of power reactors. Strict application of these requirements would prohibit withdrawal of funds from the Trusts for activities other than decommissioning activities until final radiological decommissioning at SONGS, Units 2 and 3 has been completed.

The SONGS, Units 2 and 3 total Decommissioning Trust Funds balance as of December 31, 2013, was \$3,926 million in 2013 dollars. The SCE analysis projects that the total radiological decommissioning cost of SONGS to be approximately \$1,769 million (2013 dollars). As required by 10 CFR 50.54(bb), SCE estimated the costs associated with the long-term irradiated fuel management at \$1,487 million in (2013 dollars). The total expenditures for site restoration are estimated at \$1,098 million (2013 dollars). The NRC staff performed an independent cash flow analysis of the Trusts through 2051 (assuming an annual real rate of return of 2%, as allowed by 10 CFR 50.75(e)(1)(ii)) and determined the projected earnings of the Trust. The staff confirmed that the current funds, planned future contributions and projected earnings of the Trusts provide reasonable assurance of adequate funding to complete all NRC required decommissioning activities, and that SCE's site-specific decommissioning cost analysis demonstrates adequate funds are available in the Trusts to also conduct irradiated fuel management and site restoration activities. The staff's review and conclusions are based on SCE's specific financial situation as described in the February 13, 2014, and March 12, 2014, letters. Therefore, SCE has demonstrated reasonable assurance that sufficient funding will be available for radiological decommissioning, irradiated fuel management, and site restoration activities and that the exemptions from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 50.75(h)(2), with respect to the use of funds from the Trusts for irradiated fuel management and site restoration activities, will still achieve the underlying purposes of the rule.

In its submittal, SCE also requested exemption from the requirements of 10 CFR 50.75(h)(2) concerning prior written notification to the NRC of withdrawals from the Trusts to fund activities other than decommissioning activities. The underlying purpose of notifying the

NRC prior to withdrawal of funds from the Trusts is to provide opportunity for NRC intervention, when deemed necessary, if the withdrawals are for expenses other than those authorized by 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8) that could result in insufficient funds in the Trust to accomplish radiological decontamination of the site.

By granting the exemptions to 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8), the staff considers that withdrawals consistent with the licensee's submittal dated February 13, 2014, as supplemented on March 12, 2014, are authorized. As stated previously, the NRC staff has determined that there are sufficient funds in the Trusts to complete legitimate radiological decommissioning activities and to conduct irradiated fuel management and site restoration activities. Pursuant to the annual reporting requirements in 10 CFR 50.82(a)(8)(v) – (vii), licensees are required to monitor and report the status of the decommissioning Trust fund and the funding status for managing irradiated fuel. These reports provide the NRC with awareness of and the ability to take action on any actual or potential funding deficiencies. The requested exemption would not allow withdrawal of funds from the SONGS Trusts for any other purpose that is not currently authorized in the regulations without prior notification to the NRC. Therefore, the granting of this exemption to 10 CFR 50.75(h)(2) to allow the licensee to make withdrawals from the Trusts without prior written notification to the NRC will still meet the underlying purpose of the regulation.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii) are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

The licensee states that the Trusts contain funds in excess of the estimated costs of radiological decommissioning and that these excess funds are needed for irradiated fuel management and site restoration activities. The NRC does not preclude use of funds from the

decommissioning Trust in excess of those needed for radiological decommissioning for other purposes, such as irradiated fuel management or site restoration. The NRC has stated that funding for irradiated fuel management and other site restoration activities may be commingled in the decommissioning Trust provided the licensee is able to identify and account for the radiological decommissioning funds separately from the funds set aside for irradiated fuel management (see NRC Regulatory Issue Summary 2001-07, Rev 1, "10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning," dated January 8, 2009 [ADAMS Accession No. ML083440158], and Regulatory Guide 1.184, Rev 1, "Decommissioning of Nuclear Power Reactors," [ADAMS Accession No. ML13144A840]). To prevent access to those excess funds in the Trusts because irradiated fuel management and site restoration are not associated with radiological decommissioning would create an unnecessary financial burden without any corresponding safety benefit. The adequacy of the Trusts to cover the cost of activities associated with irradiated fuel management and site restoration in addition to radiological decommissioning is supported by the NRC staff's site-specific decommissioning cost analysis. If SCE cannot use its Trusts for irradiated fuel management and site restoration activities, it would need to obtain additional funding that would not be recoverable from the Trusts, or SCE would have to modify its decommissioning approach and methods. The NRC staff concludes that either outcome would impose an unnecessary and undue burden significantly in excess of that contemplated when the regulation was adopted.

Therefore, since the underlying purposes of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would be achieved by allowing SCE to use a portion of the Trusts for irradiated fuel management and site restoration activities without prior NRC notification, and compliance with the rules would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment, (see Environmental Assessment and Finding of No Significant Impact published on July 23, 2014, 79 FR 42837).

IV. Conclusions.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SCE exemptions from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) to allow withdrawals from the SONGS, Units 2

and 3 Trusts, for irradiated fuel management and site restoration activities without prior NRC notification.

The exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 5th day of September 2014.

For the Nuclear Regulatory Commission.

/RA/

A. Louise Lund, Acting Director,
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