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10 CFR 2.206

April 3, 2015

Michele G. Evans, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation
Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3; Response to FOE's Comments on Proposed Director's Decision

Reference:

1. NRC to SCE letter dated February 27, 2015, enclosing Proposed Director's Decision Under 10 CFR 2.206
2. SCE to NRC letter dated March 25, 2015, Response to Proposed Director's Decision under 10 CFR 2.206
3. FOE to NRC letter dated March 27, 2015 re Proposed Director's Decision

Dear Ms. Evans:

In Reference 1, you transmitted to Southern California Edison (SCE) a proposed Director's Decision under 10 CFR 2.206 regarding a petition filed on June 18, 2012 by Friends of the Earth (FOE) requesting action related to the San Onofre Nuclear Generating Station (SONGS) replacement steam generators (RSGs). The proposed Director's Decision concludes that FOE's request is moot in light of the permanent cessation of operation of SONGS. In Reference 2, SCE stated that it would not be submitting comments on the proposed Director's Decision, but that it reserved the right to respond to any comments that may be submitted by FOE. In Reference 3, FOE submitted extensive comments criticizing the proposed Director's Decision and SCE. FOE also requested the Commission and the NRC Office of the Inspector General (OIG) to "intervene" in this proceeding. On behalf of SCE, we are submitting this response to FOE's comments, including its request for intervention by the Commission and OIG.

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Ms. Michele G. Evans
April 3, 2015
Page 2

FOE Has Mischaracterized the Facts regarding the SONGS Replacement Steam Generators

Many of FOE's alleged "facts" are simply incorrect or without basis. For example:

- FOE alleges that the problems with the SONGS RSGs were the result of design choices made by SCE.¹ However, SCE was not the designer of the RSGs - - Mitsubishi Heavy Industries (MHI) was the designer. As discussed in NRC's Inspection Report 2013-201 for MHI dated September 20, 2013, the problems with the RSGs were caused by a number of failures by MHI, including failures embedded in its design computer codes.² SCE was not aware of those failures until 2012, after the leak in one of the RSGs. Furthermore, as a utility without expertise in the design of steam generators, such failures were not readily identifiable or foreseeable by SCE.
- FOE alleges that there were "foreseeable and foreseen high void fraction[s]" in the RSGs.³ However, as stated in NRC Inspection Report 2012-009 for SONGS dated September 20, 2013, it was determined in 2012 that the actual peak void fraction in the RSGs was 0.996, versus a maximum void fraction of 0.95 calculated by MHI during the design of the RSGs.⁴ FOE provides no basis for an allegation that the void fraction of 0.996 was "foreseen or foreseeable" by SCE. SCE has a high commitment to safety and never would have installed the RSGs if it had known they were defective.
- FOE alleges that neither SCE nor the NRC Augmented Inspection Team (AIT) determined the root cause of the tube degradation of the RSGs.⁵ That allegation is incorrect. NRC's Inspection Report 2013-201 on MHI discussed the MHI root cause analysis of the tube degradation at length.⁶ Furthermore, as discussed in NRC Inspection Report 14-004 dated November 17, 2014, NRC reviewed SCE's root cause evaluation and concluded that the root causes and contributing causes are understood.⁷

¹ Ref. 3, p. 2.

² NRC Inspection Report 99901030/2013-201 (Sept. 20, 2013), pp. 8-9, available in ADAMS as accession number ML13261A189.

³ Ref. 3, p. 2.

⁴ NRC Inspection Report 05000361/2012009 and 05000362/2012009 (Sept. 20, 2013), p. 21, available in ADAMS as accession number ML13263A271.

⁵ Ref. 3, p. 3.

⁶ NRC Inspection Report 99901030/2013-201 (Sept. 20, 2013), pp. 4-6, available in ADAMS as accession number ML13261A189.

⁷ NRC Inspection Report 050-00361/14-004 and 050-00362/14-004 (Nov. 17, 2014), p. 15, available in ADAMS as accession number ML14321A900.

Ms. Michele G. Evans
April 3, 2015
Page 3

- FOE alleges that SCE did not perform a 10 CFR 50.59 evaluation prior to “predetermining” that the changes in the RSGs would not require a license amendment.⁸ That claim is false. As discussed in the AIT’s Inspection Reports 2012-007 dated July 18, 2012 and 2012-010 dated November 9, 2012, SCE performed 50.59 screens and evaluations prior to installing the RSGs, and it correctly concluded that the RSG design changes did not require a license amendment.⁹

To the extent that FOE may be referring to SCE’s desire in 2004-2006 to install the RSGs without a license amendment pursuant to 10 CFR 50.59, there was absolutely nothing improper with that goal. The RSG Specification stated SCE’s preference to replace the steam generators under 10 CFR 50.59 and specified that MHI make the RSGs “as close as possible to the existing steam generators in form, fit, and function, *subject to additional requirements and limitations* stated elsewhere” in the Specification, which included requirements for preventing damaging tube vibration and leaks.¹⁰ If MHI had believed that a license amendment was necessary under 10 CFR 50.59 to satisfy those requirements, MHI should have let SCE know so that one could have been obtained. In fact, SCE sought and received two license amendments for the RSGs where required to comply with 10 CFR 50.59.¹¹

In any event, as stated recently in NRC’s lessons learned review of SONGS, the staff evaluated whether it is acceptable for a licensee to intentionally design a facility change such that it could be implemented under 10 CFR 50.59 without the need for prior NRC approval. The staff determined such a practice “does not represent a safety concern or a compliance concern.”¹²

In summary, NRC’s AIT reports concluded that the design changes involving the RSGs did not require a license amendment. Moreover, NRC’s lessons learned report concluded that SCE’s

⁸ Ref. 3, pp. 2-3.

⁹ NRC Inspection Report 05000361/2012007 and 05000362/2012007 (July 18, 2012), pp. 33-37, available at ADAMS as accession number ML 12188A748; NRC Inspection Report 05000361/2012010 and 05000362/2012010 (Nov. 9, 2012), pp. 22-26, available at ADAMS as accession number ML 12318A342.

¹⁰ SCE Conformed Specification for Design and Fabrication of the Replacement Steam Generators for Unit 2 and Unit 3, Rev. 4 (July 2010), Section 3.6.1 (emphasis added), available at http://www.songscommunity.com/docs/design/Specification_for_Design_and_Fabrication_Rev4_Part1.pdf

¹¹ Letter from J. Hall, NRC, to R. Ridenoure, SCE, San Onofre Nuclear Generating Station, Units 2 and 3- Issuance of Amendments Re: Technical Specification Changes in Support of Steam Generator Replacement (TAG Nos. MD9160 and MD9161) (June 25, 2009), available at ADAMS accession number ML091670298.

¹² NRC San Onofre Steam Generator Tube Degradation Lessons Learned Report (Mar. 6, 2015), p. 16, available at ADAMS accession number ML15015A419.

Ms. Michele G. Evans
April 3, 2015
Page 4

50.59 evaluations “did not have any bearing on the underlying, unrecognized design control issues that actually caused the San Onofre steam generator tube leak.”¹³

FOE Has Not Provided Any Basis for Changing the Conclusion that Its Petition Is Moot

FOE does not disagree that its petition is now moot with respect to SCE, given the permanent cessation of operation of SONGS. Nor does it dispute that NRC dismissal of FOE’s petition is fully consistent with NRC administrative practice, as well as that of other administrative agencies and the courts. At most, it argues that the NRC should address the merits of FOE’s allegations in order to “address serious problems that plague the agency’s use” of the 50.59 process and to address 50.59 problems that “may have tarnished decisions made about other steam generators.”¹⁴

FOE does not identify any problems (or any potential problems) with the application of 10 CFR 50.59 to other steam generators. Additionally, FOE does not identify any reason why a ruling on the merits of its petition is necessary for NRC to take action with respect to any problems that may exist at other plants. This is not a situation in which a decision is needed on a generic issue that is recurring and yet evades review by NRC. In fact, the NRC has publicly addressed the 50.59 issues related to the SONGS RSGs in its AIT inspection reports and the generic issues in the lessons learned report issued on March 6, 2015 related to the SONGS RSGs. As the Commission has already held with respect to a different aspect of FOE’s petition, the issues raised by FOE are moot given SCE’s decision to shut down SONGS permanently and the Commission’s determination that a “future case [involving another plant] is appropriately decided in the context of a concrete dispute” and not a decision on FOE’s petition.¹⁵ That same reasoning applies here and provides a more than sufficient basis for dismissing FOE’s petition as moot.

FOE Has Not Provided Any Valid Basis for “Intervention” by the OIG or the Commission

FOE requests that the OIG intervene in this proceeding because the issues raised by the OIG report on the implementation of 10 CFR 50.59 “are at risk of being swept under the carpet.”¹⁶ Incredibly, FOE never discusses NRC’s lessons learned report on SONGS, which directly addresses the OIG’s findings. Specifically, the lessons learned report responds to each of the 50.59 findings of the OIG, and identifies action that the NRC is taking to provide guidance to the

¹³ Id., p. 10.

¹⁴ Ref. 3, p. 6.

¹⁵ *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-09, 78 NRC 551, 556-58 (2013).

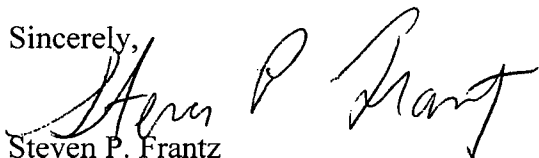
¹⁶ Ref. 3, p. 6.

Ms. Michele G. Evans
April 3, 2015
Page 5

industry related to those findings.¹⁷ Thus, the OIG does not need to intervene in this proceeding to ensure that its findings are appropriately addressed.

Similarly, FOE requests that the Commission intervene in this proceeding.¹⁸ However, FOE's request is inconsistent with 10 CFR 2.206(c)(2), which states that "[n]o petition or other request for Commission review of a Director's decision under this section will be entertained by the Commission." Furthermore, the Commission should not intervene as a matter of discretion, because as discussed above: 1) the AIT has already evaluated the types of issues raised by FOE and concluded that the design changes involving the SONGS RSGs did not require a license amendment; 2) NRC has concluded that issues related to the implementation of 10 CFR 50.59 had no bearing on the cause of the tube leak at SONGS; and 3) the NRC has conducted a lessons learned review of implementation of 10 CFR 50.59 at SONGS and is taking action to enhance implementation in the future.

Sincerely,



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Counsel for Southern California Edison Co.

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¹⁷ NRC San Onofre Steam Generator Tube Degradation Lessons Learned Report (Mar. 6, 2015), p. 12, available at ADAMS accession number ML15015A419.

¹⁸ Ref. 3, p. 6.