

CALIFORNIA ENERGY COMMISSION
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May 14, 2015

Via Electronic and U.S. Mail

Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC, 20555
Attn: Rulemakings and Adjudications Staff

**RE: San Onofre Nuclear Generating Station (SONGS) - License Amendments
Regarding the Revision to Emergency Plan and Emergency Action Levels
(TAC Nos. MF3838 through MF3843)**

Dear Ms. Vietti-Cook:

California Energy Commission staff has read and considered the license amendments for the SONGS Units 1, 2, and 3, and the Independent Spent Fuel Storage Installation (ISFSI) submitted by Southern California Edison's (SCE) separate applications dated March 31, 2014. The Energy Commission has prepared these comments as a state agency affected by the proposed action. Until the United States, through its authorized agency, has approved a means for permanent and terminal disposition of high-level nuclear waste, spent fuel will continue to be stored in California for many generations to come, if not indefinitely. Because spent fuel will be stored on-site in wet storage for the immediate future, the Energy Commission has concerns that approval of SCE's requested license amendments at this time would unreasonably diminish the current safeguards necessary to ensure public health and safety.

The first of the amendments proposed by SCE seeks an exemption from the NRC's governing regulations, which would allow SCE to completely replace the existing SONGS Emergency Plan with a Permanently Defueled Emergency Plan (PDEP), which SCE asserts would reflect the permanently defueled condition of SONGS. The second amendment would revise the SONGS Emergency Action Level (EAL) scheme to reflect what SCE asserts is the permanently defueled condition of the station. The proposed EALs are based on the guidance contained in Nuclear Energy Institute (NEI) 99-01, Revision 6, "Development of Emergency Action Levels for Non-Passive Reactors,"

Appendix C, that is applicable for permanently defueled conditions and for an Independent Spent Fuel Storage Installation (ISFSI).

According to 10 CFR 50.12(a)(1), any exemption from the NRC's governing regulations must be authorized by law, not present an undue risk to the public health and safety, and be consistent with the common defense and security. The regulations in 10 CFR 50.12(a)(2)(ii) provide that the NRC may, on application by a Licensee, grant exemptions from the requirements of the regulations in circumstances in which application of the regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The NRC staff asserts in its report dated December 17, 2014¹ that the risk of an offsite radiological release is significantly lower and the types of possible accidents are significantly fewer, at a nuclear power reactor that has permanently ceased operations and removed fuel from the reactor vessel than at an operating power reactor. The report notes that on such basis the NRC has previously granted similar exemptions from EP requirements for permanently shut down and defueled power reactor licensees. But the NRC fails to consider circumstances unique to California's coastal nuclear facilities: risks to public health and safety associated with and exacerbated by the state's seismicity and risk of tsunamis. Allowing an exemption to SCE for the SONGS facility from the NRC's governing regulations at this time without further consideration of California's unique circumstances would present an undue risk to public health and safety.

The first license amendment request would decrease the safeguards to public health and safety in the event of a credible and foreseeable accident scenario at SONGS. First, the requested exemptions outlined above would eliminate the breadth of SCE's obligations to keep the State emergency response organizations and the general public informed in the event of an emergency. The exemptions would further reduce the State's ability to adequately and effectively respond to an emergency by discontinuing the federal requirement for support to State planning and monitoring activities, placing the health and safety of California citizens in jeopardy in the event of a plant emergency.

The second amendment would revise the SONGS Emergency Action Level (EAL) scheme to reflect what SCE asserts is the permanently defueled condition of the station. This would effectively treat the radioactive material stored in a spent fuel pool as if it were a dry cask ISFSI and/or monitored retrievable storage ("MRS") facility. Energy Commission staff notes that it will be several years before the waste is moved from wet cooling to dry cask storage. Further, SCE's license amendment request does not even contain implementing procedures, preventing the Energy Commission from

¹ SECY-14-0144, POLICY ISSUE for the Commissioners of the NRC from Mark A. Satorius, Executive Director for Operations, regarding the "REQUEST BY SOUTHERN CALIFORNIA EDISON FOR EXEMPTIONS FROM CERTAIN EMERGENCY PLANNING REQUIREMENTS"

understanding what changes it would need to make to its emergency response protocols if the exemptions and license amendment request are approved. In sum, the requested exemptions would eliminate substantial emergency plan requirements contained in 10 CFR Part 50, Appendix E, which in turn would necessarily reduce the effectiveness of any emergency plan going forward.

Taken together, the license amendment requests would significantly reduce, if not eliminate, notification procedures currently required by 10 CFR Part 50, Appendix E. For instance, the exemptions request proposes that the procedures requiring notification and interaction with State and local agencies as set forth in Part 50, Appendix E be eliminated almost in their entirety, based on the erroneous assumption that SONGS - in its present state with spent fuel in the cooling pool - be viewed as an ISFSI and/or MRS facility. Second, the license amendment request fails to adequately analyze a number of credible scenarios whereby public health and safety may be put at risk, including from a seismic event or tsunami, and from the spent fuel rods maintained in the spent fuel cooling pool. The license amendment request, if granted, would eliminate the federal requirement that SCE take responsibility for planning a response to a spent fuel pool emergency that may last more than 10 hours. This problem would be compounded by the lack of clear notification procedures to the State otherwise required by Part 50, Appendix E.

NRC staff have determined that pursuant to 10 CFR 50.12, "Specific Exemptions", the exemptions requested by SCE are authorized by law, will not present an undue risk to the public health and safety, and will be consistent with the common defense and security. However, while spent fuel remains stored on-site in wet-cooling pools, the license amendment requests would likely result in a clear reduction in emergency plan effectiveness that cannot meet the requirements of 10 CFR § 50.54(q)(4) and companion Part 50, Appendix E emergency plan requirements. At this time, until spent fuel is permanently transferred from the wet-cooling pools to dry-cask storage, the Energy Commission sees no justification for granting either license amendment request.

The Energy Commission appreciates the opportunity to comment on the amendment requests before the Nuclear Regulatory Commission, and requests that you consider these comments prior to taking final agency action.

Sincerely,



ROBERT B. WEISENMILLER
Chair