



August 12, 2016

Via U.S. Mail and Email

Cynthia Herzog  
Senior Environmental Scientist  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825  
Email: CEQAcomments@slc.ca.gov

Marlayna Vaaler, Project Manager ✓  
U.S. Nuclear Regulatory Commission  
Office of Nuclear Material Safety and Safeguards  
Washington, DC 20555-0001  
Email: Marlayna.Vaaler@nrc.gov.

Subject: Environmental Review Scoping Comments for the San Onofre Nuclear Generating Station Units 2 & 3 Post-Shutdown Decommissioning Project

Dear Ms. Herzog:

On behalf of the City of Laguna Beach ("City"), this letter provides preliminary scoping comments on the Notice of Preparation ("NOP") of a draft environmental impact report ("DEIR") for the San Onofre Nuclear Generating Station Units 2 & 3 Post-Shutdown Decommissioning Project ("Project").

A portion of the proposed Project is located within the jurisdiction of the California State Lands Commission ("SLC"), on land within the Marine Corps Base Camp Pendleton, three (3) miles south of the community of San Clemente, west of Interstate 5 (I-5) and adjacent to the Pacific Ocean in northern San Diego County. The Project consists of the following four phases:

- Phase 1 – Decontamination and Dismantlement (2017-2025);
- Phase 2 – Partial Site Restoration and Offshore Conduit Disposition (2020-2035);
- Phase 3 – ISFSI Operation and Maintenance (2035-2049); and
- Phase 4 – Phase 4: ISFSI Removal and Final Site Restoration (2049-2051).

According to the NOP, the Project has the potential to cause a number of significant short-term, long-term and cumulative environmental impacts. The SLC, as the lead agency under the California Environmental Quality Act ("CEQA"),<sup>1</sup> has correctly determined that an EIR is required. As a responsible agency under CEQA and a cooperating agency under the National Environmental Policy Act ("NEPA"),<sup>2</sup> the City respectfully submits the following scoping comments.

<sup>1</sup> Pub. Res. Code §§ 21000 *et seq.*; *see also* Cal. Code Regs., tit. 14, ch. 3, § 15000 *et seq.* ("CEQA Guidelines").

<sup>2</sup> 42 USC §§ 4341 *et seq.*; *see also* Council on Environmental Quality ("CEQ") NEPA Regulations, contained in 40 C.F.R. Parts 1500-1508.

1. Consultation with the City concerning this Project's traffic, recreation, and open space impacts is required.

On July 12, 2016, the City of Laguna Beach became aware of the Project when City staff received the NOP. Section 15083 of the CEQA Guidelines encourages lead agencies to consult with other interested parties early in the environmental review process. The NOP solicits input from such interested parties, including the City. The City hereby submits these comments within the period requested in the NOP.

Because the Project is one of regional and areawide significance, a scoping meeting is required pursuant to Public Resources Code, section 21083.9(a)(2). Further, because the City exercises authority over resources that may be affected by the Project, including transportation facilities within its jurisdiction that could be affected, the SLC is required to consult with the City concerning potential effects to those resources.<sup>3</sup> We hereby request consultation concerning the Project's impacts to all potentially impacted transportation facilities within the City and to the area's beaches, adjacent ocean resources, open space and wildlife habitat resources.

Pursuant to Public Resources Code, section 21092.2, we also request notice of all stages of environmental review for the Project and any and all actions that the SLC proposes to take on this Project. Please send any and all notices via email to the following persons:

- a) Mike Phillips, Environmental Specialist, at [mphillips@lagunabeachcity.net](mailto:mphillips@lagunabeachcity.net);
- b) Christa Johnson, Assistant City Manager, [cjohnson@lagunabeachcity.net](mailto:cjohnson@lagunabeachcity.net); and
- c) Jason Holder, outside legal counsel retained for this matter, [jason@holderecolaw.com](mailto:jason@holderecolaw.com).

Additionally, please send paper copies of notice documents solely to the undersigned.

2. Because the Nuclear Regulatory Commission Must Ultimately Approve the Decommissioning Project, There is a Federal Nexus Triggering the Need for a Joint EIR/EIS.

The Project is subject to oversight and review by the U.S. Nuclear Regulatory Commission ("NRC") under Title 10 of the Code of Federal Regulation, Part 50, Section 50.59 (10 CFR 50.59), applying to design changes, tests and experiments carried out at licensed nuclear facilities. The Project involves design changes to SONGS that will ultimately require NRC approval. For example, the NRC will have to approve SCE's license termination plan. Arguably, the Project also requires a license amendment.<sup>4</sup> When it fulfills its statutory duties,

<sup>3</sup> PRC, § 21092.4; CEQA Guidelines, § 15086(a).

<sup>4</sup> For example, the NRC has not approved the design of the Holtec UMAX system that SCE has proposed for the ISFSI, and that partially subterranean design may reduce radiation safety. The proposed changes and alterations to the SONGS facility's design associated with decommissioning, including the Spent Fuel Pool Island Project ("SFPI") and the expanded and modified Independent Spent Fuel Storage Installation ("ISFSI"), require a license amendment because these changes were never addressed in the SONGS Final Safety Analysis Report ("FSAR") or any of the updates to the FSAR. See 10 C.F.R. §§ 50.56, 50.59(c). In addition, the Updated FSAR also does not consider the effects of sea level rise caused by

NRC will be the federal lead agency for review of the Project pursuant to NEPA. To adequately address the environmental impacts of the whole of the Project, SLC and NRC should jointly prepare an EIR/EIS for the Project. (See CEQA Guidelines, §§ 15006(j), 15170, 15220, 15222.) The CEQA Guidelines are clear:

If a Lead Agency finds that an [Environmental Impact Statement (“EIS”)] or Finding of No Significant Impact for a project would not be prepared by the federal agency by the time when the Lead Agency will need to consider an EIR or Negative Declaration, the Lead Agency should try to prepare a combined EIR-EIS or Negative Declaration-Finding of No Significant Impact. To avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the joint document.

This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.<sup>5</sup>

Similarly, the CEQA regulations for implementing NEPA encourage cooperation with state and local agencies in an effort to reduce duplication in the NEPA process.<sup>6</sup>

In the required Draft EIR/Environmental Impact Statement (“DEIR/S”), NRC should fully address the radiological safety concerns that are purportedly preempted by federal law.<sup>7</sup> This is the elephant in the room that can no longer be concealed or brushed aside under a blanket claim of federal preemption. The public’s interests and legal rights to understand the full environmental impacts of the decommissioning process will be circumvented if radiological safety issues are not addressed in the DEIR/S analysis.

When conducting this analysis, NRC will have to analyze site-specific radiological safety concerns.<sup>8</sup> The NRC’s past “generic” EIS documents do not satisfy the requirement for detailed impact analysis. These boilerplate analyses do not address the specific circumstances that make SONGS decommissioning particularly worrisome to neighboring stakeholders, including the City’s residents, businesses, and visitors. In *Natural Resources Defense Council v. Morton*, the

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climate change and associated reductions of radiation safety at SONGS. See SONGS FSAR, Hydrologic Engineering Chapter, available at: <http://www.nrc.gov/docs/ML1114/ML11145A032.pdf>.

<sup>5</sup> CEQA Guidelines, § 15222; see also *id.* at §§ 15226, 15228.

<sup>6</sup> 40 CFR § 1506.2.

<sup>7</sup> As discussed further below, when recently approving the ISFSI, the California Coastal Commission did not analyze the “radiological safety” impacts of spent fuel storage casks based on a claim of federal preemption. (See Addendum to CCC Staff Report, dated Oct. 5, 2015 (CCC ISFSI Addendum), pp. 10-11, available at: <http://documents.coastal.ca.gov/reports/2015/10/Tu14a-10-2015.pdf>.) Comments made to the Coastal Commission and included in the CCC ISFSI Addendum are hereby incorporated herein by reference.

<sup>8</sup> The 2002 Supplement to NRC’s *Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities* (NUREG-0586 Supplement 1) (the “Supplement”) does not address storing spent fuel in a seismically active marine environment such as that characterizing the Project site. See generally Supplement, available at: <http://www.nrc.gov/docs/ML0234/ML023470304.pdf>.

Bureau of Land Management attempted to grant individual licenses, relying solely on a program EIS for the entire licensing program.<sup>9</sup> The court found that the program EIS failed to provide the decisionmaker with information regarding the specific and particular consequences of the action.<sup>10</sup> A similar finding was made by the court in *Natural Resources Defense Council v. Administrator*: “As a general rule, the preparation of a [program EIS] does not obviate the necessity of preparing a particularized impact statement for individual major federal actions that are components of a subject program.”<sup>11</sup> Several courts have confirmed that site-specific environmental analyses are required before a lead agency can dispense with environmental review.<sup>12</sup>

Here, the NRC’s Supplement generically analyzing the impacts of decommissioning identified two categories of impacts to be site-specific: threatened and endangered species and environmental justice. These issues must be addressed in the DEIR/S for this Project. It also identified four categories of impacts that it termed “conditionally site-specific”:

- Land use involving offsite areas to support decommissioning activities
- Aquatic ecology for activities beyond the operational area
- Terrestrial ecology for activities beyond the operational area
- Cultural and historic resources for activities beyond the operational area with no current cultural and historic resource survey.<sup>13</sup>

The Supplement also concluded that environmental justice impacts must be determined on a site-specific basis.<sup>14</sup> The DEIR/S required for this Project must also address each of these site-specific impact categories and any others implicated by the proposed actions.

The NRC’s Supplement also acknowledged site-specific analysis would be required when circumstances for decommissioning are unusual. Additionally, the NRC’s more recent *Generic EIS for Continued Storage of Spent Nuclear Fuel* acknowledged that prior studies did not consider seismic risks at western nuclear reactors including San Onofre.<sup>15</sup> Here, because the Project site is located in a seismically active area and is immediately adjacent to a sensitive

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<sup>9</sup> *Natural Resources Defense Council v. Morton* (1974) 388 F.Supp. 829.

<sup>10</sup> *Id.* at 838.

<sup>11</sup> *Natural Resources Defense Council v. Administrator* (1978) 451 F.Supp. 1245, 1258.

<sup>12</sup> The Ninth Circuit of the U.S. Court of Appeals, which includes California, adopted similar reasoning. (See, *Natural Resources Defense Council v. Hodel* (9<sup>th</sup> Cir. 1987) 819 F.2d 927, 928 (refers to *NRDC v. Morton, supra*, as “the leading case in this area”); *City of Tenakee Springs v. Block* (9<sup>th</sup> Cir. 1985) 778 F.2d 1402, 1407 (“[w]here there are large-scale plans for regional development, NEPA requires both a programmatic and a site-specific EIS”); *Oregon Environmental Council v. Kunzman* (9<sup>th</sup> Cir. 1983) 714 F.2d 901 (Oregon Department of Agriculture ordered to prepare site-specific EIS for herbicide spraying program and had erred in relying on earlier program EIS).

<sup>13</sup> Supplement, p. xvi.

<sup>14</sup> *Id.* at p. 4-65.

<sup>15</sup> See *NRC Generic EIS for Continued Storage of Spent Nuclear Fuel* (NUREG-2157), pp. xlii, F-10 fn. 5, available at: <http://www.nrc.gov/docs/ML1419/ML14196A105.pdf>.

marine ecosystem, the site-specific analysis must consider the associated risks of radiological contamination.

In September 2014, SCE submitted a post-shutdown decommissioning activities report (“PSDAR”), the licensee’s required analysis of the extent to which the Project’s impacts are covered by the analysis in NRC’s Supplement.<sup>16</sup> In its PSDAR, SCE asserted that “[b]ased on current plans, no decommissioning activities unique to the site have been identified and no activities or environmental impacts outside the bounds considered in the GEIS have been identified.”<sup>17</sup> The City strenuously disagrees with this conclusion and requests that the NRC conduct an independent assessment of the extent to which the environmental impacts of the Project require site-specific analysis in the DEIR/S, especially given the Project’s unique environmental setting.

When engaging in further consultation with the City and other concerned stakeholders, please confirm that the SLC and NRC will prepare a joint DEIR/S that will address radiological safety issues and will support the analysis with substantial evidence.

3. The DEIR/S Must Analyze the Impacts of the Whole Project.

Both CEQA and NEPA require lead agencies to analyze the impacts of the “whole of the project.”<sup>18</sup> Here, the whole of the project is the entire decommissioning process. The NRC defines “decommission” in 10 CFR 50.2 as a process “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.” This process necessarily includes each step following the decision to cease operations to the termination of the NRC license. Indeed, in its PSDAR, SCE admits that the decommissioning process necessarily includes Spent Nuclear Fuel Management Periods.<sup>19</sup>

Unfortunately, there has already been a pattern of piecemealed review and approval of various smaller “projects” that are in actuality inextricably connected to SONGS decommissioning. For example, the CPUC approved SCE’s decommissioning cost estimate in December 2014. This decision was not preceded by any environmental impact analysis. Then,

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<sup>16</sup> See SCE’s PSDAR for SONGS, available at: <http://www.nrc.gov/docs/ML1426/ML14269A033.pdf>.

<sup>17</sup> See *id.* at p. 8. The PSDAR is ostensibly supported by SCE’s Environmental Impact Evaluation (“EIE”). See PSDAR for SONGS, p. 18. Like the PSDAR, the EIE concluded that “SCE’s review confirmed that the anticipated or potential impacts are within the bounds of the generic impacts that the NRC described in the decommissioning GEIS.” See EIE, p. ES-3, available at: <https://www.songscommunity.com/docs/eieaug1.pdf>. The EIE, however, provides only a cursory review of potential environmental impacts from the Project applicant’s undeniable self-interested perspective, and that review relies on multiple unsupported assumptions. An independent review of Project impacts, conducted by state and federal agencies, is required.

<sup>18</sup> See CEQA Guidelines § 15378(a) [a “project” means the whole of an action that may cause either a direct or reasonably foreseeable indirect physical change in the environment]; see also *McQueen v. Board of Directors of the Midpeninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143; see also *Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985); see also *Save Yaak Comm. v. Block*, 840 F.2d 714 (9th Cir. 1988).

<sup>19</sup> See SCE’s PSDAR for SONGS, p. 8.

in 2015, the Coastal Commission approved the SFPI and several months later approved the ISFSI for SONGS. These components of the overall decommissioning project should have been analyzed together in a single EIR/S. Instead, their individual effects have been minimized by chopping up the larger project into smaller pieces.

The DEIR/S must analyze the impacts of all phases of decommissioning, including the SFPI and the ISFSI. Again, the public's interests and legal rights to understand the full environmental impacts of the SONGS decommissioning process will be thwarted if the DEIR/S analysis does not consider all necessary aspects of decommissioning.

4. The SLC Has Broad Authority to Analyze Radiological Safety Issues and to Regulate Non-Radioactive Health and Safety Issues.

As noted above, the City recognizes that some of the issues identified above may be considered radiologic safety issues that could be preempted under federal law. The Coastal Commission did not analyze many safety issues raised by commenters based on a claim of federal preemption. Specifically, it asserted:

Without assessing the validity of these concerns, the Commission staff notes that the consequences of any failure, malfunction, or defects in the proposed cooling system are related to radiological safety, which is under the exclusive jurisdiction of the federal [NRC].<sup>20</sup>

While a state agency may be prevented from imposing restrictions on nuclear power plants based on federal preemption, nothing prevents the state agency from analyzing radiological safety issues and recommending restrictions (i.e., mitigation measures and alternatives) that the NRC can and should adopt.

Further, while both federal and state regulatory agencies have oversight over nuclear power facilities, it is well-settled that state regulators maintain their traditional authority to regulate non-radioactive health and safety issues, including land-use, environmental, and economic concerns associated with nuclear power generation.<sup>21</sup> SLC regulatory action for this Project is not preempted when motivated by non-preempted concerns and when it neither conflicts with nor frustrates the Congressional purpose of the Atomic Energy Act ("AEA").<sup>22</sup> Thus, even if the NRC does not presently assume its proper role as co-lead agency for this Project, for purposes of performing the analysis of radiological safety impacts, SCE must satisfy its duty to analyze non-radioactive health and safety issues.

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<sup>20</sup> CCC ISFSI Addendum, pp. 10-11.

<sup>21</sup> *Pacific Gas & Electric Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 205, 212 (1983) (PG&E).

<sup>22</sup> *Id.* at 220-223.

5. The DEIR/S must adequately analyze the Project's potentially significant impacts to marine life, air and water quality, City transportation and recreation facilities, and it must consider secondary impacts and analyze a reasonable range of Project alternatives.

The DEIR/S must include thorough analysis of the following potentially significant environmental impacts that could affect the City and its residents:

- a) Demolition impacts – Impacts to air and ocean water quality during demolition of Units 2 & 3 reactor structures
- b) Damage to roadways and other infrastructure caused by the transportation of structures, systems, and components (“SSCs”), hazardous materials, and any contaminated soils and water<sup>23</sup>
- c) Impacts to groundwater supplies caused by potential radiation contamination and contamination that may have already occurred
- d) Impacts associated with disposing of spent fuel pool water – Discussion of how contaminated water from the spent fuel cooling pool is disposed of after rods are removed
- e) Impacts to special status species

The NOP acknowledges that four special-status reptiles have the potential to occur within the offshore Project area and that several other special-status species have the potential to occur within the onshore Project site.<sup>24</sup>

- f) Impacts to marine life if cooling system intake and discharge conduits, and the fish return system conduit are left partially or completely in place
- g) Seismic-related hazards associated with the storage of spent nuclear fuel storage casks for at least 20 years and quite possibly longer<sup>25</sup>
- h) Impacts that may occur if the dry storage casks in the ISFSI crack and release radiological contamination

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<sup>23</sup> SCE's EIE states that decommissioning will involve the transportation of millions of cubic feet of radioactive and nonradioactive waste. *See* EIE, p. ES-16. It then explains that “SCE plans to ship the bulk of radiological waste by rail; however, there may be times when truck shipments will be required.” *Ibid.*

<sup>24</sup> *See* NOP, Attachment, p. 19.

<sup>25</sup> In a June 2015 staff report, Coastal Commission staff noted that “Though SCE seeks temporary development authorization until 2051, there is no assurance that SCE will be able to transfer the spent fuel to DOE custody and decommission the proposed facility as planned by 2051, complicating the analysis of the project's exposure to geologic hazards and its potential to adversely affect coastal resources. The uncertain duration of the ISFSI's presence at the proposed location also has implications for SCE's alternatives analysis....” (CCC ISFSI Addendum, Staff Report, p. 20.)

- i) Cumulative impacts – Please address the potential impacts to the surrounding environment (earth, land, sea, air) of short-term, long-term, and indefinite storage of spent nuclear fuel on the Project site.
- j) Mitigation Measures – please include measures to reduce or eliminate all potentially significant Project impacts

If the SLC concludes that mitigation measures are within the responsibility and jurisdiction of another agency, such as the NRC, then it must recommend that those measures “can and should” be adopted by that agency.

- k) Weekday and peak traffic impacts on all surrounding roads and intersections caused by transporting SSCs, spent nuclear fuel storage casks, and any contaminated soils and water
- l) Weekend and off-peak traffic impacts on Highway 1 and SR 133 (Laguna Canyon Road)
- m) Impacts on the City’s recreation facilities including its beaches and shoreline caused by the Project<sup>26</sup>
- n) Public service impacts to the City’s residents, including any reduced police, fire, or ambulance services or increased response times caused by Project activities<sup>27</sup>
- o) Secondary impacts caused by increased Project traffic, including air quality impacts and increased greenhouse gas (GHG) emissions
- p) Consideration of a reasonable range of Project alternatives, including options for removal of the dry storage casks from the Project site and to either a Consolidated Interim Storage (“CIS”) location or to a permanent spent nuclear fuel storage facility

Please include all technical support for the above analyses in appendices to the DEIR/S.

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We request that the SLC and NRC provide a joint environmental impact analysis that considers the Project in its entirety. The requested DEIR/S must enable fulfillment of duties to protect communities and natural resources by considering and minimizing all potentially

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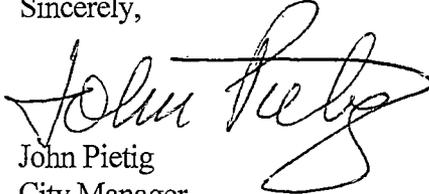
<sup>26</sup> The NOP indicates that SLC staff has concluded that the Project would not have any potentially significant impacts to recreation. (NOP, p. 18.) This conclusion is incorrect and is unsupported by substantial evidence. Because the Project is located adjacent to the Pacific Ocean and near several state beaches, it has the potential to impact these recreation facilities. Those impacts must be analyzed in the DEIR/S and mitigated to the extent feasible.

<sup>27</sup> Again, the NOP indicates that SLC staff has concluded that the Project would not have any potentially significant impacts to public services. (NOP, p. 18.) This conclusion is similarly incorrect and is also unsupported by substantial evidence.

significant impacts of the Project, including those that have heretofore been disregarded as the exclusive province of the federal government.

If you have any questions concerning these comments, please contact Michael Phillips at (949) 497-0390 and at [mphillips@lagunabeachcity.net](mailto:mphillips@lagunabeachcity.net).

Sincerely,



John Pietig  
City Manager

cc: (via email only)  
City Council  
Christa Johnson, Assistant City Manager  
David Shissler, Director of Water Quality  
Mike Phillips, Environmental Specialist  
Jason Holder, outside legal counsel