UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

November 8, 1984

OFFICE OF THE
COMMISSIONER

MEMORANDUM FOR: Chairman Palladino
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech

FROM: Commissioner Roberts

SUBJECT: PROPOSAL FOR RESTART OF SAN ONOFRE 1

I have read the General Counsel's November 5, 1984 memorandum regarding the legal and policy considerations relating to Southern California Edison Company's (SCE) proposal to restart the San Onofre 1 reactor, notwithstanding that all provisions of an August 1982 order have not been fully complied with. In addition, I have read the staff's paper requesting policy guidance from the Commission (SECY-84-360) and the legal analysis submitted on SCE's behalf by the law firm of Miller and Chevalier.

In my view, these documents plus the additional information presented to us in briefings by the staff and SCE provide a more than adequate basis for us to decide the issue before us: whether or not to permit the staff to make a decision, upon completion of its technical review, to permit restart of San Onofre 1. More importantly, I believe that it is imperative that we make that decision promptly if we are to avoid a situation whereby lack of Commission action is tantamount to denial of SCE's request. The California PUC has ordered that, unless San Onofre 1 is returned to service by January 1, 1985 (or by February 1, 1985, if the PUC should find good cause for such an extension), SCE will incur substantial financial penalties. I understand that "return to service," for these purposes means, in general terms, continuous operation for 30 days at 65 percent of capacity. I am informed that, as a practical matter, the minimum time in which this could be achieved, assuming a trouble-free ascension to power, is 36 days. Thus, compliance with the PUC deadline will become a physical impossibility if a final NRC decision is not communicated to the licensee by November 24, 1984.

Against this background, I propose that the Commission adopt the following course of action in this matter:

1. The OGC analysis indicates that there is no definitive legal answer as to whether the 1982 order was simply an "order" which can be relaxed without an opportunity for a prior hearing or an "amendment" which could be relaxed only in compliance with the "Sholly" procedures. In light of the policy considerations discussed by both Miller and Chevalier and the General Counsel, we should respond to the staff's request for policy guidance with the instruction that the August 1982 order should not be treated as having amended the underlying license, but rather as an order which may be relaxed for good and sufficient technical cause. (I note particularly that the order in question was a confirmation of the licensee's voluntary commitment to upgrade to .67g as an

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alternative to meeting the staff's request for proof that the plant met the .5g design basis. The proposed relaxation is premised upon a showing that the original demand--meeting the .5g design basis--is met and that significant upgrading to .67g has already been accomplished.)

2. Armed with this policy guidance, the staff should be further instructed to resolve the underlying technical issues according to normal procedures. The issue important for Commission consideration is the legal/policy question identified in item 1 above; the adequacy of the licensee's showing of compliance with the .5g design basis is manifestly a proper subject for routine staff review.

3. A question has been raised regarding the need for ACRS review of this matter. Should the Commission believe that such review is desirable, the ACRS should be requested to provide its views to the Commission and the staff by November 25, if possible. If that is not possible, the staff should be authorized to act upon completion of its technical review. Should restart be authorized by the staff, the ACRS review could be accomplished during the early stages of the facility's ascension to power. In this regard, I have been informed that the ACRS has requested presentation on this matter and that an ACRS subcommittee meeting has been scheduled for November 26.

4. The difficult procedural and legal policy issues raised in this case probably could not have been anticipated. Thus, the pressure on the Commission to act promptly appears to have been unavoidable. This case demonstrates, however, the need for a thorough review of the staff practices with regard to the use of orders (especially confirmatory orders) and license amendments to accomplish safety upgrades. It may well be that the limited benefits of confirming, by order, actions which a licensee is willing to perform voluntarily are far outweighed by the potential loss of regulatory flexibility. I believe that the Commission should direct that staff prepare an analysis of this issue for our consideration in the formulation of guidance for future actions.

SECY, please track.

cc: OGC
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SECY
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