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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 PUBLIC WATCHDOGS,) CASE NO. _____
12 Plaintiff,)
13 vs.) **COMPLAINT FOR DECLARATORY AND**
14 UNITED STATES OF AMERICA; UNITED) **INJUNCTIVE RELIEF**
15 STATES DEPARTMENT OF DEFENSE; JAMES)
16 MATTIS, in his official capacity as Secretary of)
17 Defense; UNITED STATES DEPARTMENT OF)
18 THE NAVY; RICHARD V. SPENCER, in his)
19 official capacity as Secretary of the Navy;)
20 SOUTHERN CALIFORNIA EDISON COMPANY;)
21 SAN DIEGO GAS & ELECTRIC COMPANY;)
22 and DOES 1 through 100,)
23 Defendants.)

** JURY REQUESTED **

24 Plaintiff PUBLIC WATCHDOGS ("Plaintiff") alleges as follows:

25 1. Plaintiff brings this lawsuit to prevent Defendants from storing highly dangerous spent
26 nuclear fuel containers at the San Onofre Nuclear Generating Station ("SONGS"), ocean-front public
27 land that was leased from the federal government for electricity-generating purposes but never intended
28 to be used for post-closure storage of such containers. In 1963, Congress authorized the lease of
approximately 90 acres on the military base commonly known as Camp Pendleton to Defendants
SOUTHERN CALIFORNIA EDISON COMPANY ("SCE") and SAN DIEGO GAS & ELECTRIC
COMPANY ("SDGE") so they could construct, operate, maintain, and use the land for nuclear electric

1 generating station. Slightly more than four years ago, SCE and SDGE notified the federal government
2 that they had permanently terminated power operations at SONGS. With the affirmative assistance and
3 tacit approval of military officials, SCE and SDGE have embarked on a course of conduct that now
4 involves permanent storage of spent fuel on the leased property and converting the site into a *de facto*
5 radioactive dump – well beyond, and in violation of, the authorization Congress gave in 1963.

6 **Parties**

7 2. Plaintiff is a California non-profit corporation that serves as a public “watchdog” to
8 ensure that government agencies and special interests comply with all applicable laws, especially in the
9 public-utilities industry. Plaintiff has at least one member who lives within the zone of exposure to a
10 catastrophic release of radioactive material from SONGS.

11 3. Defendants UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF
12 DEFENSE, and UNITED STATES DEPARTMENT OF THE NAVY are agencies and
13 instrumentalities of the federal government. Defendant JAMES MATTIS is the Secretary of Defense
14 and is being sued in his official capacity. Defendant RICHARD V. SPENCER is the Secretary of the
15 Navy and is being sued in his official capacity. These Defendants are collectively labeled the “Federal
16 Defendants.”

17 4. Defendants SOUTHERN CALIFORNIA EDISON COMPANY and SAN DIEGO GAS
18 & ELECTRIC COMPANY are corporations doing business in the State of California.

19 5. Plaintiff is informed and believes and on that basis alleges that, at all times stated in this
20 pleading, each Defendant was the agent, servant, or employee of every other Defendant and was, in
21 doing the things alleged in this pleading, acting within the scope of said agency, servitude, or
22 employment and with the full knowledge or subsequent ratification of his principals, masters, and
23 employers. Alternatively, in doing the things alleged in this pleading, each Defendant was acting alone
24 and solely to further his own interests.

25 6. The true names and capacities of the Defendants identified as DOES 1 through 100 are
26 unknown to Plaintiff, who will seek the Court’s permission to amend this pleading in order to allege
27 the true names and capacities as soon as they are ascertained. Plaintiff is informed and believes and
28

1 on that basis alleges that each of the fictitiously named Defendants 1 through 100 has some degree of
2 liability to Plaintiff or has some other cognizable interest in this lawsuit.

3 **Jurisdiction and Venue**

4 7. This Court has federal-question jurisdiction over this lawsuit pursuant to Section 1983
5 of Title 42 of the United States Code, among others provisions of law.

6 8. Venue is proper in this District pursuant to Section 1391 of Title 28 of the United States
7 Code because a substantial part of the events or omissions giving rise to the claim occurred in the
8 County of San Diego.

9 **FIRST CAUSE OF ACTION:**
10 **Violation of Public Law 88-82**
(Against All Defendants)

11 9. On or about July 30, 1963, Congress enacted Public Law 88-82. Among other things,
12 Public Law 88-82 authorized and empowered the Secretary of the Navy “to grant to Southern California
13 Edison Company, a California corporation, and to San Diego Gas and Electric Company, a California
14 corporation, and to each of them, their respective successors and assigns, upon such terms and
15 conditions as the Secretary deems necessary to protect the interests of the United States, an easement
16 in, over, under and upon lands of the United States of America, approximately ninety acres in area,
17 within the Camp Joseph H. Pendleton Naval Reservation, California, for the construction, operation,
18 maintenance, and use of a nuclear electric generating station, consisting of one or more generating
19 units, and appurtenances thereto; and easements in, under, over, and upon such additional lands of the
20 United States of America within the Camp Joseph H. Pendleton Naval Reservation, California, as are
21 necessary or desirable for the purpose of constructing, operating, maintaining, and using electric
22 transmission and communication lines, switchyards and substations, cooling water conduits, pipelines
23 for water, gas and sewage, railroad spur tracks, access roads and other appurtenances to said facilities
24 and to said nuclear electric generating station.” A true and correct copy of Public Law 88-82 is
25 attached to this pleading as Exhibit “A.”

26 10. After Public Law 88-82 was enacted, the Federal Defendants (including the Secretaries’
27 predecessors) granted the easement described therein to SCE and SDGE. The grant is memorialized
28 in writing, but Plaintiff has not been provided with a copy of it.

1 11. Pursuant to the written grant for the easement described in Public Law 88-82, over the
2 years SCE and SDGE operated three nuclear electric generating units at SONGS.

3
4 12. According to a website maintained by the United States Nuclear Regulatory Commission
5 (“NRC”), SCE and SDGE shut down Unit 1 at SONGS in 1992. A true and correct copy of the website
6 is attached to this pleading as Exhibit “B.”

7 13. On or about June 12, 2013, SCE and SDGE notified the NRC in a written letter that they
8 had “permanently ceased power operation” of Units 2 and 3 at SONGS. A true and correct copy of the
9 letter is attached to this pleading as Exhibit “C.”

10 14. The NRC’s website (Exhibit “B”) also provides information about the future plans for
11 the storage of spent nuclear fuel at SONGS: “The fuel from Unit 1 was transferred to Phase 1 of the
12 ISFSI [*i.e.*, Independent Spent Fuel Storage Installation]. The ISFSI is being expanded onto the area
13 previously occupied by Unit 1 in order to store all Unit 2 and Unit 3 spent fuel.”

14 15. The storage of spent nuclear fuel was not contemplated or authorized by Public Law 88-
15 82. Storing spent fuel at SONGS would pose a threat to the interests of the United States of America.
16 Any agreement or action by the Federal Defendants to allow the storage of spent fuel at SONGS under
17 the grant authorized by Public Law 88-82, as well as any and all actions taken by SCE and SDGE to
18 store the spent fuel at SONGS, is illegal. To the extent the written grant from the Federal Defendants
19 to SCE and SDGE purports to allow such storage, the grant is *ultra vires*.

20 16. Plaintiff, its members, and members of the public generally are being harmed by
21 Defendants’ conduct in authorizing the storage of spent nuclear fuel at SONGS and by their actual
22 storage of spent fuel. By way of example and not limitation, if a container storing spent fuel were to
23 break open due to mishandling or due to corrosion caused by the proximity to salt-heavy ocean air and
24 moisture, tens of thousands of people within 50 miles of SONGS could be exposed to levels of radiation
25 that would cause imminent death.

26 **Prayer**

27 FOR ALL THESE REASONS, Plaintiff respectfully prays for the following relief against
28 Defendants:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Exhibit "A"

Public Law 88-82

AN ACT

To authorize the Secretary of the Navy to grant easements for the use of lands in the Camp Joseph H. Pendleton Naval Reservation, California, for a nuclear electric generating station.

July 30, 1963
[S. 546]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Navy be and he hereby is authorized and empowered to grant to Southern California Edison Company, a California corporation, and to San Diego Gas and Electric Company, a California corporation, and to each of them, their respective successors and assigns, upon such terms and conditions as the Secretary deems necessary to protect the interests of the United States, an easement in, over, under and upon lands of the United States of America, approximately ninety acres in area, within the Camp Joseph H. Pendleton Naval Reservation, California, for the construction, operation, maintenance, and use of a nuclear electric generating station, consisting of one or more generating units, and appurtenances thereto; and easements in, under, over, and upon such additional lands of the United States of America within the Camp Joseph H. Pendleton Naval Reservation, California, as are necessary or desirable for the purpose of constructing, operating, maintaining, and using electric transmission and communication lines, switchyards and substations, cooling water conduits, pipelines for water, gas and sewage, railroad spur tracks, access roads and other appurtenances to said facilities and to said nuclear electric generating station.

California.
Camp Pendleton,
land easement.

SEC. 2. Upon such terms and conditions as he deems necessary to protect the interests of the United States and within the scope set forth in Section 1, the Secretary or his successors in interest, may amend any such easement by mutual agreement of the parties thereto, or their successors in interest, in such manner as to change the lands affected thereby, either by substitution, addition or deletion, as well as to change the terms and conditions of the grant.

Conditions.

SEC. 3. A reasonable charge, which may be paid in installments or in a lump sum or in a combination thereof, as determined by the Secretary, or his successor in interest, based upon the fair value of each easement granted pursuant to the authority herein contained, shall be payable by the grantee or grantees thereof, their respective successors and assigns.

Charges.

Approved July 30, 1963.

Public Law 88-83

AN ACT

To provide for the free entry of an orthicon image assembly for the use of the Medical College of Georgia, Augusta, Georgia.

August 5, 1963
[H. R. 3272]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of the Treasury is authorized and directed to admit free of duty one orthicon image assembly imported for the use of the Medical College of Georgia, Augusta, Georgia.

Orthicon image
assembly.
Free entry.

(b) If the liquidation of the entry of the article described in subsection (a) has become final, such entry shall be reliquidated and the appropriate refund of duty shall be made.

Approved August 5, 1963.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Exhibit "B"

San Onofre - Unit 1

1.0 Site Identification

Type of Site: Power Reactor Facility
Location: San Clemente, CA
License No.: DPR-13
Docket No.: 50-206
License Status: SAFSTOR
Project Manager: Marlayna Vaaler

2.0 Site Status Summary

The San Onofre Nuclear Generating Station (SONGS), operated by Southern California Edison (SCE) is approximately 100 km (60 mi) south of Los Angeles, 6.5 km (4 mi) south of San Clemente, CA. It is located between I-5 and the Pacific Ocean, within the boundary of the Camp Pendleton military reserve. The site originally comprised three nuclear power plants. Unit 1 commenced operation in 1968, and shut down in 1992. Units 2 and 3 permanently ceased operations in June 2013. Dismantlement of Unit 1 is essentially complete. The turbine building was removed and the licensee completed reactor pressure vessel internal segmentation and cutup; however, the licensee was unable to make arrangements for shipping the reactor pressure vessel to a disposal facility because of the size and weight of the vessel and shipping package. The licensee plans to store the vessel onsite until the decommissioning activities for Units 2 and 3 allow for its removal.

SONGS-1 was a Westinghouse 3-loop pressurized water reactor constructed by Bechtel and rated at 1347 MW_{thermal}. It began commercial operation on January 1, 1968, and ceased operation on November 30, 1992. Defueling was completed on March 6, 1993. On December 28, 1993, NRC approved the Permanently Defueled Technical Specifications. On November 3, 1994, SCE submitted a Proposed Decommissioning Plan to place SONGS-1 in SAFSTOR until the shutdown of Units 2 and 3. On December 15, 1998, following a change in NRC decommissioning regulations, SCE submitted a post shutdown decommissioning activities report (PSDAR) for SONGS-1, to commence DECON in 2000. SCE actively decommissioned the facility, and most of the structures and equipment have been removed and sent to a disposal facility. Water control is active, and is processed through the Unit 2 and 3 wastewater treatment system. NRC issued a license amendment in February 2010 releasing the off-shore portions of the Unit 1 cooling intake and outlet pipes in place, under the Pacific Ocean seabed, for unrestricted use. The fuel from Unit 1 was transferred to Phase 1 of the ISFSI. The ISFSI is being expanded onto the area previously occupied by Unit 1 in order to store all Unit 2 and Unit 3 spent fuel.

3.0 Major Technical or Regulatory Issues

The PSDAR states all equipment and structures from Unit 1 will be removed from the site at the time of license termination, but SCE has stated it may reconsider this later, and possibly leave some of the below-grade structures in place. For now, SCE has elected to leave the below-grade portions of the turbine building in place after grouting expansion joints and embedded pipes. Because SCE has not submitted an LTP for this unit, there is not an NRC-approved survey plan or residual concentration limits. Therefore, it is not known if the surveys done on these areas prior to grouting will meet NRC requirements for final status surveys at the time of request for license termination. Current survey data may not support this option, in which case additional surveys, e.g. of the embedded piping, may be necessary.

4.0 Estimated Date For Closure

12/30/2030

Page Last Reviewed/Updated Friday, July 08, 2016

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Exhibit "C"

June 12, 2013

Peter T. Dietrich
Senior Vice President & Chief Nuclear Officer

10 CFR 50.82(a)(1)(i)

U. S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D. C. 20555

Subject: **Docket Nos. 50-361 and 50-362**
Certification of Permanent Cessation of Power Operations
San Onofre Nuclear Generating Station Units 2 and 3

Dear Sir or Madam:

Pursuant to 10 CFR 50.82 (a) (1) (i), Southern California Edison (SCE) hereby certifies that it has permanently ceased power operation of the San Onofre Nuclear Generating Station, Units 2 and 3 effective June 7, 2013.

On that date, SCE publicly announced its decision to permanently shut down both Unit 2 and Unit 3 and filed its announcement with Securities and Exchange Commission on Form 8-K, pursuant to the requirements of the Securities Exchange Act of 1934.

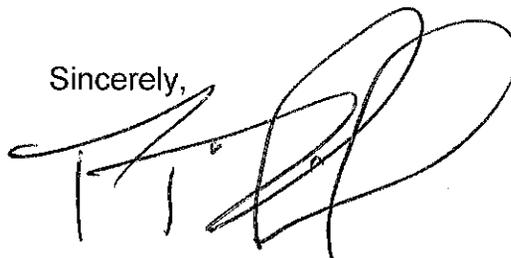
There are no new commitments contained in this letter.

If you have any questions regarding this matter, please feel free to contact Mr. Mark E. Morgan, Licensing Lead, at 949-368-6745.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 12, 2013.
(Date)

Sincerely,



cc: A. T. Howell III, Regional Administrator, NRC Region IV
R. Hall, NRC Project Manager, San Onofre Units 2 and 3
B. Benney, NRC Project Manager, San Onofre Units 2 and 3
G. G. Warnick, NRC Senior Resident Inspector, San Onofre Units 2 and 3