

State Lands Commission Vote to Approve Final Environmental Impact Report; Unlawful, Premature and Speculative

CEQA requires SLC not speculate by postponing vote to approve FEIR

Premise: New developments of Nuclear Regulatory Commission (NRC) safety violations by Holtec and Southern California Edison (Edison) require the California State Lands Commission (SLC) re-evaluate the impact of these recent developments on the 'Proposed Project.' According to the California Environmental Quality Act (CEQA), the NRC's impending 'corrective action' of March 25, 2019, makes the SLC vote to approve the Final Environmental Impact Report (FEIR) on March 21, 2019 premature and speculative and therefore unlawful.

Background: After Units 2 and 3 at SONGS were shutdown due to a radiation leak, Edison and now SLC in the above-referenced FEIR, claim '*radiological risk from accidents dropped substantially.*' That claim has not been quantified, verified nor validated. In fact, recent developments suggest that risks of radiological accidents have increased. The SLC further asserts in the FEIR, '**State CEQA Guidelines section 15145 precludes evaluation of impacts that are too speculative.**'

Public Watchdogs, a 501c3 nonprofit organization, contends all "Future Activities" described in the SLC's FEIR, Section 1.5.2 titled, '*Uncertainty Regarding Future Decommissioning Future Activities*', cannot be accurately forecast at this time due to the yet undetermined outcomes of multiple NRC safety violations by both Holtec, the spent nuclear Fuel (SNF) canister manufacturer and Edison. Any assumptions by SLC regarding these "Future Activities" **requires speculation.** The SLC supposition of "Future Actions" without consideration of the NRC's impending March 25, 2019 corrective action renders all FEIR 'Future Actions' incomplete, inconclusive and speculative as part of the "whole of the action" for the 'Proposed Project'.

State CEQA Guidelines section 15378 defines the 'Proposed Project' to mean "the whole of the action which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..." This 'Proposed Project' includes the (1) decontamination and dismantlement (D&D) of most on shore above grade structures. These structures include the spent fuel pool(s) as well as the fuel handling structure(s). Due to the multiple safety violations by Holtec and Edison, the entire SNF burial process has been shut down twice in the first 6 months of the burial and now behind schedule. This is also why approximately sixty percent of the total 3.6 million pounds of radioactive nuclear waste now remains sequestered in the spent fuel pools and fuel handling buildings within the scope of the 'Proposed Project.'

Why the NRC's impending corrective action should supersede SLC vote to approve FEIR

The NRC's federal jurisdiction, with its impending March 25, 2019 enforcement action and resulting consequences that may impact the 'Proposed Project, should supersede any SLC vote to approve this FEIR. Therefore, the SLC vote to approve the FEIR should be postponed until NRC enforcement action is announced and the impact to the 'Proposed Project' can be determined.

The SLC's assertion in the FEIR that: '*There are no changes to the approved ISFSI or the Spent Nuclear Fuel (SNF) storage that would be induced by or the result from approval of the 'Proposed Project,' and so the Approved ISFSI and the 'Proposed Project' are not interdependent*' exclude Holtec and Edison's multiple violations of Federal regulations. Depending what the NRC's decision of impending 'corrective action' decision may require, that decision may make the SLC aforementioned assertion outdated and inaccurate. A SLC vote to approve the FEIR on March 21, 2019 would be presumptive. A postponement of the SLC vote would be appropriate and in deference to NRC federal jurisdiction.

Why anticipated NRC decision of 'corrective action' may alter how SLC defines the 'Proposed Project'

The NRC enacted Federal regulations specifically to protect the public's safety and the common good. Due to multiple violations by Holtec and Edison for these Federal regulations, both the process and the scheduled timeline of moving the SNF have been forced to be altered by months long closures and delays. These alterations and delays have made the 'Proposed Project' and the ISFSI completely interdependent of one another because:

- **On January 9, 2019** the NRC held an open Pre-decisional Enforcement Conference (PEC) Webinar with Holtec International. The NRC staff examined activities conducted under Holtec's NRC approved Quality Assurance (QA) program to determine whether Holtec implemented the requirements associated with the Commission's rules and regulations and with the conditions of applicable certificates of compliance (CoC). Within these areas, an NRC inspection ensued that consisted of an examination of selected procedures and representative records, observations of activities, and interviews with personnel. Based on the information developed during the NRC inspection, two (2) apparent violations were identified and **are being considered for NRC escalated enforcement action in accordance with the NRC Enforcement Policy**. Holtec's NRC apparent violations involve:
 - (1) failure to establish adequate design control measures as a part of the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the functions of the structures, systems, and components which are important to safety, in accordance with 10 CFR 72.146(a), "Design control"
 - (2) failure to perform a 10 CFR 72.48 evaluation when required

During the NRC PEC, Holtec representative Dr. Kris Singh admitted on a recorded public webcast of Holtec's "manufacturing incompetence" of the company's equipment currently in use at the SONGS nuclear waste burial site also referred to as the Independent Spent Fuel Storage Installation (ISFSI). This admission of "manufacturing incompetence" calls into question the structural integrity as well as the company's claims of canister safety within the storage system. Subsequently, Holtec's 'failure to establish adequate design control measures' could prove potentially problematic by adversely impacting product performance measurements and possibly requiring a comprehensive re-evaluation of Holtec's canister warranty. These Holtec failures lead, in part, to a 10-day cessation of the SNF burial in March of 2018; a delay that contributed to a majority of the SNF currently being housed within the spent fuel pool and fuel handling buildings; a portion of 'the Project' as defined by SLC. The facts warrant immediate action to stop the exponential increase of radiological risk that multiply with every additional canister of radioactive nuclear waste buried. Failure of the NRC to act and respond to these imminent threats to public safety would be an actionable violation of Federal law.

- **On January 24, 2019**, the NRC also held a Pre-decisional Enforcement Conference (PEC) Webinar with Edison. This is the final step in the NRC process to decide what corrective action will be taken against Edison's failure to obey Federal law involving the transfer of nuclear waste at SONGS causing what the NRC termed as a 'near-miss' drop of an unsecured load event. That event prompted the NRC to conduct a week-long, on-site inspection at San Onofre. According to Scott Morris, the new NRC Regional Administrator for Region IV where the SONGS ISFSI is located, "**Management failed to recognize the complexity and risks associated with a long-duration fuel transfer campaign, while using a relatively new system design.**" Morris then posed the question to SCE "**How do you justify that as a root cause?**" Edison response included admissions that Edison was guilty of poor planning and lack of senior management and oversight. That admission significantly compromises Edison's credibility with the public as well as the ability for Edison to move forward without risk of repeated incidents. This lack of credibility and risk of repeated accidents presents a clear threat and substantial risk to public safety. Moreover, it calls into probability that the entire burial system within the NRC's decision-making process may be defective due to design flaws exacerbated by the flawed nuclear waste burial process. Therefore, it is illogical and unreasonable to trust that the company responsible for design flaws resulting in NRC violations of Federal law could be objective or credible enough to self-monitor, self-mitigate and self-correct as proposed in the SLC FEIR.

Edison's testimony in this NRC January 24th PEC Webinar was predicated on a false premise that the safety issues at the SONGS ISFSI can be fixed with workforce training. The factual exhibits show clear evidence that the entire system is an inherently flawed engineering failure that cannot be fixed. In accordance with its enforcement policy and a result of this PEC, the NRC has scheduled a public meeting/webinar on March 25, 2019 to reveal the NRC's 'corrective action' decisions. These NRC decisions may indeed impact how the SLC will be required by NRC federal jurisdiction to define the 'Proposed Project.'

As a result of these violations, movement of the SNF from the spent fuel pools and fuel handling structures encompassed within 'the Project', has been halted since August 2018. The abrupt and continued cessation of the SNF burial for the past 8 months has also prevented the intended transport of #30 can from the fuel handling building, leaving a fully loaded canister of highly radioactive SNF suspended within 'the Project.'

The remaining SNF in the spent fuel pool represents a majority of the SNF that SCE assumed would be moved out of 'the Project' still housed within 'the Project' currently demonstrating a clear interdependency between the ISFSI and 'the Project'. This demonstrates a clear interdependence of 'the Proposed Project' and the ISFSI that should require new analysis according to CEQA by the SLC.

Edison's claims that 'the plant is closed and the risk (of a radiological accident) are low' and the SLC's assertion based on that claim that 'radiological risk from accidents dropped substantially' are outdated, inaccurate and most importantly speculative.

Since the NRC will not announce its corrective action until March 25th and because this yet undetermined corrective action may change the current ISFSI approvals subsequently impacting 'the Project' it would be not only premature and presumptive for the SLC to vote to approve this FEIR on March 21, 2019 but a direct conflict with CEQA guidelines section 15145 which **'precludes evaluation of impacts that are too speculative and can't reasonably be forecast by SLC at this time.'**

A SLC postponement of the vote to approve the FEIR would be prudent, should be required and will be appropriate.