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14 Public Watchdogs

15 **UNITED STATES NUCLEAR REGULATORY COMMISSION**  
16 **Before the Executive Director for Operations**

17 PUBLIC WATCHDOGS, a California  
18 501(c)(3) corporation,

19 Petitioner,

20 v.

21 SOUTHERN CALIFORNIA EDISON  
22 COMPANY AND SAN DIEGO GAS  
23 & ELECTRIC COMPANY,

24 Licensees.  
25  
26  
27  
28

**10 C.F.R. § 2.206 PETITION TO  
IMMEDIATELY SUSPEND  
DECOMMISSIONING OPERATIONS  
AT SAN ONOFRE NUCLEAR  
GENERATING STATION UNITS 2 AND  
3**

1 Pursuant to 10 C.F.R. § 2.206, Petitioner Public Watchdogs (“Petitioner”) hereby  
2 submits its Petition to Immediately Suspend Decommissioning Operations at San Onofre  
3 Nuclear Generating Station (“SONGS”) Units 2 and 3:

4 **PRELIMINARY STATEMENT**

5 1. As part of the ongoing decommissioning of SONGS Units 2 and 3, Licensees  
6 Southern California Edison Company (“Edison”) and San Diego Gas & Electric Company  
7 (collectively, “Licensees”) are in the process of burying hundreds of tons of deadly spent  
8 nuclear fuel a mere 108 feet from one of California’s most populated public beaches,  
9 within a tsunami zone surrounded by active fault lines, in canisters that are damaged,  
10 defective, and not properly designed to serve their intended purpose. Throughout the  
11 decommissioning process, the Nuclear Regulatory Commission (“NRC”) has effectively  
12 turned a blind eye to multiple alarming safety hazards created by Licensees’ burial of spent  
13 nuclear fuel at SONGS, including evidence that the canisters being used by Licensees are  
14 damaged and defective, and that Licensees do not have adequate safety procedures or  
15 competent staff to complete the transfer of the spent nuclear fuel from wet to dry storage.

16 2. What’s more, the NRC’s various actions permitting the implementation of  
17 Licensees’ decommissioning plan and authorizing Licensees’ dangerous burial of spent  
18 nuclear fuel at SONGS are based on unreasonable and fundamentally flawed assumptions  
19 that: (1) the United States Department of Energy (“DOE”) will begin accepting spent  
20 nuclear fuel from nuclear generating stations like SONGS in 2024 or 2028; (2) all of the  
21 spent nuclear fuel currently being buried at SONGS will be permanently removed from  
22 the site by 2049; and (3) the SONGS site will be restored to a condition that is acceptable  
23 for unrestricted use by 2051. In fact, no central repository for permanent storage of spent  
24 nuclear fuel exists in the United States, there is no viable plan to open such a permanent  
25 repository, and the DOE undoubtedly will not begin accepting spent nuclear fuel for  
26 permanent storage from SONGS or any other nuclear generating station in 2024, 2028, or  
27 any other time in the foreseeable future. As the United States Court of Appeals for the  
28 District of Columbia Circuit has observed: “At this time, there is not even a prospective

1 site for a repository, let alone progress toward the actual construction of one.” *New York*  
2 *v. Nuclear Regulatory Com’n*, 681 F.3d 471, 474 (D.C. Cir. 2012).

3 3. By ignoring the manifold safety hazards posed by Licensees’  
4 decommissioning operations and permitting Licensees to implement their  
5 decommissioning plan based on the unreasonable assumption that spent nuclear fuel will  
6 be stored at SONGS only temporarily, the NRC has abdicated its paramount responsibility  
7 to protect public health and safety and it has failed to ensure Licensees will have adequate  
8 funds to pay for the full cost of decommissioning and restoring the SONGS site through  
9 the termination of their license. Accordingly, Petitioners respectfully request that the  
10 NRC issue an order immediately suspending all decommissioning operations at SONGS,  
11 including the burial of spent nuclear fuel at the SONGS site, and requiring Licensees to  
12 submit an amended decommissioning plan that properly accounts for the reality that the  
13 spent nuclear fuel being buried at SONGS will remain there indefinitely.

#### 14 **FACTUAL BACKGROUND**

##### 15 **I. LICENSEES’ NEGLIGENT OPERATION OF SONGS**

16 4. In August 1963, Congress enacted Public Law 88-82 authorizing the  
17 “construct[ion], operate[ion], maintain[enance], and use” of a nuclear power plant on  
18 approximately 90 acres of land located at the Camp Pendleton military base. In May 1964,  
19 the United States of America granted Licensees an easement for the sole purpose of  
20 “construction, operation, maintenance and use of a nuclear electric generating station” at  
21 the Camp Pendleton site.

22 5. Licensees operated three nuclear electric generating units at SONGS.  
23 Licensees operated Unit 1 from approximately 1968 until 1992, when they began the  
24 decommissioning process for that unit. Licensees operated Units 2 and 3 from  
25 approximately 1983 and 1984 (respectively) until June 12, 2013, when they submitted  
26 written certification to the NRC that they were permanently ceasing operation of those  
27 units.

1           6.       Throughout its time as an operational nuclear power plant, SONGS was  
2 marred by numerous instances of poor safety and regulatory compliance, which ultimately  
3 contributed to the cessation of operations at the site. These compliance debacles included  
4 the backward installation of a 420-ton nuclear reactor vessel and the installation of  
5 replacement steam generators, without obtaining the requisite approval from the NRC,  
6 which ultimately malfunctioned and leaked deadly radioactive steam at the site.

7 **II.    LICENSEES’ FUNDAMENTALLY FLAWED DECOMMISSIONING PLAN**

8           7.       On September 23, 2014, Licensees submitted their decommissioning plan to  
9 the NRC, including a Post-Shutdown Decommissioning Activities Report (“PSDAR”), an  
10 Irradiated Fuel Management Plan (“IFMP”), and a Site Specific Decommissioning Cost  
11 Estimate (“DCE”). *See Exhibits 1, 2, and 3.*

12           8.       Licensees’ PSDAR provided a general overview and timetable for the  
13 decommissioning, decontamination, restoration, and license termination activities at the  
14 SONGS site. The PSDAR specified that Licensees would begin transferring spent nuclear  
15 fuel to dry storage in the SONGS Independent Spent Fuel Storage Installation (“ISFSI”)  
16 in 2014, and complete the transfer by June 2019. *See Exhibit 1.* Thereafter, Licensees  
17 proposed to store the spent nuclear fuel in the ISFSI during decommissioning from June  
18 2019 to December 2031. *Id.* Finally, Licensees proposed to store spent nuclear fuel in the  
19 ISFSI during a post-decommissioning period from December 2031 to December 2049. *Id.*  
20 This timeline was based on the assumption that the DOE will begin accepting spent  
21 nuclear fuel from the industry in 2024, that all spent nuclear fuel will be permanently  
22 removed from the SONGS ISFSI and transferred to an off-site permanent repository by  
23 2049, and that the SONGS site will be restored to a condition acceptable for unrestricted  
24 use and returned to the U.S. Navy by 2051. *Id.* Licensees expressly based this assumption  
25 on some unspecified “previously documented positions of the DOE, which indicates that  
26 shipments from the industry could begin as early as 2024 and SONGS place in the current  
27 queue.” *Id.* Notably, however, Licensees acknowledged that both the date on which the  
28

1 DOE would begin accepting spent nuclear fuel from the industry and SONGS place in the  
2 queue “are subject to change.” *Id.*

3 9. Licensees’ IFMP provides additional details regarding their strategy for  
4 storing, monitoring, and managing spent nuclear fuel at the SONGS ISFSI during and  
5 after the decommissioning period and through ultimate termination of the SONGS  
6 licenses. *See Exhibit 2.* Like the PSDAR, Licensees’ IFMP is expressly based on the  
7 assumptions that the DOE would begin accepting spent nuclear fuel from the industry in  
8 2024 and that all spent nuclear fuel would be permanently removed from the SONGS  
9 ISFSI by 2049. *Id.* Again, however, Licensees provided no objective evidentiary support  
10 for these critical assumptions.

11 10. Finally, Licensees’ DCE provided a detailed estimate of the anticipated costs  
12 of the decommissioning and spent fuel management activities at SONGS. *See Exhibit 3.*  
13 Licensees projected that the total cost of decommissioning and restoring the SONGS site  
14 would exceed \$4 billion, of which approximately \$1.3 billion was allocated for spent fuel  
15 management through 2049. *Id.* Once again, Licensees based their DCE on the  
16 assumptions that the DOE will begin accepting spent nuclear fuel from the industry in  
17 2024 and that all spent nuclear fuel will be removed from the SONGS ISFSI by 2049. *Id.*  
18 Significantly, however, Licensees’ DCE expressly acknowledged that “DOE has not  
19 committed to accept [Edison’s] canistered spent fuel.” *Id.* Despite this acknowledgment,  
20 the DCE also confusingly stated: “But for purposes of this estimate, it is assumed that an  
21 [Edison-funded] dry storage facility will not be necessary.” *Id.*

22 11. At the time Licensees submitted their PSDAR, IFMP, and DCE, there was,  
23 in fact, no viable plan or intention for the DOE to begin accepting spent nuclear fuel in  
24 2024 or any other time. Indeed, Licensees submitted their PSDAR, IFMP, and DCE  
25 approximately 4 years after the DOE withdrew its application for a license to construct a  
26 permanent repository for spent nuclear fuel at Yucca Mountain in Nevada and  
27 approximately 3 years after the NRC suspended its adjudicatory proceeding regarding the  
28 withdrawal of the DOE’s license application. *See Exhibit 4.* In other words, the

1 fundamental predicate for Licensees' decommissioning plan was, and remains today, a  
2 pure fiction that is completely untethered to objective reality.

3 **III. LICENSEES' SELECTION OF HOLTEC'S HI-STORM UMAX STORAGE**  
4 **SYSTEM AND DEFECTIVE THIN-WALL CANISTERS**

5 12. At the time Licensees submitted their decommissioning plan, they had not  
6 yet identified a location for the expanded SONGS ISFSI, nor had they selected storage  
7 equipment or vendors for the build out of the ISFSI. *See Exhibit 2.*

8 13. In December 2014, Licensees selected a location for the expanded SONGS  
9 ISFSI and selected Holtec International's ("Holtec") HI-STORM UMAX storage system  
10 for the "temporary" storage of spent nuclear fuel. *See Exhibit 5.* The location selected  
11 for the ISFSI is a mere 108 feet from the Pacific Ocean, within a tsunami zone surrounded  
12 by active fault lines, and little more than a foot above the mean high tide level, making it  
13 especially susceptible to flooding as sea levels rise. *See Exhibit 6.* Notably, although  
14 Licensees' decommissioning plan contemplated, albeit fancifully, that spent nuclear fuel  
15 would be stored at the SONGS ISFSI for at least 30 years, Holtec only warranted its  
16 storage system for 10 years. *See Exhibit 7.*

17 14. Moreover, the Holtec dry storage canisters in which the spent nuclear fuel is  
18 being stored at the SONGS ISFSI are defective and unfit for the indefinite storage of spent  
19 nuclear fuel. Each and every one of the 73 individual canisters will contain more deadly  
20 radioactive Cesium-137 than was released globally during the Chernobyl disaster, as well  
21 as dozens of other radioactive and toxic fission byproducts. The failure of even one of  
22 these canisters will have calamitous consequences. Severe problems with Licensees'  
23 decommissioning plan make this nightmare scenario a real possibility.

24 15. First, although the radioisotopes in each canister remain radioactive, toxic,  
25 and deadly for hundreds of years (and one, Plutonium-239, remains deadly for over 24,000  
26 years), Holtec warrants the canisters for only 25 years. *See Exhibit 7.* Thus, the warranty  
27 on the canisters will expire long before 2049, when Licensees unreasonably assume that  
28 all spent fuel will be transferred to permanent storage, and there is no objective basis for

1 determining that the canisters will remain viable beyond 2049, even though they will  
2 likely remain in the SONGS ISFSI indefinitely.

3 16. Second, the design of the Holtec canisters the Licensees are using to store the  
4 spent nuclear fuel deviates from the acceptable minimum safety thresholds required for  
5 the design and manufacture of nuclear waste storage containers. Indeed, the Holtec  
6 canisters are so-called “thin-wall” canisters with only a 5/8-inch thick stainless-steel wall  
7 with an aluminum egg-crate structure designed to hold up to 37 spent fuel assemblies.  
8 Holtec designs, manufactures, and supplies the canisters under strict guidelines  
9 promulgated by the NRC and, more important, under the conditions of applicable  
10 certificates of compliance (“CoCs”). *See Exhibit 8.* The NRC issues a CoC conditioned  
11 on the holder strictly hewing to specific technical specifications and approved contents  
12 and design features. But after receiving CoCs for the thin-wall canisters being used at  
13 SONGS, Holtec secretly modified the design and manufacture of the canisters, apparently  
14 to reduce manufacturing costs and/or to correct a flaw in the original design. By making  
15 the change surreptitiously, Holtec avoided a costly and time-consuming NRC design  
16 review and attendant risk analysis. In any case, the design change introduced a critical  
17 flaw into the casks that is discussed in further detail below.

18 17. Third, due to the design of the canisters, the narrow slots in which they are  
19 loaded into the storage system, and the equipment used to load the canisters into the  
20 storage system, extensive gouging of the canisters occurs during routine loading into the  
21 storage system. Over time, the gouges in the canisters can grow into deeper cracks that  
22 make the canisters susceptible to leaking and make it impossible for the canisters to be  
23 safely removed from the ISFSI in the future. However, there is no way to adequately  
24 monitor or inspect the canisters once they are in the ground, and no way to fix them even  
25 if critical damage to them could be identified.

1 **IV. NRC GRANTS A LICENSE AMENDMENT THAT PERMITS**  
2 **DECOMMISSIONING OF SONGS ACCORDING TO LICENSEES’**  
3 **FLAWED DECOMMISSIONING PLAN**

4 18. Because the original license granted to the Licensees was narrow in scope—  
5 in that it only permitted them to operate the plant and temporarily store spent nuclear fuel  
6 and waste—a license amendment would be necessary to decommission the plant.  
7 However, when Licensees decided to permanently cease nuclear operations, they sought  
8 to utilize the nuclear power plant for an entirely different purpose—that is, the long-term  
9 storage of spent nuclear fuel. Thus, the grant or denial of the Licensees’ request for a  
10 license amendment was a matter of significant public concern, requiring an opportunity  
11 for meaningful public participation.

12 19. Without meaningful public participation or an independent assessment, on  
13 July 17, 2015, the NRC granted Licensees’ request for a license amendment that permitted  
14 them to begin decommissioning the SONGS facility. *See Exhibit 9*. Specifically, the NRC  
15 authorized Licensees to “Take actions necessary to decommission the plant and continue  
16 to maintain the facility, including, where applicable, the storage, control and maintenance  
17 of the spent fuel, in a safe condition.” *Id.* In so doing, the NRC “found” that there was  
18 “reasonable assurance (i) that the activities authorized by this amendment can be  
19 conducted without endangering the health and safety of the public, and (ii) that such  
20 activities will be conducted in compliance with the Commission’s regulations.” *Id.* In  
21 fact, the NRC simply relied on Licensees’ own flawed analysis instead of objective criteria  
22 or independent analysis, enabling Licensees to present their internal, untested, and  
23 unchecked conclusions, without even a suggestion of an objective analysis or oversight.

24 20. In addition, the NRC repeatedly granted Licensees’ numerous subsequent  
25 license amendments and exemptions, regardless of the scope and magnitude of the  
26 proposed changes. *See Exhibit 10*. Among these exemptions was a staggering reduction  
27 in the amount of onsite liability insurance required to be maintained by Licensees from  
28 the \$1.06 billion required by NRC regulations to a paltry \$50 million. *See Exhibit 11*.

1 **V. LICENSEES’ MULTIPLE DECOMMISSIONING DISASTERS**

2 21. From the outset, Licensees’ decommissioning operations have been marred  
3 by a series of miscues, lackadaisical managerial oversight, and attempts to conceal the  
4 same. Unsurprisingly, this behavior has caused Licensees to repeatedly fall short of the  
5 NRC’s identified standards and promulgated regulations. Among the many failures of the  
6 Licensees’ decommissioning efforts are the following:

7 **A. Licensees compromised the structural integrity of twenty-nine canisters**  
8 **they buried at SONGS.**

9 22. Licensees have consistently used fewer personnel than necessary to ensure  
10 that the Holtec canisters are safely and effectively loaded into the ISFSI. For example,  
11 Licensees have employed an inadequate number of “spotters” at different vantage points,  
12 resulting in limited visibility of the canister as it is being loaded into its enclosure. This  
13 negligent deviation from safe fuel-handling procedures has already caused substantial  
14 harm to the millions of people around the SONGS facility. *See Exhibit 12.*

15 23. On information and belief, and as revealed in NRC documents and noted at  
16 public hearings, the Licensees negligently gouged and then buried twenty-nine (29) fully  
17 loaded canisters at SONGS. Experts believe this gouging may lead to deeper, through-the-  
18 wall cracks, which will make the future safe movement of these canisters impossible  
19 (despite the fact that the safety of the canisters’ storage location is only warranted for 10  
20 years). Experts also point out that damage to the canisters will be exacerbated, *inter alia*,  
21 by the presence of salt air, fog, rain, and salt water—the precise weather conditions that  
22 the canisters will be exposed to at the current location just steps from the Pacific Ocean.  
23 *See Exhibit 6.*

24 24. Upon information and belief, many (if not all) of the canisters were  
25 negligently scratched during transportation to the ISFSI. According to an NRC inspection  
26 report, and as admitted at a Community Engagement Panel Meeting by NRC spokesperson  
27 Scott Morris, **every single canister was damaged** during the downloading process: “The  
28 canister involved in the near-drop event [and] all the other canisters . . . experienced a little

1 bit of scuffing, and a little bit of contact going into the ISFSI.” See **Exhibit 13**. As  
2 discussed below, one NRC inspector concluded that the damage to the canisters during  
3 loading into the SONGS ISFSI caused them to fall out of compliance with requirements  
4 of the applicable CoC. See **Exhibits 27 and 29**. The NRC, however, simply ignored this  
5 assessment and cleared the way for even more defective and non-compliant canisters to  
6 be buried at SONGS.<sup>1</sup>

7 **B. Licensees nearly dropped two 49-ton canisters full of deadly**  
8 **radioactive nuclear waste and attempted to cover it up.**

9 25. On July 22, 2018, Licensees nearly dropped a 49-ton canister full of deadly  
10 radioactive nuclear waste more than 18 feet into the ISFSI when it was caught on a quarter  
11 inch thick steel guide ring. Licensees referred to this event as an “unsecured load event.”  
12 In actuality, this event could have turned San Onofre State Beach Park into a permanently  
13 uninhabitable nuclear wasteland.

14 26. Pursuant to 10 C.F.R. § 72.75, any incident involving nuclear waste *must* be  
15 reported to the NRC within *twenty-four hours*, yet the July 22 failure was not formally  
16 reported on the NRC’s Event Notifications Report. The sole purpose of 10 C.F.R. § 72.75  
17 is to insure that potentially hazardous events are promptly reported and investigated and  
18 to allow for public disclosure of potential safety risks.

19 27. Despite the regulation’s clear obligation to provide a formal written report  
20 for events of this nature, Licensees *never* provided a formal report for the July 22  
21 unsecured load event. As a result, the public was kept in the dark about the potentially  
22 disastrous incident in July.

23 28. Ten days later, on August 3, 2018, the Licensees once again lost control of a  
24 49-ton canister full of deadly radioactive nuclear waste while it was being lowered into a

25 \_\_\_\_\_  
26 <sup>1</sup> Despite the Licensees’ efforts to downplay the significance of the gouging found on  
27 Holtec canisters, the potential consequences are staggering. Holtec’s CEO admitted as  
28 much during a public meeting, acknowledging that even a microscopic crack in a canister  
is enough to cause a release of “millions of curies of radioactivity.” *Dr. Kris Singh, CEO,*  
*Holtec International, on Dry Canister Nuclear Waste Storage, YouTube* (Oct. 14, 2014),  
at 31:04-34:30(at <https://www.youtube.com/watch?v=s5LAQgTcvAU>). See **Exhibit 14**.

1 below-ground storage silo. While moving the canister, Licensees' employees snagged the  
2 49-ton canister on the same quarter-inch wide steel flange that captured the canister during  
3 the July 22 event. Licensees' personnel did not realize that the equipment holding the  
4 canister had been caught on the flange.

5 29. A whistleblower, David Fritch, came forward and publicly reported the event  
6 six days later during the August 9 Community Engagement Panel Meeting. Prior to the  
7 whistleblower's disclosure, Licensees' representative did not disclose the August 3 "near-  
8 miss" disaster when discussing the work stoppage put in place after the event. In fact,  
9 Edison's then Vice President and Chief Nuclear Officer, Tom Palmisano, affirmatively  
10 misled the public and misrepresented that the work stoppage was a planned stop so that  
11 they could perform necessary maintenance, provide employees with time off, and analyze  
12 the overall efficiency and effectiveness of the decommissioning process at that point.

13 30. However, during the public comment portion of the event, Fritch (a Safety  
14 Professional employed as a contractor at the SONGS facility) disclosed the misconduct as  
15 the actual cause for the work stoppage. Fritch informed the public about the near-miss  
16 event of August 3rd, and directly contradicted Licensees' public statements that the work  
17 stoppage was a "planned event."

18 31. Fritch's whistle-blowing sparked widespread media attention on the safety  
19 hazards posed by the Defendants' negligence at the facility. This alone should have  
20 prompted the NRC to perform a professional and independent risk assessment to  
21 determine the actual risks at the site, and take appropriate remedial steps to avoid or  
22 minimize future risks. Again, however, the NRC abdicated its responsibilities and  
23 continued to do nothing to protect the public or adequately monitor the situation.

24 32. As before, the Licensees failed to issue an NRC Event Notification Report  
25 within twenty-four hours of the Friday, August 3 event as required the NRC's regulations.  
26 Instead, they waited more than six weeks to report the incident. Moreover, rather than  
27 submitting the legally required written report, Licensees waited until Monday, August 6,  
28 to informally call the NRC. Licensees' private phone call deprived the public not only of

1 a written contemporaneous report of the near fatal disaster but prevented transparency of  
2 their actions at SONGS. This oral notification both failed to comply with the NRC’s own  
3 “Event Reporting Requirements” under 10 CFR § 72.75, and failed to notify the public of  
4 the significant public safety hazards being posed by Licensees’ decommissioning  
5 operations. In this way, Licensees attempted to keep the August 3 near-catastrophic-miss  
6 a secret.

7 33. This concealment was not accidental. In fact, the July 22 and August 3 near-  
8 miss events occurred during a required public comment period for the California State  
9 Lands Commissions Draft Environmental Impact Report (“EIR”) directly related to the  
10 SONGS decommissioning project. That period ran from June 28 until August 30. By  
11 delaying formal written notice of the events, Licensees were able to avoid meaningful  
12 public participation in connection with the interrelated EIR.

13 34. Rather than taking precautionary steps to protect the public in light of the  
14 Licensees’ demonstrated negligence, upon information and belief, the NRC completely  
15 deferred to Licensees and blindly relied upon their assurances that everything was under  
16 control. Indeed, the NRC went so far as to summarily reject a written request by  
17 Congressman Mike Levin for the installation of permanent NRC inspectors at the facility.  
18 *See Exhibit 15.*

19 35. On August 17, 2018, in response to the August 3 “near-miss,” the NRC issued  
20 an Inspection Charter for SONGS, which found five violations that were ultimately  
21 penalized by the imposition of a wrist-slapping fee of \$116,000 on Edison. *See Exhibits*  
22 **16 and 17.** Perhaps more troubling, the NRC has not required Licensees to file an Event  
23 Notification Report for the July 22 event, and has ignored their flagrant violation of federal  
24 law for not filing an Event Notification Report for 47 days after the August 3 event.

25 36. Instead of ordering the Licensees to cease operations at SONGS, the NRC  
26 seemingly accepted the Licensees’ “verbal commitment” to discontinue loading until the  
27 NRC issued its final Inspection Report.

28

1 **VI. HOLTEC’S SURREPTITIOUS REDESIGN OF THE DRY STORAGE**  
2 **CANISTERS**

3 37. In February 2018, while preparing to load one of the thin-wall canisters with  
4 spent nuclear fuel, Licensees discovered a loose bolt inside. After reporting the issue to  
5 Holtec, Holtec revealed that it had redesigned the already defective canisters to include a  
6 different “stand-off shim.” The purpose of these shims is to enhance convection cooling  
7 of the hot fuel assemblies by creating additional space to allow cooling helium gas to flow  
8 throughout the canister so that the spent nuclear fuel does not overheat. The newly  
9 designed shims included bolts that were not part of the original design. As Licensees  
10 discovered, the newly introduced bolts are susceptible to breaking loose inside the  
11 canister, which could ultimately cause a restriction of airflow within the canister and a  
12 failure of the canister’s cooling mechanism. Left uncooled, spent nuclear fuel will heat  
13 up to the point of a critical—and deadly—nuclear reaction. Thus, a failure of the canister’s  
14 cooling mechanism would be disastrous.

15 38. Under NRC regulations, Holtec was required to obtain a CoC amendment  
16 prior to implementing any proposed change to the design of its canisters if the change  
17 would result in more than a minimal increase in the frequency or likelihood of an accident,  
18 malfunction, or the consequences of such accident or malfunction. Despite the serious  
19 risks posed by Holtec’s design changes, however, Holtec failed to even notify the NRC,  
20 much less obtain a CoC amendment, before changing the design of the canisters.

21 39. On March 22, 2018, Licensees’ admitted during a Community Engagement  
22 Panel Meeting that four canisters with the defective shim design had already been filled  
23 with spent nuclear fuel and buried at SONGS. To make matters worse, Mr. Palmisano  
24 made a stunning admission that there is no existing method for safely opening defectively  
25 designed canisters to see if the stand-off shims were broken in the four buried canisters.  
26 Thus, the SONGS Defendants have no way of ensuring that the fuel assemblies and/or  
27 cooling mechanisms have not been critically compromised. Mr. Palmisano admitted that  
28

1 it would be at least three years before the techniques necessary to unload and inspect a  
2 canister *could possibly* be developed:

3 So nobody has unloaded a commercial canister, either a bolted cask or a  
4 welded cask or canister. . . . What you would do is basically have a  
5 mechanism, either to do it in a fuel pool or do it in a dry transfer facility. .  
6 . . The real challenge as we would understand it today, and nobody has had  
7 to do it yet, is the reflood. Certainly, technically possible. What I would  
8 tell you is just I was back in Washington with the NRC last week, if you  
9 were just to brainstorm, *this would probably be a two- to three-year project  
10 to develop the techniques*, pile up the techniques. The NRC would want to  
11 have explicit approval on this because of the *radiological hazards*.

12 See **Exhibit 18** (emphasis added).

13 40. Although the NRC found that Holtec failed to establish adequate design  
14 control measures of components important to safety, and failed to perform evaluations  
15 before making the design changes, it failed to impose any fine or other penalty on Holtec  
16 for these violations.

17 41. Notably, this was not the first time Holtec flouted its obligations to disclose  
18 critical information to a regulator. In October 2010, Holtec was “debarred” as a contractor  
19 by the Tennessee Valley Authority (“TVA”) in connection with improper and undisclosed  
20 payments made to a federal official to secure a contract to design and construct a dry cask  
21 storage system for spent nuclear fuel rods at the Brown Ferry Nuclear Plant. See **Exhibit**  
22 **25**. Following that debarment, Holtec sought a \$260 million tax break related to a nuclear  
23 plant project in Camden New Jersey. As part of that process, Holtec’s CEO Kris Singh  
24 submitted certified forms where he answered “no” to the question of whether Holtec had  
25 ever been barred from doing business with a state or federal agency. In June 2019, New  
26 Jersey regulators froze Holtec’s \$260 million tax-incentive award pending further  
27 investigation. See **Exhibit 26**. Despite Holtec’s history of misconduct and deceit, the  
28 NRC has continued to blindly accept its representations regarding its defective and  
dangerous canisters and has approved multiple amendments to the applicable CoCs to  
permit the continued use of Holtec’s defective and dangerous canisters at SONGS and  
elsewhere.

1 **VII. LICENSEES’ UPDATED, BUT NO LESS FLAWED, DCE, AND**  
2 **DECOMMISSIONING FUNDING STATUS REPORTS**

3 42. As required by the California Nuclear Facilities Decommissioning Act of  
4 1985, Licensees updated their DCE for SONGS Units 2 & 3 in 2017. *See Exhibit 19.*  
5 Although Licensees’ updated DCE continued to estimate that all spent nuclear fuel will  
6 be removed from the SONGS ISFSI by 2049, and that the site will be acceptable for  
7 unrestricted use by the end of 2051, Licensees changed their assumptions regarding the  
8 date the DOE will commence accepting spent nuclear fuel from the industry. Specifically,  
9 Licensees’ 2017 DCE assumed the DOE will begin accepting spent nuclear fuel from the  
10 industry in 2028, rather than 2024, because of the “DOE’s continued failure to perform its  
11 contractual obligation to remove spent fuel from commercial nuclear reactors in the past  
12 four years.” Licensees’ 2017 DCE does not explain, however, why pushing back the  
13 estimated date on which the DOE will begin accepting spent nuclear fuel from the industry  
14 by four years would not also necessitate pushing back the estimated date for removal of  
15 all spent nuclear from the SONGS ISFSI by four years and concomitantly increasing the  
16 estimated cost of storing that fuel for an extra four years. Nor does Licensees’ 2017 DCE  
17 provide any objective evidence supporting its updated assumption that the DOE will, in  
18 fact, begin accepting spent nuclear fuel from the industry in 2028.

19 43. In subsequent decommissioning funding status reports submitted to the NRC,  
20 Licensees repeated this updated assumption regarding the date on which the DOE will  
21 begin accepting spent nuclear fuel from the industry. *See Exhibits 20 and 21.*  
22 Specifically, Licensees’ status reports expressly acknowledge that the “current site-  
23 specific decommissioning cost estimates for San Onofre Unit 1 and San Onofre Units 2  
24 and 3 assume that the DOE will commence transporting fuel in 2028.” As in the 2017  
25 DCE, however, Licensees’ status reports do not provide any basis for the 2028 assumption,  
26 nor do they explain how pushing back the estimated date on which the DOE will begin  
27 accepting spent nuclear fuel from the industry would not also necessitate pushing back the  
28 date for removal of all spent nuclear fuel from SONGS and concomitantly increasing the

1 estimated cost of storing that fuel for an extra four years. Notably, however, Licensees’  
2 status reports do effectively acknowledge that their fundamental assumptions regarding  
3 the DOE’s acceptance of spent nuclear fuel are uncertain at best. Indeed, the status reports  
4 expressly state that the 2028 assumption “may be updated periodically due to the ongoing  
5 uncertainties regarding the availability of a permanent repository for spent fuel.”

6 **VIII. DESPITE SERIOUS PUBLIC CONCERNS AND HAZARDOUS**  
7 **CONDITIONS THE NRC PERMITS LICENSEES TO RESUME**  
8 **DANGEROUS BURIAL OF SPENT NUCLEAR FUEL**

9 44. In March 2019, an NRC inspector, Lee Brookhart, issued an internal report  
10 concluding that the damaged and defective Holtec canisters would require a formal design  
11 change, approved by the NRC, if they were to continue in service under the applicable  
12 CoCs, which require loading into the ISFSI to be accomplished without any scratching or  
13 damage to the canisters. *See Exhibits 27 and 29.* On May 21, 2019, however, the NRC  
14 disregarded Mr. Brookhart’s warnings, Licensees’ string of poor project oversight,  
15 Holtec’s history of incompetence and malfeasance, and the fanciful assumptions  
16 underlying Licensees’ entire decommissioning plan, and announced its determination that  
17 burial of spent nuclear fuel could continue at SONGS. *See Exhibit 22.* Thereafter, in July  
18 2019, Licensees resumed their decommissioning operations, including the burial of spent  
19 nuclear fuel at the SONGS ISFSI.

20 45. Given the uncertainty surrounding the renewed canister burial, as well as  
21 litigation seeking to halt the process pending development of a record, Counsel for  
22 Petitioner—on September 6, 2019—requested that Licensees briefly abate further  
23 interment. *See Exhibit 23.* Licensees declined the request and are apparently poised to  
24 “continue the transfer operations” and complete the burial of spent nuclear fuel at SONGS  
25 as fast as possible. *See Exhibit 24; see also Exhibit 15.*  
26  
27  
28



1 inches above, a rising Pacific Ocean, in a tsunami zone surrounded by active fault lines,  
2 and in a humid environment that is likely to corrode and cause stress-induced cracking of  
3 the canisters' outer walls.

4 49. In other words, the SONGS ISFSI is a proverbial "ticking time bomb," and  
5 it is not a matter of whether a nuclear disaster will occur at the site, but a matter of when  
6 and how damaging the nuclear disaster will be. Accordingly, the NRC should immediately  
7 suspend all decommissioning operations at the SONGS site, including, and especially, the  
8 continued burial of spent nuclear fuel, and require Licensees to submit a proposed  
9 decommissioning plan that will not pose an imminent threat to public safety.

10 **III. LICENSEES' ESTIMATED COST OF DECOMMISSIONING SONGS IS**  
11 **BASED ON UNREASONABLE AND FUNDAMENTALLY FLAWED**  
12 **ASSUMPTIONS**

13 50. The fundamental premise for Licensees' various decommissioning cost  
14 estimates is that the spent nuclear fuel being buried at SONGS will remain there only  
15 temporarily. Indeed, Licensees initial DCE was based on the assumption that the DOE  
16 will begin accepting spent nuclear fuel from the industry in 2024 and that all spent nuclear  
17 fuel will be permanently removed from SONGS by 2049. Accordingly, Licensees' have  
18 allocated only enough funds to store and monitor spent nuclear fuel at SONGS through  
19 2049.

20 51. Both Licensees and the NRC know full well that these assumptions are  
21 unreasonable and untethered to reality because there is currently no viable plan for the  
22 DOE to construct a permanent repository for spent nuclear fuel and there is certainly no  
23 plan or intention for the DOE to begin accepting spent nuclear fuel from the industry in  
24 2024. In fact, the NRC states in its own publications that, although it "considers that  
25 25 to 35 years is a reasonable timeframe for repository development, it acknowledges that  
26 there is sufficient uncertainty in this estimate that the possibility that more time will be  
27 needed cannot be ruled out." *See Exhibit 28.*

28 52. Although Licensees' 2017 DCE and decommissioning funds status reports  
push back to 2028 the assumed date on which the DOE will begin accepting spent nuclear

1 fuel from the industry, this is no more realistic or supported by any actual evidence than  
2 the initial 2024 estimate. Furthermore, this updated assumption renders Licensees' cost  
3 estimates even more fanciful, because, while they push back the date on which they  
4 assume the DOE will begin accepting spent nuclear fuel from the industry, they  
5 inexplicably maintain the assumption that all spent nuclear fuel will be permanently  
6 removed from SONGS by 2049.

7 53. By unreasonably assuming that all spent nuclear fuel will be permanently  
8 removed from SONGS by 2049, and only allocating sufficient funds to store and monitor  
9 the spent nuclear fuel at the site through that date, Licensees grossly understate the full  
10 cost of decommissioning SONGS and storing and monitoring spent nuclear fuel at the site  
11 through the termination of the SONGS licenses. Among other things, Licensees' cost  
12 estimates fail to account for the costs associated with: (1) storing and monitoring fuel  
13 beyond 2049 and perhaps permanently; (2) replacing and/or repairing canisters that have  
14 degraded, been damaged, and/or outlived their 40-year certifications; and (3) transferring  
15 canisters to another location when the storage system itself inevitably degrades and  
16 becomes unfit for storage of spent nuclear fuel. Accordingly, the NRC should suspend all  
17 decommissioning operations currently underway at SONGS and require Licensees to  
18 submit a new decommissioning cost estimate that is grounded in the reality that spent  
19 nuclear fuel will be stored at SONGS indefinitely.

#### 20 **IV. LICENSEES' FLAWED DECOMMISSIONING PLAN POSES A LONG** 21 **TERM THREAT TO PUBLIC SAFETY**

22 54. By falsely assuming that spent nuclear fuel will be stored at SONGS only  
23 temporarily, Licensees have not only understated the total cost associated with their  
24 decommissioning operations but they have set a disaster off on the horizon that will be  
25 unavoidable if not addressed immediately. As already discussed at length, Licensees'  
26 entire decommissioning plan, including all decisions related to the location of the SONGS  
27 ISFSI, the selection of the Holtec storage system and canisters, and the estimated cost of  
28

1 decommissioning and monitoring spent fuel at SONGS, are predicated on the false  
2 assumption that spent nuclear fuel will be stored at SONGS only temporarily.

3 55. Licensees selected a storage system with an extremely limited warranty and  
4 usable life based on the false assumption that it will be empty and demolished in thirty  
5 years. Licensees selected defective canisters with limited warranties that cannot be safely  
6 replaced when damaged based on the false assumption that the DOE would be removing  
7 them in thirty years. And Licensees selected a hazardous storage location near a rising sea  
8 based on the false assumption that the spent nuclear fuel will be permanently removed by  
9 the time the storage facility is underwater. If the NRC does not suspend decommissioning  
10 operations now, these fanciful assumptions will inevitably lead to a disastrous reality for  
11 the millions of people who reside in the vicinity of SONGS. Accordingly, the NRC should  
12 immediately suspend all decommissioning operations at SONGS, including and especially  
13 the burial of spent nuclear fuel in the SONGS ISFSI, and require Licensees to submit a  
14 new decommissioning plan that is grounded in the reality that the spent nuclear fuel being  
15 buried at SONGS will remain there indefinitely, if not permanently.

16 **V. THE NRC’S FAILURE TO PREPARE AN ENVIRONMENTAL**  
17 **ASSESSMENT OR SUPPLEMENTAL ENVIRONMENTAL IMPACT**  
18 **STATEMENT PRIOR TO APPROVING DECOMMISSIONING**  
19 **ACTIVITIES VIOLATES NEPA AND THE APA**

20 56. The NRC failed to prepare either an environmental assessment (“EA”) or an  
21 environmental impact statement (“EIS”) prior to issuing the July 17, 2015 license  
22 amendment or otherwise approving decommissioning activities at SONGS Units 2 and 3,  
23 in violation of the National Environmental Policy Act (“NEPA”), the Administrative  
24 Procedure Act (“APA”), and the NRC’s own regulations.

25 57. NEPA requires all federal agencies to conduct environmental evaluations of  
26 any “major federal actions significantly affecting the quality of the human  
27 environment.” 42 U.S.C. § 4332(2)(C). “Major federal actions” are defined broadly to  
28 include “new and continuing activities, including projects and programs entirely or partly  
financed, assisted, conducted, regulated, or approved by federal agencies.” 40 C.F.R.

1 § 1508.18. When an agency is uncertain whether a proposed action will significantly  
2 affect the environment, it must prepare an EA to determine whether the preparation of a  
3 more detailed EIS is necessary. 40 C.F.R §§ 1508.9(a), 1508.13 (2009); *see also California*  
4 *Wilderness Coal. v. U.S. Dep’t of Energy*, 631 F.3d 1072, 1097 (9th Cir. 2011) (“If the  
5 proposed action does not categorically require the preparation of an EIS, the agency must  
6 prepare an EA to determine whether the action will have a significant effect on the  
7 environment.”). In either case, NEPA obligates federal agencies to take a “hard look” at  
8 the potential environmental consequences of proposed actions. *California Wilderness*  
9 *Coal.*, 631 F.3d at 1097 (9th Cir. 2011).

10 58. The NRC’s issuance of a license amendment and approval of  
11 decommissioning activities at SONGS Units 2 and 3 constituted a “major federal action”  
12 that required NEPA compliance. As an initial matter, the NRC has historically prepared  
13 either an EA or EIS upon issuing a license amendment at SONGS Units 2 and 3. In 1981,  
14 the NRC prepared an EIS when it issued the initial operating license to Edison for Units 2  
15 and 3. *See Exhibit 30*. The NRC then prepared EAs each time it amended the license.  
16 For example, in 1996, it prepared an EA prior to approving a license amendment to allow  
17 an increase in fuel enrichment. *See Exhibit 31*. In 2001, it prepared an EA prior to  
18 approving a license amendment to allow Edison to increase its maximum reactor core  
19 power level. *See Exhibit 32*. And in 2015, it prepared an EA prior to approving an  
20 amendment allowing security personnel to use certain firearms and ammunition on site.  
21 *See Exhibit 33*. The NRC’s failure to prepare either an EA or EIS prior to issuing a license  
22 amendment and approving decommissioning activities is contrary to its prior practice at  
23 SONGS.

24 59. Furthermore, the NRC’s own regulations and guidance documents state that  
25 the NRC will prepare an EA or EIS prior to authorizing decommissioning. The NRC’s  
26 regulations provide that “[i]n connection with the amendment of an operating or combined  
27 license authorizing decommissioning activities . . . the NRC staff will prepare a  
28 supplemental environmental impact statement for the post operating or post combined

1 license stage or an environmental assessment.” 10 C.F.R. part 51.95(d). Similarly, the  
2 NRC’s Environmental Review Guidance for Licensing Actions Associated with NMSS  
3 Programs NUREG-1748 (2003) states that the NEPA review process is “usually initiated  
4 by . . . a decommissioning plan submitted to the NRC.” See **Exhibit 34** at 1-2.

5 60. Numerous federal courts have also noted that “decommissioning is an action  
6 which, even under the [NRC’s] new policy, requires NEPA compliance.” See, e.g.,  
7 *Citizens Awareness Network, Inc. v. U.S. Nuclear Regulatory Comm’n*, 59 F.3d 284, 293  
8 (1st Cir. 1995); see also *New Jersey v. U.S. Nuclear Regulatory Comm’n*, 526 F.3d 98, 103  
9 (3d Cir. 2008) (“[T]he NRC will conduct site-specific environmental analyses when  
10 licensees decommission...”); see also *Benton Cty. v. U.S. Dep’t of Energy*, 256 F. Supp.  
11 2d 1195, 1202 (E.D. Wash. 2003) (“Prior to committing any resources to any one of the  
12 options for decommissioning, the [agency] must prepare an EIS.”). Thus, the NRC was  
13 required to prepare either an EA or EIS prior to approving the Decommissioning Plan.

14 61. The NRC partially discharged its duty to comply with NEPA prior to  
15 decommissioning through the Final Generic Environmental Impact Statement on  
16 Decommissioning of Nuclear Facilities, NUREG-0586 (1988), as supplemented by  
17 NUREG-0586, Supplement 1 (2002) (collectively, the “Decommissioning GEIS”). See  
18 **Exhibit 35**. The generic EIS analyzed the environmental impacts of decommissioning  
19 that are common to all sites. But the Decommissioning GEIS concluded that a site-  
20 specific supplemental EIS would be necessary to evaluate non-generic issues, such as the  
21 environmental impacts of decommissioning on environmental justice and threatened and  
22 endangered species:

23 The staff has considered available information on the potential impacts of  
24 decommissioning on environmental justice, including comments received on  
25 the draft of Supplement 1 of NUREG-0586. Based on this information, the  
26 staff has considered that the adverse impacts and associated significance of  
27 the impacts must be determined on a site-specific basis . . . . Subsequent to  
28 the submittal of the PSDAR, the NRC staff will consider the impacts related  
to environmental justice from decommissioning activities.

1 *See Exhibit 35* Supp. 1 at 4-65.

2 The staff has considered available information on the potential impacts of  
3 decommissioning on threatened and endangered species, including  
4 comments received on the draft of Supplement 1 of NUREG-0586. Based on  
5 this information, the staff has considered that the adverse impacts and  
6 associated significance of the impacts must be determined on a site-specific  
7 basis.

8 *See Exhibit 35* Supp. 1 at 4-30. The NRC’s regulations and guidance documents purport  
9 to fill these gaps in the Decommissioning GEIS by requiring the NRC to prepare either an  
10 EA or supplemental EIS prior to approving a decommissioning plan. *See, e.g.*, 10 C.F.R.  
11 51.95(d). The NRC, however, failed to prepare either an EA or supplemental EIS when  
12 it approved Edison’s license amendment and authorized decommissioning at SONGS  
13 Units 2 and 3.

14 62. The City of Laguna Beach (“City”) notified the NRC of this failure to comply  
15 with NEPA at SONGS in its August 12, 2016 letter. *See Exhibit 36*. Notably, the  
16 California State Lands Commission (“CSLC”) correctly determined that the  
17 decommissioning activities required the CSLC to prepare an Environmental Impact  
18 Report (“EIR”) under California’s Environmental Quality Act (“CEQA”), which is the  
19 State of California’s NEPA analog. In connection with preliminary scoping of the CSLC  
20 EIR, the City insisted that the NRC prepare a supplemental EIS, as required by NEPA, or  
21 alternatively prepare a joint EIS with the CSLC, as authorized by NEPA’s implementing  
22 regulations. *See* 40 C.F.R. 1506.2. The City expressed specific concern over the following  
23 issues:

- 24 • The NRC has not considered the environmental and safety effects of sea level  
25 rise caused by climate change.
- 26 • The NRC has not addressed the environmental impacts of decommissioning  
27 on environmental justice, threatened and endangered species, offsite land  
28 use, offsite aquatic and terrestrial ecology, and certain cultural and historic  
resources.

- 1 • The NRC has not approved the design of the Holtec UMAX system that  
2 Edison has proposed for the ISFSI and that a partially subterranean design  
3 may reduce radiation safety.
- 4 • The NRC has not addressed certain radiological safety concerns, such as the  
5 site-specific radiological safety concern of storing SNF in a seismically  
6 active marine environment, which is not addressed in the Decommissioning  
7 GEIS.
- 8 • The proposed changes and alterations to the SONGS facility’s design  
9 associated with decommissioning, including the Spent Fuel Pool Island  
10 Project and the expanded and modified ISFSI, were never addressed in the  
11 SONGS Final Safety Analysis Report (“FSAR”) and thus require a separate  
12 license amendment.

13 63. Despite the City’s letter, the NRC failed to take corrective action. Instead,  
14 the NRC took the incorrect and inconsistent position that it was not required to prepare an  
15 EA or supplemental EIS in connection with approving decommissioning, because the  
16 “decommissioning activities remain within the scope of the Decommissioning GEIS [and]  
17 applicable site-specific NEPA analyses conducted in support of previous licensing  
18 actions.” *See Exhibit 37.* Specifically, the NRC claimed that review of “site-specific  
19 environmental impacts (*i.e.*, those not dispositioned generically in the Decommissioning  
20 GEIS) are first addressed in the [1981 EIS]” and were additionally “analyzed in the  
21 EA/FONSIs for license amendment or exemption requests during the plant’s operation,”  
22 such as the 1996 EA, 2001 EA, and 2015 EA. But this is plainly untrue. The prior site-  
23 specific analyses at SONGS never addressed the potential environmental impacts of  
24 decommissioning. They addressed the potential environmental impacts of the proposed  
25 actions stated therein (*e.g.*, a license amendment to allow security personnel to carry  
26 certain ammunition on-site). *See Exhibit 33.* These prior analyses do not act to satisfy  
27 the NRC’s duty to prepare a site-specific supplemental EIS for non-generic  
28 decommissioning issues, as contemplated by the Decommissioning GEIS and NRC.

64. This is not the first time the NRC has failed to comply with its own  
regulations in the context of preparing site-specific supplemental EISs that tier off of a

1 generic EIS. In August 2013, the Office of the Inspector General (“OIG”) audited the  
2 NRC’s NEPA compliance and concluded that the NRC had an “incorrect understanding  
3 of the regulations related to scoping for EISs that tier off of a generic EIS.” *See Exhibit*  
4 **38** at 24. The issue here is similar. The NRC’s reasoning for refusing to prepare a  
5 supplemental site-specific EIS is based on an incorrect understanding of its own  
6 regulations and the role of the Decommissioning GEIS.

7         65. The NRC’s failure to prepare either an EA or supplemental EIS prior to  
8 approving Edison’s license amendment and authorizing decommissioning at SONGS  
9 Units 2 and 3 is contrary to the Decommissioning GEIS, NRC regulations, and federal  
10 court opinions. In addition, it violates NEPA, 42 U.S.C. § 4332(2)(C), and constitutes  
11 arbitrary and capricious conduct under the Administrative Procedure Act, 5 U.S.C. § 706.  
12 Petitioner therefore requests that the NRC immediately suspend all decommissioning  
13 operations at SONGS and prepare a supplemental EIS that evaluates site-specific  
14 environmental issues not addressed in the Decommissioning GEIS or prior site-specific  
15 NEPA analyses, such as the those issues referenced herein. In so doing, the NRC should  
16 (1) discuss mitigation measures the agency could take to reduce environmental impacts;  
17 (2) discuss the direct, indirect, and cumulative impacts that may result from  
18 decommissioning activities; and (3) ensure the use of “accurate scientific analysis” and  
19 “high quality” information. 40 C.F.R. §§ 1500.1(b), 1508.25(b).

20  
21  
22 Dated: September 24, 2019

**BARNES & THORNBURG LLP**

23  
24  
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