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14 Public Watchdogs

15 **UNITED STATES NUCLEAR REGULATORY COMMISSION**

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

18 Petitioner,

19 v.

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

23 Licensees.  
24  
25  
26  
27

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

28 Pursuant to 10 C.F.R. § 2.206 and the Nuclear Regulatory Commission's ("NRC")

1 Management Directive 8.11, Petitioner Public Watchdogs hereby submits this  
2 Supplement to its Petition to Immediately Suspend Decommissioning Operations at San  
3 Onofre Nuclear Generating Station (“SONGS”) Units 2 and 3, which was submitted to  
4 the NRC on September 24, 2019. The purpose of this Supplement is to clarify the issues  
5 raised in the Public Watchdogs’ Petition and to provide the Petition Review Board  
6 (“PRB”) with supplemental information relevant to the Petition, some of which was not  
7 available to Public Watchdogs at the time the Petition was filed nor to the PRB at the  
8 time it made the initial decision not to accept the Petition for review.

9 **PRELIMINARY STATEMENT**

10 1. Spent nuclear fuel “poses a dangerous, long-term health and environmental  
11 risk. It will remain dangerous for time spans seemingly beyond human comprehension.”  
12 *New York v. NRC*, 681 F.3d 471, 474 (D.C. Cir. 2012) (internal quotations omitted).  
13 Unfortunately, long-term storage and management of spent nuclear fuel has proven to be  
14 an intractable Sisyphean task in the United States. Despite repeated efforts by Congress,  
15 federal agencies, and numerous stakeholders to construct a centralized deep geological  
16 permanent repository for the country’s ever-growing stockpile of lethal, radioactive  
17 spent nuclear fuel, no viable plan currently exists for a permanent storage solution.

18 2. Due to the lack of a permanent repository, the majority of the country’s  
19 spent nuclear fuel is stored on site at nuclear power plants. Although there is currently  
20 no permanent storage solution or even a viable plan to create one, the NRC routinely  
21 permits licensees to implement decommissioning plans and store fuel on-site, in densely  
22 populated areas, based on the false assumption that spent nuclear fuel will be removed  
23 from on-site storage facilities and transferred to a permanent repository in the relatively  
24 near future. *See Exhibit 1*. By permitting licensees to implement these falsely  
25 predicated decommissioning and nuclear waste burial plans, the NRC is effectively  
26 authorizing licensees to store spent nuclear fuel indefinitely without any plan or strategy  
27 for managing or funding such indefinite storage operations. The NRC’s general policy  
28 of willful ignorance not only violates its own regulations and policies, but it also equates

1 to a complete abdication of the NRC’s paramount statutory obligation to protect public  
2 health and safety.

3 3. As explained in Public Watchdogs’ Petition, the NRC’s policy of willful  
4 ignorance has created unique and particularly acute public health and safety risks at  
5 SONGS. Licensees are burying spent nuclear fuel in the SONGS Independent Spent  
6 Fuel Storage Installation (“ISFSI”) pursuant to a decommissioning plan that is  
7 predicated on the arbitrary and erroneous assumption that all spent nuclear fuel being  
8 stored at SONGS will be accepted by the Department of Energy and transferred to an  
9 offsite permanent repository by 2049. Situated a mere 108 feet from one of California’s  
10 most populated public beaches, only inches above the median high tide level, within an  
11 officially designated tsunami inundation zone, and surrounded by active fault lines, the  
12 SONGS ISFSI is in the most perilous location possible. To make matters worse,  
13 Licensees are burying spent nuclear fuel at SONGS in defective and damaged canisters  
14 that are only warranted to last 25 years. By Licensees’ own public admissions,  
15 technology does not currently exist that would enable Licensees to retrieve these  
16 canisters and safely repackage the tons of radioactive spent nuclear fuel contained  
17 therein if and when a canister fails or even if routine replacement of the canisters  
18 becomes necessary. Furthermore, Licensees have been unable to design or develop an  
19 underground monitoring system or Aging Management Plan as required by the “Special  
20 Conditions” imposed by the California Coastal Commission nuclear waste burial permit  
21 granted October 6, 2015. Thus, the NRC, by its own negligent enforcement, is allowing  
22 Licensees to bury one of the most dangerous substances known to human kind, in one of  
23 the most dangerous places imaginable, in defective and damaged canisters that cannot be  
24 monitored, retrieved, or repaired, all pursuant to a decommissioning plan that is  
25 predicated on the knowingly false assumption that all spent nuclear fuel will be removed  
26 from SONGS and transferred to a centralized permanent repository in the relatively near  
27 future. Despite the grave public health and safety hazards posed by this reckless course  
28 of action, Licensees have made clear that they intend to bury all spent nuclear fuel at

1 SONGS as quickly as possible. What’s more, the NRC has also made clear that it will  
2 neglect to regulate Licensees’ violations of federal law, thereby using its regulatory  
3 authority to facilitate the hasty and unsafe burial of all spent nuclear fuel at SONGS.

4 4. Since Public Watchdogs filed its Petition, Licensees have publicly admitted  
5 that continued storage of spent nuclear fuel at SONGS is not feasible, and that there is  
6 currently no viable alternative. In addition, state regulators recently delayed the release  
7 of more than \$400 million in decommissioning trust funds, imperiling Licensees’ ability  
8 to continue its decommissioning operations at all, much less safely. Based on these  
9 troubling recent developments, as well as the various public health, safety, and  
10 environmental concerns identified in the Petition, Public Watchdogs respectfully  
11 requests that the NRC issue an order immediately suspending all decommissioning  
12 operations at SONGS, including all spent fuel transfer operations, and requiring  
13 Licensees to submit an amended decommissioning plan that properly accounts for the  
14 reality that spent nuclear fuel will likely remain buried at SONGS indefinitely.

15 **CLARIFICATION AND SUPPLEMENTATION OF GROUNDS FOR**  
16 **IMMEDIATELY SUSPENDING DECOMMISSIONING OPERATIONS**

17 **I. RECENT EVENTS CONFIRM THAT LICENSEES CANNOT ENSURE**  
18 **THEIR FINANCIAL ABILITY TO PAY FOR THE TOTAL COST OF**  
19 **DECOMMISSIONING AND LONG TERM SPENT FUEL**  
20 **MANAGEMENT.**

21 5. Although the NRC’s Generic Environmental Impact Statement (“GEIS”)  
22 for the long term storage of spent nuclear fuel finds that spent nuclear fuel can be stored  
23 on-site for an indefinite period without significant environmental impact, the GEIS does  
24 not authorize, license, or otherwise permit licensees to store spent fuel for any length of  
25 time. *See* NUREG-2157. Moreover, the GEIS validates that indefinite on-site storage  
26 of spent nuclear fuel will require periodic repackaging of spent nuclear fuel and  
27 replacement of spent nuclear fuel canisters, as well as long term security to protect the  
28 stored spent nuclear fuel from terrorist attack or other nefarious interventions. *Id.*

1           6.     NRC regulations require licensees to provide assurance that they will have  
2 sufficient financial resources to pay for the total cost of decommissioning a nuclear  
3 power plant and managing spent nuclear fuel. *See* 10 C.F.R. 50.75 and 50.82. As NRC  
4 Chairwoman Allison Macfarlane stated in her comments to the Final Rule for the  
5 Continued Storage of Spent Nuclear Fuel, there are “significant uncertainties” associated  
6 with the indefinite and risky on-site storage of spent nuclear fuel, including “the lack of  
7 experience in repeatedly repackaging spent fuel into new storage devices over time,”  
8 “the lack of a guarantee that responsible parties would pay for the costs of repackaging  
9 over time,” and “unforeseen events in our natural environment and society.” *See Exhibit*  
10 **2**. Indeed, Chairwoman Macfarlane presciently predicted that “[d]ecommissioned  
11 licensees will likely not have sufficient revenue to pay for the reoccurring expenses such  
12 as repackaging of spent fuel, construction of dry transfer facilities, and increased  
13 security needs assumed in the GEIS.” *Id.*

14           7.     At a SONGS Community Engagement Panel on November 21, 2019,  
15 Licensees implicitly conceded that indefinite storage of spent nuclear fuel at SONGS is  
16 not feasible and they acknowledged that they are working to develop a strategy to  
17 relocate the SONGS spent fuel to an offsite storage or disposal facility. *See Exhibit 3*.  
18 Although Licensees’ entire decommissioning plan, including their decommissioning cost  
19 estimate and irradiated fuel management plan, is predicated on the assumption that spent  
20 nuclear fuel will be removed from SONGS by 2049, Licensees acknowledged at the  
21 Community Engagement Panel that they have not even identified a receiving site, much  
22 less established a viable plan to remove all spent nuclear fuel from SONGS by 2049. *Id.*  
23 In other words, Licensees publicly admitted that the fundamental predicate for their  
24 entire decommissioning plan is false.

25           8.     On December 4, 2019, Licensees sought authorization from the Public  
26 Utilities Commission of the State of California (“CPUC”) to disburse more than \$400  
27 million from the SONGS decommissioning trust fund to pay for various 2020  
28 decommissioning costs, including fuel transfer operations. *See Exhibit 4*. This

1 represented a nearly threefold increase in the amount of funds Licensees' previously  
2 estimated would be necessary to perform 2020 decommissioning and spent nuclear fuel  
3 transfer operations. *Id.* On January 6, 2020, following Public Watchdogs' objection, the  
4 CPUC suspended the disbursement of these funds for up to 120 days, finding that  
5 Licensees' request requires further staff review. *Id.* The CPUC decision also includes  
6 options to extend the suspension beyond the 120-day period if necessary.

7 9. As discussed in Public Watchdogs' Petition, Licensees' entire  
8 decommissioning plan is predicated on the false assumption that all spent nuclear fuel  
9 will be removed from SONGS by 2049. Based on this assumption, Licensees have only  
10 assured the NRC that they will have enough funds to pay for decommissioning and spent  
11 fuel management through 2049. Given Licensees' recent public acknowledgement that  
12 they have not identified a receiving site for SONGS' spent nuclear fuel, much less  
13 developed a viable plan to remove all spent nuclear from SONGS by 2049, Licensees'  
14 assurances regarding their ability to pay the full cost of decommissioning and spent fuel  
15 management are not credible. Moreover, CPUC's recent decision to suspend  
16 disbursements from the SONGS decommissioning trust fund further undermines  
17 Licensees' assurances that they have sufficient funds available to them to pay the full  
18 cost of decommissioning and spent fuel management. Because Licensees are unable to  
19 provide the financial assurances required by NRC regulations, the NRC should  
20 immediately suspend all decommissioning activities at SONGS and require Licensees to  
21 submit a new decommissioning plan that accounts for the reality that Licensees will  
22 have to bear the cost of spent fuel management indefinitely. At minimum, the NRC  
23 should suspend all decommissioning activities until such time as the CPUC approves the  
24 disbursement of SONGS decommissioning funds for 2020. Without such funds,  
25 Licensees will have a perverse incentive to cut corners and ignore safety requirements,  
26 which will significantly increase the already prodigious risks to public health and safety  
27 associated with Licensees' continued decommissioning and fuel transfer operations.

1 **II. LICENSEES ARE VIOLATING NRC REGULATIONS BY BURYING**  
2 **SPENT NUCLEAR FUEL AT SONGS IN A STORAGE SYSTEM THAT**  
3 **DOES NOT ALLOW FOR READY RETRIEVAL OF THE FUEL.**

4 10. Under NRC regulations, “[s]torage systems must be designed to allow  
5 ready retrieval of spent fuel, high-level radioactive waste, and reactor-related GTCC  
6 waste for further processing or disposal.” See 10 C.F.R. 72.122(l). As discussed in  
7 Public Watchdogs’ Petition, Licensees have publicly acknowledged that technology does  
8 not currently exist that would enable Licensees to retrieve the canisters being buried at  
9 SONGS and repackage the tons of spent nuclear fuel contained therein if and when a  
10 critical failure of the canisters occurs or even if routine replacement of a canister  
11 becomes necessary. See Public Watchdogs’ Petition at Exhibit 18. Moreover, Licensees  
12 have publicly acknowledged that any technology for unloading a canister that might be  
13 developed in the future would require a spent fuel pool or a dry transfer facility. *Id.*  
14 Significantly, Licensees have recently confirmed that they intend to demolish the spent  
15 fuel pools and the fuel handling building at SONGS as soon as all spent nuclear fuel is  
16 transferred from the spent fuel pools to the ISFSI, which is imminent since the Licensee  
17 projects the burial will be completed prior to July 15, 2020. See **Exhibit 3**; see also  
18 **Exhibit 5** at p. 11-12. Thus, Public Watchdogs respectfully submits that the spent  
19 nuclear fuel being buried at SONGS is currently unretrievable in violation of NRC  
20 regulations, and that Licensees’ own admissions confirm that the spent nuclear fuel will  
21 be completely unretrievable by this summer, when the spent fuel pools are demolished.  
22 For this additional reason, the NRC should suspend all decommissioning activities at  
23 SONGS, including all spent fuel transfer operations, and require Licensees to submit a  
24 decommissioning plan that complies with NRC regulations.

25 **III. THE SONGS ISFSI IS OPERATING IN AN UNANALYZED CONDITION.**

26 11. As discussed at length in Public Watchdogs’ Petition, the precarious  
27 location of the SONGS ISFSI—only feet from the Pacific Ocean, in a tsunami  
28 inundation zone, and between active fault lines—makes it uniquely susceptible flooding.

1 The potential consequences of a flooding event would be disastrous, including, but not  
2 limited to, canister deformation or rupture and the simultaneous release of radioactive  
3 “geysers” from the ISFSI. Although the Holtec Final Safety Analysis Report and  
4 Certificates of Compliance clearly contemplate a potential flooding event and state that a  
5 site specific analysis will be submitted by Licensees, Public Watchdogs is not aware that  
6 any such analysis has been performed or submitted. Accordingly, the SONGS ISFSI is  
7 operating in an unanalyzed condition, and all decommissioning operations, including all  
8 fuel transfer operations, should be suspended until such an analysis is performed.

9 **CONCLUSION**

10 12. For the reasons set forth in this supplement, and for the reasons set forth in  
11 Public Watchdogs’ Petition, Public Watchdogs respectfully requests that the NRC enter  
12 an order immediately suspending all decommissioning operations at SONGS, including  
13 all fuel transfer operations, and requiring Licensees to submit an amended  
14 decommissioning plan that properly accounts for the reality that the spent nuclear fuel  
15 being buried at SONGS will likely remain there indefinitely.

16  
17 Dated: January 21, 2019

**BARNES & THORNBURG LLP**

18  
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