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## Justices Won't Review Challenge To Nuke Plant Shuttering

By **Juan Carlos Rodriguez**

Law360 (December 6, 2021, 7:35 PM EST) -- The U.S. Supreme Court on Monday rejected a California public safety advocate's challenge to a Ninth Circuit decision upholding the U.S. Nuclear Regulatory Commission's plan for shutting down a nuclear plant on the Pacific coast.

Public Watchdogs had asked the justices to review the appeals court's **January decision**, arguing that the Ninth Circuit wrongly interpreted the Hobbs Act — which mandates that certain challenges to agency actions are sent directly to the courts of appeals — as prohibiting litigation between private parties when some of those parties are licensed by the NRC, and as prohibiting claims arising from conduct that is merely "incidental" to a final agency order.

In 2019, the group asked the NRC to halt decommissioning operations at the San Onofre Nuclear Generating Station, located roughly halfway between Los Angeles and San Diego. It said the plan was fatally flawed in large part because it didn't properly consider the country's inability to find a place for long-term storage of spent nuclear fuel.

The group says the issues are especially important because the plant operated by the Southern California Edison Co. is on the coast, close to fault lines and in a "tsunami inundation zone."

A Ninth Circuit panel, however, said the matter wasn't reviewable because the petition actually fights "a decision not to institute an enforcement proceeding" that would suspend "licensed spent fuel transfers" at the facility. Not moving forward with enforcement is "presumptively unreviewable," the panel said.

SoCal Edison, San Diego Gas & Electric Co., Sempra Energy and Holtec International all argued in opposition to the group's Supreme Court petition.

The justices did not comment on why they rejected Public Watchdogs' petition for writ of certiorari.

Southern California Edison spokesperson John Dobken on Monday said the company is pleased that the Ninth Circuit's ruling will stand.

"Placing spent nuclear fuel into federally approved canisters that meet all technical, safety and regulatory requirements enables relocating the fuel to an off-site, federally licensed facility," Dobken said in an email Monday. "Moving the fuel to such a facility, as safely and soon as possible, is SCE's goal."

Charles La Bella of Barnes & Thornburg LLP, who represents Public Watchdogs, said the group is disappointed the Supreme Court rejected its petition.

"We hope that at some point there will be meaningful judicial review of the nuclear decommissioning process before there is an adverse event that will certainly threaten personal safety and the environment," La Bella said Monday.

The NRC did not respond to a request for comment Monday.

Southern California Edison, San Diego Gas & Electric, Sempra Energy and Holtec International are represented by Edward J. Casey, Alexander Akerman and Brian D. Boone of Alston & Bird LLP.

Public Watchdogs is represented by Brian E. Casey, Sarah E. Brown, Charles La Bella and Eric J. Beste of Barnes & Thornburg LLP.

The federal government is represented by Elizabeth B. Prelogar, Todd Kim, Jennifer Scheller Neumann, Evelyn S. Ying and Justin D. Heminger of the U.S. Department of Justice.

The case is Public Watchdogs v. Southern California Edison Co. et al., number 20-1676, in the Supreme Court of the United States.

--Editing by Lakshna Mehta.

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