BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos.
	)	San Onofre 50-361 and 50-362-LA
(San Onofre Nuclear Generating Station)	)	
	)	August 18, 2013

CITIZENS OVERSIGHT'S ANSWER TO MOTION VACATE RULING OF ASLB ON PETITION TO INTERVENE AND REQUEST A HEARING AND THE SUBSEQUENT APPEAL OF THAT RULING

1. INTRODUCTION

Citizens Oversight, Inc. is a nonprofit (501(c)3) organization incorporated in Delaware, and with primary offices in California. Among its missions, Citizens Oversight (or Citizens Oversight Projects, "COPS") seeks to ensure the public has an opportunity to influence the outcome of government and corporate decisions that affect the lives of many people.

The licensee (Southern California Edison Company, "SCE") submitted a license amendment request (LAR) for San Onofre Nuclear Generating Station ("SONGS"), Units 2 and 3, dated July 29, 2011, requesting approval to convert the Current Technical Specifications ("CTS") to be consistent with the most recently approved version of the Standard Technical Specifications ("STS") for Combustion Engineering Plants, NUREG-1432.

Pursuant to 10 C.F.R. § 2.309, Petitioner submitted a petition to intervene and request a hearing ("Petition") in the NRC proceeding to amend the operating license for SCE's San Onofre plant on October 17, 2012. Oral arguments were heard before the Atomic Safety and Licensing Board (ASLB) on December 5, 2012. The ASLB denied a hearing on the matter in LBP-12-25, dated December 21, 2012. An appeal of that decision was submitted by Citizens Oversight to the Commission on January 14, 2013. On May 13, 2013, the Secretary of the NRC extended the time for Commission review of the

appeal pending further order of the Commission.

On June 12, 2013, SCE notified the NRC of its decision to permanently cease power operations of SONGS Units 2 and 3. In light of SCE's decision to permanently retire SONGS Units 2 and 3, on July 30, 2013, SCE submitted to the NRC a withdrawal of its July 29, 2011 STS License Amendment Request, among other things. The letter, which constitutes SCE's formal withdrawal of the referenced license amendment action, is publicly available in ADAMS at Accession No. ML13212A250.

On August 8, 2013, SCE submitted "Southern California Edison Company's Motion To Withdraw License Amendment Request And To Vacate LBP-12-25 And Associated Petition For Review As Moot," and on August 9, 2013, the Staff of the Nuclear Regulatory Commission submitted "NRC Staff's Motion To Vacate Licensing Board Order LBP-12-25." This document represents the response of Citizens' Oversight to these two motions.

2. POSITION OF CITIZENS OVERSIGHT ON THE MOTIONS

Since the applicant SCE has notified the NRC that SONGS would be permanently shut down and decommissioned, it is indeed the case that within the legal paradigm within which these questions are considered, it is appropriate for the LAR to be withdrawn, and since the Petition and the subsequent appeal were with regard to this LAR, it is appropriate that the decision by the ASLB that no valid contention was contained in the Petition should be vacated. Citizens Oversight understands the fact that within the legal paradigm of operation by the NRC, this is the logical conclusion.

However, it is the position of Citizens Oversight that this methodology is biased toward decisions that will result in reduced safety and will not adequately explore questions that may have broad implication. Therefore, Citizens Oversight objects to this action, and requests that the ASLB ruling be reversed and a hearing conducted in the matter.

3. GENERAL DISCUSSION

The NRC uses a system that is based on a legal paradigm to manage changes in the regulations which are intended to ensure the safety of nuclear plants. In this section, we will show that this system is inherently biased against increased safety, and most particularly when it is possible for a licensee to avoid further processing of questions by withdrawing LARs, and the subsequent vacating of decisions based on their initial request, which is exactly what is proposed in this case.

To explain this situation, we will attempt to construct a logical proof that does not rely upon the normal traditions of the legal system within which we are working, but is based on reason and logic. This approach is taken here because, we will show, that the legal paradigm is untrustworthy and biased, and should not be utilized in its present form by the NRC or other similar organizations.

Consider the set of Licensees who are controlled by a set of regulatory constraints contained in the Technical Specifications and other similar public documents (TS). The Licensees have an appropriate agenda to increase production and profits, with the likely outcome that safety margins in the TS are constantly challenged or reduced. There are a set of Intervenors who have the agenda to increase (or maintain) safety margins, with the likely outcome that profits of the Licensees are constantly challenged, reduced, and at least not allowed to increase.

In an attempt to construct a means to balance these competing agendas, the NRC utilizes a system based on the legal paradigm, where it is hoped that the two points of view will reach a balance and the best possible decisions will be made. Within this paradigm, there are a number of doctrines and traditions that have been adopted from the the criminal justice system and applied to this system. We find that many of these doctrines and traditions are inherently biased.

3.1 Asymmetric Application

In the traditions of Western law, there are Plaintiffs and Defendants they have different roles

and rights in the traditional court of law. For example, in a criminal case, the plaintiff is the prosecutor and the defendant is the person who is accused of a crime. There are two major outcomes of the case. If the defendant broke the law, then the defendant is supposed to be found guilty, and if not, not guilty. Such courts do not ever analyze the law itself and decide that the defendant is not only not guilty, but the law itself is improper, and as a result, his rights should be increased. So the pendulum only swings one way. You have to operate outside the court system completely and work within the political system and law-making bodies of government to get it to swing the other way. Thus, this system is inherently asymmetric because it can only work to change status quo in one direction.

The system used by the NRC is similar because has adopted the mechanisms and traditions of the courts. Licensees make requests to change the constraints of the TS in LARs (License Amendment Requests) but Intervenors can only object to these requests. Thus with no other factors at play, this asymmetric application of the legal paradigm will result in changes to the status quo only in one direction -- reduced safety margins and increased Licensee production (and profits) -- but never increased safety margins.

Consider a hypothetical TS containing 100 constraints. The Licensees request that 25 of the constraints are reduced, thereby allowing higher profits and reduced safety margins. Intervenors are successful in stopping say ten of these requests. Thus, 15 of the constraints are reduced. There is no similar process to increase the constraints and thereby possibly increase safety. Either the Licensees are successful at reducing them or they are not. Later, if they are first unsuccessful at reducing the constraints, they can attempt to reduce the constraints again and again, and only if Intervenors are successful can the reduction in safety be stopped. In many cases, the changes in the TS go unchallenged by Intervenors completely, and if they do, then the practice implied by the changes in the TS start to proliferate in the industry, and then we start to hear that since there are no accidents yet, that safety must be good enough, and the issue is never vetted by the hearing process.

This asymmetry is exacerbated by a vast difference in the ability of the parties to fund support of their position. Utility-funded licensees hire vast legal teams to prepare requests and to defend them against challenges, and they have nearly unlimited time to process their requests. Intervenors have limited resources and typically have a very short time window to prepare an adequate response, and are not compensated by the NRC for their efforts. Even if the two sides were equally capable, there is no pressure to increase safety margins within this structure. Licensees will rarely, if ever, request that safety margins be increased and profits decreased. Without such a request, Intervenors have no mechanism to push toward increased safety.

An additional factor in asymmetry is excessively difficult criteria that Intervenors must fully comply before the technical aspects of their contentions can be heard. In addition to just being difficult, it provides advance warning to the Licensee so that they can potentially withdraw their LAR so that no precedents can be established in favor of the Intervenors (see "Vacating is Biased," below).

3.2 Stare Decisis

This latin terms that means "to stand by decided cases; to uphold precedents; to maintain former adjudications".[1] We assert, as have others, that this doctrine can and does frequently get off track[1]:

> [I]t has come to take on a life of its own, with all precedents being presumed to be well-founded, unbiased legal decisions, rather than political decisions, and presumed to have both the authority of the constitutional enactments on which they are based, plus that of the precedents on which they are based, so that later precedents are presumed to be more authoritative than earlier ones.
>
> The doctrine also tends to give great weight to the opinion in the case, even to the point of treating the opinion as though it was law, even though only the order and findings have the actual force of law, and only in that case, and an explanation of how the decision was reached is only *dictum*, or commentary. This means that a poorly-worded opinion can define a set of legal positions that exceed the bounds of the underlying constitutional enactments, and become the basis for future precedents, as though they were constitutional enactments themselves. The problem is exacerbated by the failure of judges to clearly delineate the boundaries between edict and dictum.

1 http://constitution.org/col/0610staredrift.htm "How stare decisis Subverts the Law," Jon Roland 2000 June 10

> The doctrine tends to disfavor legal argument that precedents were wrongly decided, especially if they are precedents established at a higher level in the appeals hierarchy, and to demand the litigants "distinguish" their cases from adverse precedents, arguing that those precedents do not apply to the present case because of elements that make it different from the cases on which the precedents were established. This can be very difficult to do if there are a great many recent cases on the same issues which cover most of the possibilities.

There is no question that a body of knowledge must be maintained to assist with the correct and appropriate application of regulations to the industry to thereby provide adequate safety margins. However, the mindless application of *stare decisis* within a legal paradigm will always allow the knowledge base to drift from reality. In this case, because of the asymmetrical nature of the system from the get-go, the drift will again be toward reduced safety and increased industry profits. In any system that makes decisions, some decisions will be faulty. Since all such decisions are in the direction of reduced safety, over time the drift toward profits and away from safety can become extreme.

The same reference above goes on to say:

> There are two variants on the doctrine of *stare decisis*. The problem we have discussed here is with the strong form, which treats precedents as *binding*. However, there is a weaker form, which treats precedents as merely *persuasive*. In this second variant, a dissenting opinion could be more persuasive than the prevailing opinion, if the person citing it agreed with it. In this variant, precedent becomes merely a convenient way to save time and words by citing the reasoning in another case, saying "My reasoning is similar to that", and nothing more. Historically, what came to be treated as binding started as persuasive. Returning to treatment of precedents as merely persuasive would solve the problem discussed here, but history shows us that judges are prone to drift back to treating them as binding unless some corrective mechanism is instituted to prevent it. Finding such a check would then be an essential component of any lasting reform.
>
> *Stare decisis* is the way judges seek the safety of the herd. We need to demand they exhibit more courage, and return to fundamental principles, resorting to *stare decisis* only when the positions lie on the fuzzy boundary of the region of legitimacy.

3.3 Vacating Interventions Biased

In addition to the asymmetry described above, there is an unfortunate asymmetry due to the fact that Licensees can withdraw their LAR "prior to a hearing" and any related decisions that may have

resulted from the initial processing of the LAR are vacated, and essentially erased from the knowledge base used in the application of stare decisis. This is the proposal in this case, and is also unfortunately the proposal in the case of the challenge by Friends of the Earth that the Confirmatory Action Letter process is a defacto LAR but without the opportunity for the public to challenge the LAR by requesting a hearing, which the ASLB supported[2]. The proposal to vacate these actions will further exacerbate the bias inherent in the asymmetric legal paradigm.

For LARs that are challenged by Intervenors and approved, those cases remain within the set of cases that can be referenced as applicable precedent, per *stare decisis* mentioned above. However, if Licensees see that their LAR may not be successful and the arguments of the Intervenors may be successful, they can pull their LAR (or sometimes completely close the plant) and the Licensee (and NRC Staff) will move (as they have in this case) that all decisions and actions in process, particularly those which were in favor (or may produce results) of increased safety and in general opposition to their profit motive, should be vacated. This act will remove those decisions from the potential knowledge base for references to support arguments to support the positions of the Intervenors. Thus if Licensees withdraw their LARs before the hearings occur, we are left with only those arguments and positions that support the Licensees, and all arguments that support the positions of the Intervenors are lost. Thus, the knowledge base of precedents is biased toward those decisions that were in favor of a LARs approval, and any decisions that could potentially exist that would disallow LARs in the future, are removed through the vacating process. This is in inherently biased process and is bad policy.

Instead, just the opposite should be the case. If a Licensee withdraws their LAR or shuts down the plant when threatened with a likely successful action by an Intervenor, all cases related to those premature withdrawals (or closures) should be processed to their conclusion, particularly when the implications of the case may be useful in the precedential knowledge base, such that future actions by

2 ASLBP No. 13-924-01-CAL-BD01

Intervenors can be supported. We assert that instead of vacating and terminating these proceedings, they should be continued to their logical conclusion to actively avoid the bias inherent in the vacating process.

3.4 Removal of Constraints

One common strategy to further allow safety margins to be reduced is for Licensees to remove constraints from the TS and place them in "Licensee-controlled documents" which are proprietary in nature, so these constraints can be modified at will by the Licensee without any threat of an objection by Intervenors. This changes the constraints included in the set, and not just the value of the constraints, has been a trend in recent years and permanently decreases the ability of Intervenors to ensure that adequate safety margins exist. This action essentially eliminates the constraints from the entire process, and as such, is not just a simple change to the constraint, but essentially elimination of the constraint from the process, providing Intervenors with no ability to object to unreasonable changes to the constraints.

So in the example above, if instead of arguing to loosen the 25 constraints out of the 100 constraints in the regulatory set, the Licensee simply eliminates them completely, thereby eliminating any future threat that Intervenors may be able to stop loosening of those constraints to reduce safety and increase profits.

4. SPECIFIC DISCUSSION

With that said, Citizens Oversight does not believe that the issue in our Contention 1 is moot, nor do we believe that operation within the legal paradigm is the only way the NRC should operate. We assert that the controversy of Contention 1 not only applies to SONGS and this LAR, but has been implemented throughout the industry without adequate review. Indeed, according to the ASLB, this was the first time the subject of Contention 1 had been broached, and yet it had already been deployed as

"standard" in the industry and adopted in other plants without any critical review.

The Board concluded in LBP-12-25 (page 11):

> The "key issue" raised by Contention 1 is that "relocating" the surveillance frequency requirements from the license to a licensee-controlled document is improper because it will deprive the public of any opportunity to scrutinize or challenge further changes to the surveillance frequencies. It is clear to us that Citizens Oversight is correct on one point—If SCE's license amendment request is granted, then SCE will be able to make future changes to the surveillance frequencies with no opportunity for public scrutiny and oversight. See Tr. at 49–50 (SCE), 89 (NRC Staff). Indeed SCE and the NRC Staff state that SCE will not even need to inform the NRC Staff of such changes. 222 See Tr. at 74–75 (SCE), 90 (NRC Staff).

Thus, the technical specification is being eliminated and replaced by a qualitatively different provision, a "written commitment." Compliance with a technical specification is required and directly enforceable by the Commission, whereas compliance with written commitments contained in licensee-controlled documents is not.[3]

The Board in LBP-12-25 already agreed with our assertion that the admissibility of our contention is not dependent upon whether similar actions had been performed at other plants, whether NRC Staff or the industry endorses it. In LBP-12-25, Footnote 23:

> [W]e do reject the suggestions by SCE and the NRC Staff that the "relocation" of these surveillance frequency requirements is necessarily legal because (a) the nuclear industry endorses this practice, (b) NRC policy endorses it, or (c) everybody else is doing it.

Indeed, Citizens Oversight asserted that the elimination of surveillance frequencies in the Technical Specifications was in direct violation of the Commission's own "Final Policy on Technical Specifications, Improvements for Nuclear Power Reactors," 58 Fed Reg 39132, issued in the Federal Register July 22, 1993, includes the following provision:

> It is a Commission policy that licensees retain in their technical specifications LCOs, action statements and surveillance requirements for the following systems, which operating experience and PSA have generally shown to be significant to public health and safety, and any other structure, systems or components that meet this criterion: reactor core, isolation and cooling.

The proposed changes to the Technical Specifications in this LAR included relocating

3 See LBP-12-25 at footnote 21.

surveillance frequencies regarding many systems that are "reactor core, isolation and cooling" systems, many within the containment building itself. For example, checking that the Reactor Coolant System is in operation is certainly critical to the operation of the plant, and if this system were not in operation, the plant could undergo a LOCA -- loss of coolant accident -- and possible scenario similar to what occurred at the Fukushima Daiichi nuclear power plant, where three of the reactors are in full meltdown and millions of people had to be relocated. The surveillance frequency specification for this system was proposed to be removed by the LAR, in direct violation of the Commissions policy.

This is in distinction to the primary precedent, cited by the NRC Staff and SCE, of Millstone[4], where the issue was with the surveillance frequencies of the effluent being emitted on the exterior of the plant, far from the containment building and not a critical safety-related system. To assert that surveillance of radioactive effluent at an off-site location is the same as surveillance of the reactor coolant system in the containment building is nothing more than ridiculous, and shows the world how far removed from logic the legal paradigm of operation has become, and why *stare decisis* is now leading the Commission astray. Both the NRC Staff and SCE quote this case not to support the removal of the surveillance frequencies, but that any contention about the surveillance frequencies is meritless, and therefore the technical issues should not be discussed in a hearing.

The fact that these surveillance frequencies have been removed from the Technical Specifications of other plants, and the basis for review of this action is "because everyone is doing it," gives the public little confidence that the systems and practices of the NRC and the ASLB result in increased safety.

The position of Citizens Oversight is that this issue is not moot because this decision goes beyond the current LAR in question. The industry is relying on the fact that this practice has never been

4 CLI-01-24 was a review of the original decision, LBP-01-10, 53 NRC 273 (2001), that denied a petition for leave to intervene and request for hearing filed by the Connecticut Coalition Against Millstone and the STAR ("Standing for Truth About Radiation") Foundation.

thoroughly and critically reviewed and put to bed, and they now say it is okay because "everyone is doing it" and since no accidents have occurred, that the "proof is in the pudding." This is not moot because the removal of these surveillance specifications has never been challenged and to vacate the issue now without addressing it is will continue this obvious illegal activity.

The NRC has established a complex and difficult methodology based on the legal paradigm which puts the onus on the public to negotiate through a first layer of administrative processing before the underlying technical issues can be considered. The "intentionally strict" system was established to allow the industry to avoid superfluous objections to nuclear plants that had no real technical merit. Although these changes were initially well-intentioned to avoid meritless contentions, it is clear to Citizens Oversight that this system has now gone too far in the other direction, resulting in extensive legal review of immaterial constraints of timeliness, standing, proper legal etiquette, and stating that the public not just provide a "brief description" of the contention, but to require that the public fully argue the legal and technical merits before a hearing is ever scheduled.

With limitless legal muscle of the nuclear utility industry and their ability to request ratepayer subsidies to underwrite the circumvention of legitimate technical controversies through the "intentionally strict" legal paradigm, combined with the NRC Staff that parrots the position of the industry, it is all but impossible to raise reasonable technical issues critical to the safety of nuclear plants.

To top it off, even if the contention has merits, if the applicant pulls their LAR, the entire attempt to bring up these technical issues disappears into thin air. Again, legal processing trumps common sense.

Citizens Oversight has no objection to the fact that SCE has decided to permanently close this SONGS which has been mired in technical problems that are completely unrelated to the subject of this LAR and the petition of Citizens Oversight. And, it there is no objection to the withdrawal of the LAR

after this closure. Likewise, we understand that within the legal paradigm of operation, it is appropriate to vacate the ruling of the ASLB regarding our Petition and the subsequent appeal. This tilts in our favor in one respect, because as we understand it, it means that the defective decision of the ASLB cannot be used to further underwrite the unsafe removal of surveillance frequencies as raised by Contention 1. Such a course of action is supported within this legal paradigm by the Munsingwear case[5] Of course, as mentioned, we also believe that vacating prior cases and the strict use of *stare decisis* are inappropriate by a regulatory agency responsible for safety because of the overwhelming bias in favor of profits over safety.

However, we do object to the notion that our Contention 1 is moot. It is not moot because the status quo -- allowing relocation of surveillance frequencies to licensee controlled documents -- is still occurring at other plants, and is still considered "safe because everyone is doing it" or safe because no accidents have yet occurred and "the proof is in the pudding."

Thus although SCE desires to pull out of the proceeding because they do not have an LAR application in process, Citizens Oversight still wishes to pursue the larger question between the NRC Staff, the ASLB, and the Commission.

With SCE no longer in the mix, no LAR application is being actively considered. Thus the Commission can entertain the question of appropriateness of the removal of surveillance frequencies of safety-critical systems from the Technical Specifications without the possibility of stopping or slowing any specific LAR. The policy of "intentionally strict" processing need not be the case. It may seem like an impossible notion, but this could be an opportunity for the NRC to proactively consider the safety

5 From 848 F.2d 1307, 270 U.S.App.D.C. 275, 3 Indiv.Empl.Rts.Cas. 1109 UNITED STATES of America, Appellant, v. Billie Pirner GARDE No. 88-5022. June 17, 1988:

The Munsingwear Court itself noted that generally, "the judgment in the first suit would be binding in the subsequent ones if an appeal, though available, had not been taken or perfected." Munsingwear, 340 U.S. at 39, 71 S.Ct. at 106. Therefore, when appellant is precluded from obtaining review of an adverse decision because of subsequent intervening events not within its control, it is the duty of the appellate court to vacate the decision below in order to preserve the legal rights of the parties involved and avoid prejudice to appellant. Id. at 39-40, 71 S.Ct. at 106-07. See also Duke Power Co. v. Greenwood County, 299 U.S. 259, 267, 57 S.Ct. 202, 205, 81 L.Ed. 178 (1936).

implications without the distorting circumstances that an operating power plant may be in jeopardy, and without the claim that the petitioner is raising the issue just to stop the LAR and to shut down the plant.

The reality is that the mindset of the NRC is such that such a suggestion is not considered within the realm of possibility, particularly within the straight jacket of the legal paradigm used to process any and all interaction with the public, where it is impossible to raise an issue unless it is in the act of stopping a LAR, and the most any intervention can hope for is stopping the LAR in its tracks.

The trouble is that declaring this issue moot and vacating the ASLB ruling on the Petition and the subsequent appeal, means that the NRC and the industry will be able to continue to remove surveillance frequency specifications from the Technical Specifications at will and without any regard for the underlying safety implications nor the "Final Commission Statement on Technical Specifications" which explicitly states that surveillance frequencies of critical safety systems will not be removed from the Technical Specifications. By removing those specifications from the Tech Specs, the Licensees permanently alter the ability of the Public to properly intervene in the name of safety. Those changes will not be required to be scrutinized by the public and the NRC, and approved by the NRC through the possibility of a hearing on the matter is eliminated.

The sidelining of this issue points out a fundamental flaw in the systems of the NRC. The NRC has adopted the notion that these technical issues are best dealt with using a system that is analogous to the judicial system, by practitioners who are practiced in making legal arguments but are hardly equipped to deal with the actual technical issues. The first stage of processing, the Petition, Reply, Rebuttals, Oral Arguments, etc. remain strictly in the arbitrary legal realm where *stare decisis* need not refer to any facts from the world of physics and engineering, and over time, the ability of the petitioner to get anything through this system has been brought to a standstill. This was brought out in this case during Oral Arguments when the ASLB judge stated that it was not clear that the Reactor Coolant System was a critical system. Although Citizens Oversight was able to provide the testimony of a

nuclear expert in our appeal, it was probably too late in the eyes of those who have rigid expectations of the petitioners to have their case fully argued before reaching the first stage of Oral Arguments in the matter, and underlines the defective nature of the legal paradigm being used to process these issues.

The legal paradigm is not creative. It does not look for alternative answers. It is not a means to negotiate the best solution. It is used because it is advantageous for the industry to block public scrutiny and involvement, not because it results in the safest conclusions. It is used because it has an inherent bias toward industry profits and against increased safety.

For example, in this case, Citizens Oversight's Contention 1 asserts that it is improper to remove the surveillance frequencies from the Technical Specifications. The most we can do within the legal paradigm is object to LAR which includes those changes, which makes it seem as though we would be happy with nothing other than the situation as it stands -- i.e. requiring a new LAR for any and all changes to the surveillance frequencies of any and all critical systems. On the contrary, there are typically many possible solutions which can satisfy both the constraints, that is, of allowing the surveillance frequencies to be modified using the Surveillance Frequency Control Program (SFCP) while still including these in the Technical Specifications and allowing the NRC and the public to be informed when they are changed. One possible solution would be to include ranges of surveillance frequencies within the Technical Specifications. This would give the licensee the freedom to modify them within those ranges using the SFCP, and a means to notify the public and the NRC if they do so, plus still require that an approval process would be invoked if the licensee desires to exceed those limits. The approval process and review process should probably not be the legal paradigm used today to review LARs.

Unfortunately, any discussion of the actual issue was never initiated because the ASLB ruled that there was no contention of significant merit, which of course is a ruling that we believe is defective.

The "intentionally strict" threshold combined with the legal paradigm used by the NRC means that "hearings" have become extremely expensive and rare. It means that interaction with the public has devolved into a system where the public can only object to things already being proposed, and does not embrace the wisdom of crowds, the involvement of the public, is not equipped to help find mutual ground, and does not come up with new ideas or approaches. To avoid hearings, the licensees have worked -- with the blessing of the NRC -- to further reduce the likelihood of hearings by reducing the Technical Specifications to a sterile framework, while all the meat has been moved into proprietary licensee-controlled documents, which are no longer available for public review, require nondisclosure agreements, and can be changed "at will" by the licensee, without any review or approval by the NRC nor any notification to the NRC nor the public. Of course, the public is completely eliminated from the equation, which was the purpose of the "intentionally strict" legal paradigm and the drive to gut the Technical Specifications of any and all specificity that could raise a bone of contention and thereby cause a hearing.

Similarly, the NRC has developed the "50.59" statute that allows the licensee to claim that although changing systems in the plant, that the changes are "form, fit and function" equivalent with the prior systems, and thereby avoid the necessity of a LAR and the possibility of a hearing. The proof that the 50.59 rule is being misused has recently been provided by the replacement steam generators at SONGS, where the licensee asserted that the design was the same, but the new generators were so different and dangerous that they decided that they had to shut the plant down. They had also pushed forward with the installation of new High Pressure Turbines that relied on increased steam pressure from the new steam generators. If the steam generators were unchanged, then the steam pressure should have been about the same. The steam generators are a part of the pressure boundary, and if breached, will allow radioactivity to be released to the environment. Yet thinning of the tubes, increasing the number of tubes, changing the design of the tubes, changing the dimensions of the outer shell of the

units, removal of the central stay cylinder, and changing the design of the anti-vibration bars were all done under the notion that no changes of concern were occurring. So here, we can say that the "proof is in the pudding," and the NRC regulatory paradigm is working exactly as intended... it eliminated oversight of both the NRC and the public, and the industry is allowed to make mistakes that waste billions of dollars. Fortunately, the damage done at SONGS was only financial. We avoided a devastating nuclear accident that would have potentially turn Southern California into a no-mans-land and require the permanent evacuation of around eight million people -- or more, with a financial cost of perhaps trillions, if you can put a number on ruining southern California for habitation.

Citizens' Oversight has found that increased public participation only helps governmental bodies and agencies do the right thing. Far too often, insiders manipulate the system for their own benefit if the public does not pay attention. If a great deal of money is at stake, laws are changed over time to benefit those who are regulated and exclude oversight by the public. Such a trend is exemplified by the biased legal paradigm being used, the "intentionally strict" threshold within that legal paradigm and the implementation of the 50.59 rule to avoid hearings. This is a prescription for failure, and with the extreme danger presented by nuclear material that is utilized by these plants, we are worried that the failure could be catastrophic. This paradigm and the current rules must be changed to avoid such a result.

5. CONCLUSION

Citizens Oversight therefore OBJECTS to the motions of SCE and NRC Staff to declare as moot and vacate the ASLB Ruling and the subsequent appeal. Most particularly, we do not accept the assertion that our Contention 1 is moot. In fact, we assert that a thorough hearing on the matter should still occur so as to avoid the continuation of the illegal removal of these specifications from the Tech Specs and to actively compensate for the inherent biased legal paradigm and related legal doctrines

being utilized by the NRC.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(San Onofre Nuclear Generating Station - Units 2 and 3)	)	Docket Nos. 50-361-LA and 50-362-LA
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document "**CITIZENS OVERSIGHT'S ANSWER TO MOTION VACATE RULING OF ASLB ON PETITION TO INTERVENE AND REQUEST A HEARING AND THE SUBSEQUENT APPEAL OF THAT RULING"** have been served upon the parties by the Electronic Information Exchange.

Respectfully submitted,

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Date: August 18, 2013