

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of	)	
	)	Docket Nos. 50-361-CAL
	)	& 50-362-CAL
SOUTHERN CALIFORNIA EDISON CO.	)	
	)	ASLBP No. 13-924-01-CAL-BD01
(San Onofre Nuclear Generating Station,	)	
Units 2 and 3)	)	February 28, 2013
	)	

**FRIENDS OF THE EARTH’S ANSWER TO SOUTHERN CALIFORNIA EDISON  
COMPANY’S MOTION TO STRIKE PORTIONS OF  
DECLARATION OF JOHN LARGE**

**I. INTRODUCTION**

Friends of the Earth (FoE) opposes Southern California Edison Company’s (SCE) Motion to Strike Portions of Declaration of John Large, filed February 22, 2013 (Motion). SCE’s Motion should be denied because the Large Declaration responds to arguments made by the NRC Staff and SCE in their Answering Briefs and does not raise new issues.

**II. BACKGROUND**

On June 18, 2012, FoE filed with the Nuclear Regulatory Commission (NRC) a Petition to Intervene and Application for a Stay. On November 8, 2012, the Commission referred to the Atomic Safety and Licensing Board (Board) one issue raised by FoE’s Petition, which is the subject of the present proceeding: whether the process convened by the March 27, 2012 Confirmatory Action Letter (CAL) process is a *de facto* license amendment proceeding.<sup>1</sup>

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<sup>1</sup> *Southern Cal. Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-12-20, 76 NRC \_\_, slip op. at 4-5 (Nov. 8, 2012).

On January 11, 2013, Friends of the Earth filed an Opening Brief, including an affidavit from nuclear engineer John Large.<sup>2</sup> On January 18, 2013, *amicus curiae* in support of Petitioner, Natural Resources Defense Council, filed its Brief.<sup>3</sup> The NRC Staff and SCE filed Answering Briefs on January 30, 2013.<sup>4</sup> The Nuclear Energy Institute filed an *amicus curiae* brief in support of the Staff and SCE on the same day.<sup>5</sup> On February 13, 2013, FoE filed its Reply Brief,<sup>6</sup> which included a Declaration from John Large.<sup>7</sup>

SCE then filed, on February 22, 2013, the present Motion requesting that the Board strike Section 13 and Section 14 of the Large Declaration.

### **III. WHEN CORRECTLY APPLIED, THE LEGAL STANDARD REQUIRES THAT SCE’S MOTION BE DENIED**

SCE cites *Entergy Nuclear Operations, Inc.* to support its argument that the NRC has “long held that a reply may not contain new information that was not raised in either the petition or answers....”<sup>8</sup> However, SCE’s Motion ignores the rest of the quoted sentence, which states “... but we have not precluded arguments that respond to the petition or answers, whether they are offered in rebuttal or in support.”<sup>9</sup> Moreover, the NRC has held that it is “appropriate to take into account any information from a reply that legitimately amplifies issues presented in the

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<sup>2</sup> Opening Brief of Petitioner Friends of the Earth (Jan. 11, 2013).

<sup>3</sup> Natural Resources Defense Council’s Amicus Response in Support of Friends of the Earth (Jan. 18, 2013).

<sup>4</sup> Southern California Edison Company’s Brief on Issues Referred by the Commission (Jan. 30, 2013); NRC Staff’s Answering Brief in the San Onofre Nuclear Generating Station CAL Proceeding (Jan. 30, 2013).

<sup>5</sup> Nuclear Energy Institute, Inc.’s *Amicus Curiae* Brief In Response to the NRC Atomic Safety and Licensing Board’s Briefing Orders (Jan. 30, 2013).

<sup>6</sup> Reply Brief of Petitioner Friends of the Earth (Feb. 13, 2013).

<sup>7</sup> Reply Brief Attachment 1. On Feb. 20, 2013, FoE filed a notarized version of Large’s Declaration, which is identical to the initial filing, but for the addition of a notary page.

<sup>8</sup> Motion at 3.

<sup>9</sup> In the Matter of Entergy Nuclear Operations, Inc., (Indian Point Nuclear Generating Units 2 & 3), CLI-11-14, 74 NRC \_\_\_, slip op. at 10 (Dec. 22, 2011).

original petition. Further, it is proper for a reply to respond to the legal, logical, and factual arguments presented in answers, so long as new issues are not raised.”<sup>10</sup>

As discussed in further detail below, Sections 13 and 14 of the Large Declaration do not raise new issues. Instead these sections appropriately respond to arguments made in the Affidavit of Mr. Kenneth J. Karwoski,<sup>11</sup> on behalf of the NRC Staff, and amplify the positions presented in FoE’s Opening Brief on those issues raised by Mr. Karwoski.

#### **A. Large Declaration, Section 14**

FoE’s Opening Brief argues that the question referred by the Commission is whether the CAL and SCE’s actions in response constitute a license amendment proceeding.<sup>12</sup> The Affidavit of Mr. Kenneth J. Karwoski suffers from the same defect as the Answering Briefs of SCE and the NRC Staff: those filings fictionalize the scope of this proceeding as a review confined to the four corners of the March 27, 2012 Confirmatory Action Letter (CAL). SCE’s Motion thus erroneously attempts to exclude points presented by FoE in the Large Declaration that apply to an evaluation of SCE’s actions taken pursuant to the CAL.

Section 14 is an appropriate response to Paragraph 9 of the Karwoski Affidavit, which takes the position that “no change to the technical specifications is needed to perform the steps outlined in the CAL.” But FoE’s Opening Brief argues that SCE’s Restart Plan<sup>13</sup> does not comply with the Technical Specifications in its license for Unit 2.<sup>14</sup> Section 14 of the Large

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<sup>10</sup> In the Matter of N. States Power Co. (Formerly Nuclear Mgmt. Co., LLC) (Prairie Island Nuclear Generating Plant, Units 1 & 2), 68 N.R.C. 905, 919 (Dec. 5, 2008) (internal citations omitted).

<sup>11</sup> Affidavit of Mr. Kenneth J. Karwoski Concerning FoE’s Claims Regarding Staff’s March 27, 2012 CAL Issued to SCE (Jan. 30, 2013), filed as an attachment to NRC Staff’s Answering Brief.

<sup>12</sup> See, e.g., Petitioner’s Opening Brief at 9-37.

<sup>13</sup> SCE’s “Restart Plan” refers to SCE’s October 3, 2012 response to the NRC regarding SONGS Unit 2 and the fulfillment of the corresponding actions identified in the March 27 CAL, including all of the enclosures and attachments. These documents are provided in ADAMS Package No. ML122850320.

<sup>14</sup> See Petitioner’s Opening Brief at 17 and Large Affidavit at ¶¶ 5.8.15-5.8.25.

Affidavit simply amplifies this point.<sup>15</sup> For example, ¶ 14.4 states that Mr. Large disagrees with Mr. Karwoski's conclusion that "no change to the technical specifications is needed." The section continues with a justification of Mr. Large's opinion on the point. Thus, in response to Mr. Karwoski's assertions, Section 14 of the Large declaration simply supports the position of Petitioner in its Opening and Reply Briefs.

### **B. Large Declaration, Section 13**

SCE's objection to Section 13 is similarly unfounded. The NRC Staff introduced the applicability of the criteria in 10 CFR 50, Appendix B via Karwoski's Affidavit and Petitioner cannot be denied an opportunity to respond to the point. Karwoski asserts that the actions SCE is required to take under the CAL are authorized by the criteria of 10 CFR 50, Appendix B.<sup>16</sup> Section 13 of the Large Declaration merely walks through the door opened by Karwoski's assertion and applies the Appendix B criteria to SCE's actions pursuant to the CAL, namely the Restart Plan. Thus, the Large Declaration asserts that application of the quality assurance criteria of 10 CFR 50, Appendix B to the Restart Plan shows that "the SCE proposal is to return Unit 2 to powered operation with a faulty and non-compliant design in place without correction."<sup>17</sup> Petitioner may not be precluded from arguing the proper application of 10 CFR, Appendix B, which, as NRC Staff has correctly stated, is directly relevant to the issue before the Board.

## **IV. CONCLUSION**

For the above-stated reasons, SCE's Motion should be denied.

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<sup>15</sup> See Large Declaration at ¶ 14.5.

<sup>16</sup> See Karwoski Affidavit, Attachment 1. SCE distorts Karwoski's Affidavit when it claims that Criterion XVI is the exclusive subject of Paragraph 8. In fact, the table in Attachment 1 provides a column which is titled "*Examples of Relevant Authority or Licensing Information*" (emphasis supplied).

<sup>17</sup> Large Declaration at ¶¶ 13.3.3 and 13.3.4.

Respectfully submitted,  
/Signed (electronically) by/  
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Dated in Washington, D.C.  
this 28<sup>th</sup> day of February 2013

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, the “Friends of the Earth’s Answer to Southern California Edison Company’s Motion to Strike Portions of Declaration of John Large” was filed through the E-Filing system.

*Signed (electronically) by Jessica Olson*

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