

**BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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| In the Matter of |) | |
| |) | |
| SOUTHERN CALIFORNIA EDISON |) | Docket Nos. 50-361, 50-362 |
| |) | |
| (San Onofre Nuclear Generating Station) |) | May 23, 2013 |

**MOTION BY FRIENDS OF THE EARTH AND
THE NATURAL RESOURCES DEFENSE COUNCIL REQUESTING THE
NUCLEAR REGULATORY COMMISSION TO CONVENE AN
ATOMIC SAFETY AND LICENSING BOARD
AND CONSOLIDATE THE LICENSE AMENDMENT PROCEEDINGS
FOR THE SAN ONOFRE NUCLEAR GENERATING STATION**

I. INTRODUCTION

On May 13, 2013, the Atomic Safety and Licensing Board Panel (ASLB or “Board”) constituted by this Commission in its November 8, 2012 decision in CLI-12-20¹ issued a Memorandum and Order resolving the issues referred to it by the Commission.² The ASLB unanimously found that the Confirmatory Action Letter (CAL) process between the Nuclear Regulatory Commission (NRC) Staff and licensee Southern California Edison Company (SCE) concerning restart of the San Onofre Nuclear Generating Station (“San Onofre”) constitutes a *de facto* license amendment proceeding subject to a hearing opportunity under section 189a of the Atomic Energy Act.³

¹ Southern Cal. Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-12-20, 76 NRC ___, __ (slip op. at 5) (Nov. 8, 2012).

² Atomic Safety and Licensing Board, Memorandum and Order (Resolving Issues Referred by the Commission in CLI-12-20), ASLBP No. 13-924-01-CAL-BD01 (May 13, 2013) [hereinafter “May 13 ASLB Order”].

³ *Id.* at 1; 38.

In light of the Board's Order, Friends of the Earth (FoE) and the Natural Resources Defense Council (NRDC) file this motion under 10 C.F.R. § 2.323, respectfully requesting that the Commission instruct the Staff, pursuant to the Board's Order, to formally notice the *de facto* license amendment in the Federal Register with an opportunity for a hearing. Further, we respectfully request the Commission re-constitute the ASLB to which it referred the original issues, or, in the alternative, convene a new ASLB to preside over the *de facto* license amendment proceeding recognized by the Board in its May 13th Order.

Because SCE's existing license amendment request (LAR) 263, submitted to the NRC on April 5, 2013, is directly related to a portion of the separate license amendments required under the Board's May 13 Order,⁴ FoE and NRDC submit that the two license amendment proceedings for San Onofre should be consolidated, particularly given the fact that approval of LAR 263 alone is not sufficient to place SCE in conformity with its operating license as required to allow restart of the plant.

The Board in its Order identified a number of serious safety issues presented by the *de facto* license amendment proceeding. Accordingly, any finding by the NRC Staff of a *no significant hazards consideration* on a consolidated license amendment request by SCE would be legally insupportable. FoE and NRDC therefore respectfully request that, based on the findings of the Atomic Safety and Licensing Board, the Commission prohibit the Staff from making a *no significant hazards consideration* determination for the license amendment requests associated with the consolidated license amendment proceeding. Therefore, any public adjudicatory hearing requested upon notice of the

⁴ *Id.* at 29.

proceeding must be held *before* a decision on the license amendments is made, as required by the NRC's regulations.⁵

FoE certifies that it contacted representatives for SCE and the NRC Staff pursuant to 10 C.F.R. § 2.323(b) and that, despite a sincere attempt to resolve the issues raised in this motion, FoE's efforts to resolve the issues have been unsuccessful. SCE opposes the motion. NRC Staff plans to oppose the motion but reserves the right to respond.

II. THE COMMISSION MUST CONVENE AN ATOMIC SAFETY AND LICENSING BOARD TO PRESIDE OVER THE *DE FACTO* LICENSE AMENDMENT PROCEEDING RECOGNIZED BY THE BOARD'S MAY 13 ORDER

The Atomic Safety and Licensing Board's May 13 Order unanimously concluded that a hearing opportunity is required in the *de facto* license amendment proceeding, stating, "[f]or the foregoing reasons, we resolve the first issue referred by the Commission in the affirmative, concluding that the CAL process for SONGS Unit 2 and 3 constitutes a *de facto* license amendment proceeding that is subject to a hearing opportunity under section 189a of the AEA."⁶ The Commission should take all necessary steps to implement the Board's Order. This includes, foremost, directing Staff to notice an opportunity for a hearing and then, when petitions for hearing are filed, convening an Atomic Safety and Licensing Board to preside over the *de facto* license amendment proceeding, either by re-constituting the ASLB already familiar with this case, or, alternatively, convening a new ASLB.

Second, the Commission should instruct the NRC Staff, pursuant to the Board's Order, to formally notice the *de facto* license amendment in the Federal Register.

⁵ 10 C.F.R. § 50.92.

⁶ May 13 ASLB Order at 38.

III. THE EXISTING LICENSE AMENDMENT PROCEEDING LAR 263 SHOULD BE CONSOLIDATED WITH THE PROCEEDING REQUIRED BY THE DECISION OF THE ATOMIC SAFETY AND LICENSING BOARD

A. Substantial Overlap Between LAR 263 and a Portion of the Outstanding License Amendment Requests Now Required of SCE Warrants Consolidation

The relevant Technical Specification of San Onofre's operating license requires SCE show that the steam generator tubes will maintain structural integrity at full, or 100%, power, defined as 3,438 megawatts-thermal (MWt) in its license.⁷ Because Unit 2 cannot now operate safely at 100% power, however, SCE applied for a license amendment to operate Unit 2 at a reduced power level, which it asserts will satisfy the structural integrity requirements of its license. Accordingly, on April 5, 2013, SCE submitted License Amendment Request Number 263 (LAR 263) to its operating license for Unit 2, which would add a footnote to the license redefining "full power" to be 70% of the maximum power level.⁸

SCE's LAR 263 overlaps substantially with SCE's Return to Service Plan for Unit 2, or "Restart Plan," submitted to the NRC on October 3, 2012. The Restart Plan is conditioned on SCE "administratively" limiting Unit 2's power level to 70% in an attempt to reduce the vibration causing the tube damage⁹—precisely the substance of

⁷ San Onofre Nuclear Generating Station Unit 2 Facility Operating License, Technical Specification 5.5.2.11.b.1 (requiring that "[a]ll inservice steam generator tubes shall retain structural integrity over the full range of normal operating conditions...and design basis accidents").

⁸ Southern California Edison, Docket No. 50-361 Amendment Application Number 263 Steam Generator Program San Onofre Nuclear Generating Station, Unit 2 (submitted to the NRC on April 5, 2013).

⁹ Southern California Edison Unit 2 Return to Service Report (Oct. 3, 2012) at 3 [hereinafter "Restart Plan"].

LAR 263, SCE's existing Technical Specification license amendment request.¹⁰

Addressing SCE's proposal in the Restart Plan to "administratively limit" the power level to 70%, the Board stated:

If, pursuant to the CAL process, the NRC Staff were to authorize SCE to operate Unit 2 at a power limit not to exceed 70%, this condition would result in a deviation from the technical specification requirement that tube integrity be maintained over the "full range of normal operation conditions" up to 100%. Such a deviation from a technical specification requires a license amendment...¹¹

The Board was clear that SCE's request to limit Unit 2's power level to 70% was only one of *three* independent reasons for finding a *de facto* license amendment proceeding¹²—each alone sufficient to support the Board's determination.¹³ It is now apparent, however, that LAR 263, filed by SCE on April 5, 2013 while the Board was making its determination, is directly related to a portion of the license amendments required under the Board's Order. Given the substantial overlap of the content of LAR 263 with a portion of the *de facto* license amendment proceeding, the Commission should order that the proceeding for LAR 263 be consolidated with the *de facto* license amendment proceeding recognized by the Board.

Furthermore, consolidating the requisite license amendment proceedings for San Onofre is logical from a standpoint of judicial economy, particularly if the same ASLB

¹⁰ Docket No. 50-361, Southern California Edison Company, Amendment Application Number 263, Steam Generator Program, San Onofre Nuclear Generating Station, Unit 2 (Apr. 5, 2013); Docket No. 50-361, Supplement 1 to Amendment Application Number 263, Steam Generator Program, San Onofre Nuclear Generating Station, Unit 2 (Apr. 9, 2013).

¹¹ May 13 ASLB Order at 29.

¹² *Id.* at 24–25 (the second reason being that "[t]he restart of Unit 2 would allow SCE to operate beyond the scope of its existing license" and the third, that "SCE's Unit 2 Return to Service Plan includes a test or experiment that meets the criteria in 10 C.F.R. § 50.59 that require a license amendment").

¹³ *Id.* at 29, n.48 (stating "[a]lthough SCE's license amendment request addresses the first reason underlying our conclusion that this CAL process constitutes a *de facto* license amendment proceeding, it does not address the alternative reasons underlying our conclusion (see *infra* Parts II.C.2 and II.C.3) and it, thus, does not fully address, much less moot, the first issue referred by the Commission [whether the CAL process is a *de facto* license amendment proceeding]").

panel is re-constituted. Consolidation is also likely to facilitate greater clarity of the issues in this proceeding, including procedural issues, by eliminating parallel licensing tracks when there is substantial overlap in content.

B. SCE's Existing License Amendment Request Is Alone Insufficient to Bring the Plant Back Within Its Licensing Basis

The two proceedings should also be combined because the Technical Specification license amendment request, LAR 263, is alone insufficient to allow SCE to resume operation, and yet will require analysis relevant to SCE's other license amendment requests. In light of the Board's Order, LAR 263, which is solely concerned with redefining the power level limit in the Technical Specification, is not sufficient to bring San Onofre into conformance with its operating license given the current conditions of the plant, *i.e.*, the reality that it is operating with defective and rapidly deteriorating steam generators.

Thus, if the NRC approved LAR 263, SCE still could not operate the plant within its licensing basis, even as amended, under the Board's May 13 Order. For example, the Board recognized that the Updated Final Safety Analysis Report (UFSAR) for San Onofre, which defines the parameters within which the plant is considered safe to operate, relied on an assumption that is now "demonstrably unjustified."¹⁴ Specifically, the Board found that the UFSAR failed to take into account the possibility of the phenomenon, in-plane fluid elastic instability (FEI), causing the vibration in the steam generators and, ultimately, the tube damage,¹⁵ based on the incorrect assumption that the design of the replacement steam generators would exclude such a possibility. The Board

¹⁴ *Id.* at 32.

¹⁵ *Id.* at 5–6; 25; 27–29.

found that the section of the UFSAR that analyzes the structural integrity of the steam generator tubes was “inadequate,” “plac[ing] the replacement steam generators outside the scope of the operating license.”¹⁶ The Board went on to say:

We conclude that until the tube degradation mechanism is fully understood, until reasonable assurance of safe operation of the replacement steam generators is demonstrated, and until there has been a rigorous NRC Staff review appropriate for a licensing action, the operation of Unit 2 would be outside the scope of its operating license because the replacement steam generator design must be considered to be inconsistent with the steam generator design specifications assumed in the FSAR and supporting analysis.¹⁷

In sum, these proceedings should be consolidated to address all of the necessary license amendment requests that must be submitted by SCE so as to result in an operating license that would actually allow the plant to operate.

IV. A FINDING OF *NO SIGNIFICANT HAZARDS CONSIDERATION* IS NOT APPROPRIATE FOR THE CONSOLIDATED LICENSE AMENDMENT PROCEEDINGS

A. The Proposed *No Significant Hazards Consideration* Finding for License Amendment Request 263 Is Inappropriate for the Reasons Articulated in the Comments Filed by Friends of the Earth and the Natural Resources Defense Council

FoE and the NRDC filed extensive joint comments describing the multiple reasons that the NRC cannot properly make a finding of *no significant hazards consideration* with respect to SCE’s request to amend its license to provide for operation at no more than 70% of full thermal power for a period of up to 42 months.¹⁸

FoE’s and NRDC’s Comments point to three separate reasons why a finding of *no significant hazard consideration* cannot be made in this instance: (1) the Staff’s proposal exceeds the authority granted to it by the “Sholly amendment”; (2) the licensee’s

¹⁶ *Id.* at 32.

¹⁷ *Id.*

¹⁸ FoE’s and NRDC’s Joint Comments and supporting expert declarations are appended to this motion.

application of the criteria under 10 C.F.R. § 50.92, as adopted by the NRC Staff, does not justify a finding of *no significant hazards consideration*; and (3) Staff has not performed an environmental review of the proposed finding and license amendment as required by the National Environmental Policy Act (NEPA), and the proposed actions do not satisfy the criteria for a categorical exemption from NEPA review, provided at 10 C.F.R. § 51.22(c)(9)(i).

On the basis of LAR 263 alone, the NRC must hold a public adjudicatory hearing *prior to* making a determination on whether to approve the license amendment request. The Board expressly recognized this point in its Order, stating, “if the hearing provision in section 189a of the AEA is to serve its intended purpose, the parties in interest should be afforded a meaningful opportunity to request a hearing *before* the NRC Staff takes final action that could result in authorizing SCE to operate in a manner that is beyond the ambit of its existing license.”¹⁹

i. The Staff Exceeded Its Authority in Proposing a *No Significant Hazard Consideration* Finding for San Onofre Unit 2

The Staff’s proposed determination of *no significant hazard consideration* exceeds the authority granted under the Sholly amendment. As the Court of Appeals for the Ninth Circuit held in *San Luis Obispo Mothers for Peace v. U.S. Nuclear Regulatory Commission* (“*Mothers for Peace*”),²⁰ the Sholly amendment gives the NRC Staff a limited right to allow a license amendment to go forward before a hearing *only* for trivial changes in a license that could not possibly affect safety. If a safety issue is identified, however, then the Staff is legally obliged to conclude that a significant hazards

¹⁹ May 13 ASLB Order at 15 (emphasis in original).

²⁰ *San Luis Obispo Mothers for Peace v. U.S. Nuclear Regulatory Commission*, 799 F.2d 1268 (9th Cir. 1986) [hereinafter “*Mothers for Peace*”].

consideration exists, and must refer the issue(s) to an Atomic Safety and Licensing Board for a hearing opportunity *prior to* the decision on the proposed license amendment.

In close cases, the NRC Staff must refer a matter to the ASLB: the NRC Staff may “not resolve doubtful cases with a finding of no significant hazards consideration;”²¹ nor may it “prejudge the merits” of the issues by a proposed license amendment.²² The Staff is not to determine whether a significant hazard exists; that determination on the merits is for the ASLB to determine. The Staff’s role under the Sholly amendment is essentially ministerial: the Staff determines whether a significant hazard *consideration*—a significant hazards *issue*—exists, and, if so, asks the ASLB to determine whether the proposed amendment creates a hazard significant enough to preclude approval of the amendment.

Consistent with the *Mothers for Peace* case, SCE’s proposed license amendment and additional amendments required by the Board’s Order must be referred to an ASLB. Without question, significant hazard considerations exist in a proposal to restart San Onofre Unit 2 with damaged steam generators. A *probability*, not just a *possibility*, of significant hazards permeates this case.

It follows that the Staff has exceeded its authority in proposing a *no significant hazards consideration* finding for LAR 263, and thus the Commission should prohibit the Staff from making a similar finding for the additional license amendments ordered by the Board. The safety issues presented here are serious, not trivial, as acknowledged in the

²¹ *Id.* at 1270 (citing the U.S. House of Representatives Conference Committee Report No. 97-884 at 37, accompanying the Sholly amendment).

²² *Id.*

ASLB Panel decision of May 13, 2013.²³ Under applicable law, the Staff must withdraw the proposal and refer the proposed license amendment, along with the additional required amendments, to an ASLB for an adjudicatory hearing before a decision on the proposed amendments can be made.

ii. The Proposed License Amendment Would Involve a Significant Increase in the Probability or Consequence of an Accident Previously Evaluated

Operating the steam generators in their present condition at 70% of power creates a significant increase in the probability of a release of radioactivity with the potentially very serious consequence of radiation exposure to millions of people, particularly the more than 8.5 million Californians who live within 50 miles of San Onofre. The three impartial experts who wrote the ASLB's recent decision on San Onofre found that operating the replacement steam generators at 70% would significantly increase the probability and consequences of a previously analyzed accident.²⁴ SCE's own tube-to-tube wear assessment, as the ASLB's Order notes, shows that "one unstable tube can drive its neighbor into instability through repeated impact events."²⁵

FoE's expert nuclear engineers showed in declarations attached to FoE's and NRDC's Comments that the proposed license amendment would involve a significant increase in the probability or consequence of an accident over what was previously evaluated. Mr. Large explained that the excitation forces present in the steam generators exist due to pressure and temperature conditions that will not be affected by reducing the power from 100% to 70%.²⁶

²³ See, e.g., May 13 ALSB Order at 25.

²⁴ *Id.* at 27.

²⁵ *Id.*

²⁶ Large Decl. at ¶ 8.5.3.

Dr. Hopenfeld asserted that:

The number of tubes which are susceptible to rupture by fatigue during a given accident scenario must be known if one is required to predict accident consequences. Until this is done the present pressure based burst performance criteria cannot be used as a reliable indicator of risk. As a result it must be conservatively concluded that allowing Unit 2 to operate at any power level would significantly increase the consequences of the accidents, which were evaluated by SCE and were described in the UFSAR.²⁷

Dr. Hopenfeld concluded that restarting the plant for another cycle would place Unit 2 outside of the bounds of accidents evaluated in the UFSAR by significantly increasing the probability and consequences of a main steam line break (MSLB) accident.²⁸

Similarly, Mr. Large found that a single tube burst caused by an MSLB that damages the fuel core could result in severe consequences beyond those considered in the UFSAR.²⁹

iii. The Proposed License Amendment Would Involve the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

First, the UFSAR does not consider the possibility of accidents caused by tube wear from in-plane fluid elastic instability (FEI) because it is based on an assumption that in-plane FEI will not occur.

Second, the UFSAR currently considers only accidents resulting from excessive pressure loads, not fretting fatigue. During Cycle 16, the tubes in Unit 2's steam generators experienced fretting fatigue previously not experienced in the history of any U.S. steam generator.

²⁷ Hopenfeld Decl. at p. 8.

²⁸ Hopenfeld Decl. at p. 32.

²⁹ Large Decl. at ¶ 8.5.17.

The ASLB found that operating the replacement steam generators in their current degraded condition is a “test or experiment” as described under 10 C.F.R. § 50.59(c)(2).³⁰ Such a test or experiment obviously involves the possibility of new or different kinds of accidents, since the USFAR did not contemplate operating the unit with a damaged steam generator. The unanalyzed fretting fatigue creates the possibility of a new or different kind of accident from any accident previously evaluated.³¹ In its Comments, FoE’s experts identified five new or different kinds of accidents that could result from the damaged steam generators:

1. Fretting fatigue rupture of a tube in the free span with a relief valve stuck open, or a broken header;
2. Unplanned closure of an isolation valve, thereby increasing the steam pressure abruptly, causing rupture of tubes on the verge of exhausting their fatigue life;
3. Seismically-induced ruptures of both plugged and unplugged tubes near the end of their fatigue life;
4. Severe-accident-causing rupture of tubes near the end of their fatigue life; and
5. A main steam line break accident: in situ tests of tube integrity show only the tendency of tubes to leak on the basis of loss-of-wall-material or weakening by stress corrosion cracks. Fatigue failure would cause propagating circumferential cracks.³²

In short, the damage to the tubes and tube restraint components that occurred during the previous operating cycle at San Onofre Unit 2 was so substantial that the response of these structural components to both normal—as well as possibly adverse—operating conditions have not been accounted for, either in the original design accident cases, nor in the analyses SCE relies upon to justify restarting Unit 2 at 70% of power.

³⁰ May 13 ASLB Order at 33.

³¹ Large Decl. at ¶ 8.6.26; Hopenfeld Decl. at p. 27–34.

³² Hopenfeld Decl. at pp. 30–32.

iv. The Proposed License Amendment Would Involve a Significant Reduction in the Margin of Safety

The theory that operating at 70% of full power will prevent further tube wear is “not yet supported by actual experience” because in-plane tube-to-tube wear “has not been previously experienced in U-tube steam generators.”³³ In-plane vibrations were never considered in the USFAR.³⁴ Restarting a reactor unit with known defects caused by mechanisms (*e.g.*, in-plane FEI) that were not analyzed in the UFSAR will thus significantly decrease the margin of safety provided for by the UFSAR.

When the safety margin was originally determined for San Onofre’s license,³⁵ the NRC assumed that the functionality of the replacement steam generators complied with the design specification. The fact that they do not is now evident. Thus, any such “detriment arising from a design omission or design shortcoming,” such as those discussed above, “would not have been included for in the safety margin”³⁶—meaning that the safety margin that exists now has been substantially eroded by the defective tube conditions.

In sum, LAR 263 does not take into account the effect of the current condition of the plant: specifically, the effect that operating with numerous severely damaged tubes has on the margin of safety. Thus, the safety margin has been significantly reduced, and now is not nearly conservative enough, given the condition of the plant.

³³ May 13 ASLB Order at 34, n.54 (quoting SCE Answering Brief at 10).

³⁴ *Id.* at 31.

³⁵ Large Decl. at ¶ 8.7.2.

³⁶ Large Decl. at ¶ 8.7.4.

B. Additional Submissions from the Licensee at the end of the Public Comment Period Undermine the Public's Right to Comment

Under long established administrative law principles, an administrative agency may not base a decision on information received after the close of a comment period and on which the public has had no opportunity to comment.³⁷ Notwithstanding this principle, NRC Staff have indicated in a “clarification call” that they are prepared to consider such information from the licensee, and the licensee has indicated it will be submitting such post-comment period information. Notice of the “clarification call” between the two parties was not placed in the NRC’s ADAMS database until the day before the comment period closed on the proposed *no significant hazard consideration* determination, markedly reducing, as a practical matter, the public’s ability to comment on the matter.

On May 15, 2013, NRC Staff placed on the ADAMS database a May 9, 2013 memorandum from Brian Benney, Senior Project Manager, NRC’s SONGS Special Projects Branch (and the NRC point of contact for the Federal Register notice about the license amendment), which summarizes an April 29, 2013 “clarification call with Southern California Edison” about LAR 263. This call was, to the best of our knowledge, not publicly noticed, and therefore not made available for other parties to participate or listen-in.

The memorandum of the conversation stated that:

³⁷ See 1 Richard J. Pierce, Jr., Administrative Law Treatise § 7.3, at 583 (2010) (“The purpose of the notice required by §553 (b) is to permit potentially affected members of the public to file meaningful comments under §553 (c) criticizing (or supporting) the agency's proposal...[I]t is impossible to file meaningful comments critical of a proposed action that is premised on particular data unless that data is available in time for comments.”)

The licensee also indicated that it planned to supplement the LAR with additional license conditions . . . In addition, the licensee plans to submit information with the supplement that will clarify the discussions provided in the LAR submittals.³⁸

While the substance of this exchange appears essentially ministerial in that it concerns changes to the surveillance intervals under LAR 263, the continuing conversation between SCE and the NRC Staff presents a moving target for FoE and NRDC, as well as other interested parties. Under the Administrative Procedure Act (APA), a public comment period is required in order for the public to provide its views on a proposed agency action. If the information that forms the basis for the proposed action is allowed to be changed or supplemented after the close of the comment period, without further opportunity for public comment, neither the public nor a reviewing court will be able to determine the real basis and purpose of the agency's final action under such circumstances. Such a procedure makes meaningless the public comment period called for by the APA, which is intended to assure the transparency of agency actions and provide the agency the benefit of public input.

C. The Significant Safety Hazards Raised by the Board's Order Preclude a Finding of *No Significant Hazards Consideration* in a Consolidated Proceeding

In its May 13, 2013 Order, the ASLB stated the seriousness of the safety concerns presented by operating the replacement steam generators in their current condition, at any power level. The Board characterized defects in the replacement steam generators as "beyond the envelope of experience with U-tube steam generators."³⁹ For example, the

³⁸ Memorandum from Brian Benney, Senior Project Manager, NRC's SONGS Special Projects Branch, to NRC File, Clarification Call with Southern California Edison (May 9, 2013).

³⁹ May 13 ASLB Order at 25.

Board notes that in-plane FEI, as found in the replacement generators, is a “unique degradation mechanism because one unstable tube can drive its neighbor into instability through repeated impact events. It is thus possible for in-plane instability to develop in a single tube and propagate to a larger number of tubes in the vicinity.”⁴⁰

The existing UFSAR for Unit 2 contains numerous analyses that are based on the assumption that the steam generator tubes will maintain their integrity during operation. In-plane instability calls into question those assumptions, nullifying many analyses in the UFSAR. Indeed, as the Board found, it is significant that “the UFSAR for the original steam generators for SONGS Units 2 and 3 excluded the possibility of in-plane vibrations caused by fluid elastic instability when evaluating the conditions necessary to maintain steam generator tube integrity.”⁴¹

The existing UFSAR thus provides no assurance that the steam generators can be safely operated at any power level for any length of time in their current condition. Under these circumstances, a finding of *no significant hazards consideration* is out of the question.

V. CONCLUSION

For the reasons discussed above, FoE and NRDC respectfully request that the Commission issue an order convening an ASLB to preside over the *de facto* license amendment proceeding recognized by the Board, and that the Commission take all necessary steps to implement the Board’s May 13 Order, including: 1) instructing the Staff, pursuant to the Board’s Order, to formally notice the *de facto* license amendment in the Federal Register; 2) consolidating all of the license amendment proceedings for San

⁴⁰ *Id.* at 27 (internal citations omitted).

⁴¹ *Id.* at 31.

Onofre; and 3) prohibiting a finding of *no significant hazards consideration* by the NRC Staff with regard to the license amendment requests under consideration in the consolidated proceeding, thereby requiring the opportunity for a public adjudicatory hearing *prior to* any decision on whether to approve the license amendment requests.

Respectfully submitted,
/Signed (electronically) by Richard Ayres/

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Dated in Washington, D.C.
this 23rd day of May 2013

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion by Friends of the Earth and the Natural Resources Defense Council Requesting the Nuclear Regulatory Commission to Convene an Atomic Safety and Licensing Board and Consolidate the License Amendment Proceedings for the San Onofre Nuclear Generating Station was served via electronic mail on the recipients below and the Electronic Information Exchange (EIE) on the 23rd day of May 2013, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

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