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Lawrence J. Chandler, Esq.
Office of the Executive Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Re: Compliance of San Onofre Nuclear Generating Station, Units 2 and 3 (NRC Docket Nos. 50-361 and 362) with Federal and State Coastal Management Laws and Regulations

Dear Mr. Chandler:

Southern California Edison Company has received a copy of the letter to Mr. Harold Denton, Director, Nuclear Reactor Regulation, from Mary L. Hudson, Staff Counsel, California Coastal Commission ("CCC"), dated October 1, 1981. The letter claims that the pending application for a license to operate San Onofre Nuclear Generating Station, Units 2 and 3 ("Application"), which was filed with the Nuclear Regulatory Commission on March 23, 1977, is subject to the "consistency certification" provisions of Section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (the "Federal Act"), 16 U.S.C. §1456(c)(3)(A).

It is the Company's position that the CCC is legally incorrect, and cannot present any legitimate reason for any delay in issuance of low-power or full-power licenses to San Onofre Nuclear Generating Station, Units 2 and 3 ("SONGS 2 and 3").

The CCC's claim that the Application is subject to the Federal Act is patently wrong. The Federal Act applies only to applications for federal licenses filed subsequent to final approval of a state's coastal zone management program by the Secretary of Commerce ("Secretary"). 16 U.S.C. §1456(c)(3)(A); 15 C.F.R. §930.52. The Application was filed with the NRC on March 23, 1977. The California Coastal Zone Management Program ("CCMP") was approved by the Secretary on November 7, 1977.

In arriving at its final version of 15 C.F.R. §930.52, the National Oceanic and Atmospheric Administration "NOAA" acting for the Secretary published the following comment: 1/

> "Numerous industry and federal agency reviewers argued that the Act only applied to applicants who, following management program approval, filed an application for a federal license or permit. Reviewers pointed out that the language in Subsections 307(c)(3)(A) and (B), combined with statements in the legislative history referring to newly proposed activities, presented a persuasive case that Congress did not intend to apply the consistency requirements to applications filed prior to the approval of a coastal management program.
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> "NOAA agrees with this interpretation and the regulations have been modified accordingly." (43 Fed. Reg. at 10513; emphasis added.)

For this reason alone, the Application is not subject to the "consistency certification" provisions of the Federal Act cited by the CCC.

Moreover, although the Application is clearly not subject to the Federal Act, the CCC has, in any event, already certified that the activity proposed in the Application complies with the CCMP and will be conducted in a manner consistent with such program, as required by Section 307(c)(3)(A) of the Federal Act and 15 C.F.R. §930.57(b). Under the CCMP, issuance of a

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1/ It is a settled principle that an agency's interpretation of a statute is normally entitled to deference from the courts. (Train v. NRDC, 421 U.S. 60, 87 (1975); Udall v. Tallman, 380 U.S. 1 (1965); see also American Petroleum Institute v. Knecht, 456 F.Supp. 889 (C.D. Cal. 1978).) Here, NOAA is the agency within the Department of Commerce charged with the responsibility of promulgating regulations for the Federal Act. See, American Petroleum Institute v. Knecht, supra, at 908. During enactment of the 1976 amendments, Congress specifically directed NOAA to clarify certain requirements of the Act and thus affirmed the responsibility NOAA had assumed in administering the 1972 Act. The fact of NOAA's technical expertise in matters relating to the nation's coasts also suggests that deference should be accorded to its continuing construction of this Act. See, Ethyl Corp. v. Environmental Protection Agency, 176 U.S. App. D.C. 373, 541 F.2d 1 (1976).

coastal development permit 2/ is "deemed to be a determination by the State that the proposed Federal license or permit activity is consistent with the [CCMP], and no further certification will be required." (CCMP, Chapter 11, Section B.b.(ii), at p. 92.) The Company therefore maintains that even if the Federal Act was assumed to be applicable, the California Coastal Zone Conservation Commission ("CCZCC") development permit for SONGS 2 and 3 constitutes the "concurrence" required by Section 307(c)(3)(A) of the Federal Act. 16 U.S.C. §1456(c)(3)(A).

The CCC also appears to be asserting the position that a motion for a fuel loading and low-power testing license constitutes a material change to the original Application which would bring the otherwise exempt Application within the ambit of the "consistency certification" provisions of the Federal Act. The Company disputes such an interpretation.

A motion under 10 C.F.R. §50.57(c) may be made in existing contested proceedings. There is no requirement for any change or modification of a pending application to obtain a fuel loading and low-power testing license. Additionally, it should be noted that the Application originally requested not only a full-power license, but all "related licenses" as well. A low-power license is expressly recognized as a "related license" under the terms of 10 C.F.R. §50.57(c). The argument that a request for a low-power license is a material change to the original application is totally without merit.

Given the clear inapplicability of the Federal Act to SONGS 2 and 3, the Company submits that the CCC's position in this regard should be disregarded and should in no way be allowed to impede the early issuance of low-power or full-power licenses for SONGS 2 and 3.

Mrs. Hudson's letter also claims that Applicants are in violation of the "coastal access" provisions of the coastal development permit which was issued by the CCZCC to the Company on February 28, 1974. First, it should be noted that this claim is totally unrelated to the "consistency" issue. As indicated by Mrs. Hudson, this is an issue that has been discussed by the CCC and the Company for a number of years. The Company

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2/ By virtue of Section 30608 of the California Public Resouces Code, the CCZCC development permit for SONGS 2 and 3 (Permit No. 183-73) is the legal equivalent of a CCC coastal development permit.

perceives no reason why the NRC should be concerned with this dispute. It is a well-established principle of NRC practice that the pendency of State disputes with "theoretical possibilities" of impacting licensed activities will not be permitted to delay NRC licensing proceedings. See Southern California Edison Company, et al., (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-171, 7 AEC 37, 39 (1974).

The Company understands that it is the policy of the NRC in cases like SONGS 2, where construction is complete prior to full licensing, to avoid or reduce delays whenever measures are available that do not violate the law or compromise the NRC's fundamental commitment to a fair and thorough hearing process. See, Statement of Policy on Conduct of Licensing Proceedings, 46 Fed. Reg. 28533, 28534 (May 27, 1981); 10 C.F.R., Part 2, Appendix A. Under the circumstances presented here, the Company submits this policy is best implemented by disregarding the CCC letter which otherwise may have the effect of delaying the issuance of either or both the requested low-power or full-power licenses for SONGS 2 and 3.

If you have any questions or desire any further information, please do not hesitate to contact me.

Respectfully submitted,

ORIGINAL SIGNED

CHARLES R. KOCHER

cc: Mary L. Hudson, Staff Counsel
California Coastal Commission