

investments in funds tied to market indices or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

c. The decommissioning trust agreement must provide that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to the standards for such investments established by the Public Utility Commission of Texas (e.g., 16 Texas Administration Code § 25.301).

d. The decommissioning trust agreement must provide that except for ordinary administrative expenses, no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the NRC 30 days prior written notice of such disbursement or payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of an objection from the Director, Office of Nuclear Reactor Regulation.

e. The decommissioning trust agreement must provide that the agreement cannot be modified in any material respect without 30 days prior written notification to the Director, Office of Nuclear Reactor Regulation.

(4) Reliant and Texas Genco LP shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application, the requirements of this Order, and the related safety evaluation.

(5) Texas Genco LP shall provide the Director, Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from CenterPoint Energy, Inc., or its subsidiaries, to a proposed direct or indirect parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of such licensee's consolidated net utility plant, as recorded on Texas Genco LP's book of accounts.

(6) Texas Genco LP shall inform the Director of the Office of Nuclear Reactor Regulation of the date of the closing of the direct transfer no later than two business days prior to such date. If the direct and indirect transfers of the licenses approved by this Order are not completed by December 31, 2002, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

*It is further ordered* that, consistent with 10 CFR 2.1315(b), licensee

amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject direct license transfers are approved. The amendments shall be issued and made effective at the time the proposed direct license transfers are completed. It is hereby noted that the staff is also considering approving a transfer of the licenses to the extent held by CPL. Should the transfer of the licenses to the extent held by CPL take place prior to issuance of the amendments in the current case, the amendments approved here should reflect any conforming amendments approved and issued in connection with the CPL transfer.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 31, 2001, the supplemental submittals dated June 14, August 13, October 16, and November 7, 2001, and the safety evaluation dated December 20, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov>.

Dated at Rockville, Maryland this 20th day of December, 2001.

For the Nuclear Regulatory Commission.

**Brian W. Sheron,**

*Acting Director, Office of Nuclear Reactor Regulation.*

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## **NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 50-361 and 50-362]**

### **In the Matter of Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3); Exemption**

#### **I**

Southern California Edison Company (the licensee) is the holder of Facility Operating License Nos. NPF-10 and NPF-15, which authorize operation of the San Onofre Nuclear Generating Station, Units 2 and 3, (SONGS) at power levels not to exceed 3438 megawatts thermal. The facility consists of two pressurized-water reactors located at the licensee's site in San Diego County, California. The license provides, among other things, that the

licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

#### **II**

Section IV.F.2.b of Appendix E to Title 10 of the Code of Federal Regulations (10 CFR) part 50 requires each licensee at each site to conduct an exercise of its onsite emergency preparedness plan (EPP) every 2 years and indicates the exercise may be included in the full participation biennial exercise of the offsite EPP required by paragraph 2.c. Paragraph 2.c requires the offsite EPP for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. During such biennial full participation exercises, the NRC evaluates onsite emergency preparedness activities and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities. The licensee successfully conducted an NRC/FEMA-evaluated full participation exercise for SONGS on October 27, 28, and 29, 1999.

By letter dated September 18, 2001, the licensee requested an exemption from Sections IV.F.2.b and c of Appendix E regarding the conduct of a full participation onsite and offsite exercise originally scheduled for September 12, 2001. Specifically, the licensee requested a one-time exemption, in accordance with 10 CFR 50.12, "Specific exemptions," from the requirements in 10 CFR Part 50, Appendix E, Items IV.F.2.b and c to perform a biennial exercise of the onsite and offsite EPPs with full participation of each offsite authority having a role under the plan (*i.e.*, a full participation EPP exercise), for SONGS. A full participation onsite and offsite exercise had been scheduled for SONGS for September 12, 2001; however, as a result of the national security events occurring in the United States on September 11, 2001, this exercise was canceled. The licensee requested that the biennial exercise for 2001 not be conducted as required by Appendix E, and the next full participation exercise be conducted in 2003 and every two years thereafter.

The licensee has provided the Commission with copies of letters from five local authorities that would participate in the full participation EPP exercise at SONGS, requesting relief from FEMA to cancel the 2001 SONGS full participation exercise. The letters were to the Governor's Office of Emergency Services, State of California, which in its letter dated December 13,

2001, to FEMA, requested the cancellation from FEMA for the State and the five local authorities. The State requested that the next biennial full participation exercise to be held at SONGS with NRC/FEMA participation be conducted in 2003. Although the requests from the State and local authorities do not come under the responsibility and authority of the Commission, the Commission realizes that the full participation exercise required by Appendix E would require the participation of the State and these local authorities. The State's letter is addressed in the safety evaluation dated December 21, 2001.

Based on the safety evaluation dated December 21, 2001, the Commission concludes that the licensee's request for an exemption should be denied. However, because the scheduled 2001 full participation exercise to meet the regulations was canceled for good cause; there is insufficient time before January 1, 2002, when the licensee would be in violation of the regulations, to prepare and conduct the exercise; and the licensee has provided sufficient information for a one-year schedular extension to the requirements in the regulations, the Commission concludes that such a schedular exemption to the biennial exercise requirements in Sections IV.F.b and c of Appendix E to 10 CFR Part 50 should be granted to SONGS.

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR Part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

### III

The revised exemption is a one-time postponement of the 2001 full participation exercise for SONGS. The full participation exercise may be conducted in 2002. It is requested that the exercise be conducted as soon as practical, but the challenges of rescheduling the exercise are recognized and the exemption is not predicated on the early conduct of the exercise. Subsequent full participation exercises for SONGS would be scheduled at no

greater than 2-year intervals in accordance with 10 CFR part 50, appendix E, Section IV.F.2.c. The calendar biennium for SONGS would not be affected by this schedular exemption and the next full participation exercise would be required to be performed in 2003. Accordingly, the exemption would provide only temporary relief from that regulation.

As indicated in the licensee's request for an exemption of September 18, 2001, the licensee had originally scheduled a full participation exercise for September 12, 2001. As further set forth in that letter, as a result of the national security events occurring in the United States on September 11, 2001, this exercise was canceled. Accordingly, the licensee made a good faith effort to comply with the schedular requirements of Appendix E for full participation exercises.

The NRC staff has completed its evaluation of the revised exemption. The NRC staff, having considered the schedule and resource issues resulting from this schedular exemption and the fact that the licensee successfully conducted the last full participation exercise for SONGS on October 27, 28, and 29, 1999, which was evaluated by the NRC and FEMA, and conducted a full participation "dress rehearsal" exercise on August 8, 2001, in preparation for the September 12, 2001, exercise that was canceled, finds the request for a schedular exemption for rescheduling the 2001 biennial full participation exercise acceptable. The inspection/evaluation by NRC and FEMA indicated that the performance demonstrated during the 1999 exercise was a satisfactory test of the EPP. In its letter, the licensee stated that it successfully conducted the "dress rehearsal" exercise on August 8, 2001, with the same emergency planning elements that were planned for the September 12, 2001, exercise. The NRC staff also recognizes that it was not appropriate to conduct an exercise during the period of disruption and heightened security directly after the national emergency of September 11, 2001. However, in this period of heightened security concerns regarding nuclear plant vulnerability, it is prudent to conduct the full participation exercise as soon as practical to demonstrate and maintain readiness.

### IV

The Commission has determined that, pursuant to 10 CFR Part 50, Appendix E, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and is otherwise in the

public interest. Further, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants a one year schedular exemption from Sections IV.F.2.b and c of Appendix E to 10 CFR Part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (66 FR 66000).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December 2001.

For the Nuclear Regulatory Commission

**Ledyard B. Marsh,**

*Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01-32061 Filed 12-28-01; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Revised

The 131st ACNW meeting scheduled to be held on January 8-10, 2002, has been *changed to a two-day meeting, which will be held on January 8-9, 2002.* The ACNW meeting with the NRC Commissioners scheduled to be held between 9:30 and 11:30 a.m. on January 9, 2002 has been canceled, and will be rescheduled for March 20, 2002. Notice of this meeting was previously published in the **Federal Register** on Wednesday, December 19, 2001, (66 FR 65522). A revised agenda is provided below.

#### Tuesday, January 8, 2002

**A. 8:30—10:45 A.M.: Opening Statement/Planning and Procedures (Open)**—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future ACNW meetings.

**B. 11:00—12:00 Noon: Proposed Amendment to 10 CFR Part 63 (Open)**—The staff will provide an information briefing on the proposed amendment to 10 CFR Part 63, that would clarify the types of features, events, and processes that must be considered in performance analyses of human intrusion and