

CALIFORNIA COASTAL COMMISSION

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October 5, 2015

To: Coastal Commissioners and Interested Parties

From: Alison Dettmer, Deputy Director
Joseph Street, Environmental Scientist

Subject: **Addendum to 9-15-0228 – Southern California Edison SONGS
ISFSI Project**

This addendum provides correspondence on the above-referenced staff report, *ex parte* communications, proposed revisions to the staff report, and staff's response to comments. The proposed modifications to the staff report do not change staff's recommendation that the Commission **approve** CDP # 9-15-0228, as conditioned.

Correspondence Received

- Four e-mails from Donna Gilmore, San Onofre Safety, to Joseph Street, Coastal Commission, dated September 1, 2015
- Letter from Donna Gilmore, San Onofre Safety, to Joseph Street, Coastal Commission, September 17, 2015
- E-mail from Donna Gilmore, San Onofre Safety, to Joseph Street, Coastal Commission, September 21, 2015
- Letter from Ted Quinn, Technology Resources, to California Coastal Commission, September 27, 2015
- Letter from Jerome Kern, Oceanside City Council, to Joseph Street, Coastal Commission, September 29, 2015
- Letter from David Lochbaum, Union of Concerned Scientists, to Joseph Street, Coastal Commission, September 30, 2015
- E-mail from Lyn Harris Hicks, Coalition for Responsible and Ethical Environmental Decisions (CREED), to Joseph Street, Coastal Commission, October 1, 2015
- E-mail from Jane Swanson, San Luis Obispo Mothers for Peace, to Joseph Street and Tom Luster, Coastal Commission, October 1, 2015
- Letter (via e-mail) from Patricia Borchmann to California Coastal Commission, October 1, 2015

- E-mail from Donna Gilmore, San Onofre Safety.org, to Joseph Street, Coastal Commission, October 1, 2015
- E-mail from Dorah Shuey to Joseph Street, Coastal Commission, October 1, 2015
- E-mail from Ray Lutz, Citizens Oversight, to California Coastal Commission, October 1, 2015
- E-mail from Laura Lynch to California Coastal Commission, October 2, 2015
- Letter from David Victor, Tim Brown and Daniel Stetson, SONGS Community Engagement Panel, to Joseph Street, Coastal Commission, October 2, 2015
- E-mail from Linda Anabtawi, Southern California Edison, to Joseph Street, Coastal Commission, October 2, 2015
- Letter from Captain W. L. Whitmire, U. S. Marine Corps – Camp Pendleton, to Joseph Street, Coastal Commission, October 2, 2015
- E-mail from Charles Langley to Joseph Street, Coastal Commission, October 2, 2015
- E-mail from Donna Gilmore, San Onofre Safety, to Joseph Street, Coastal Commission, October 2, 2015
- E-mail from Dr. Donald Mosier, Del Mar City Council, to Joseph Street, Coastal Commission, October 2, 2015
- Letter from Garry Brown, Orange County CoastKeeper, to Joseph Street, Coastal Commission, October 2, 2015
- E-mail from Gary Headrick, San Clemente Green, to California Coastal Commission, October 2, 2015
- Letter from Glenn Pascall, Sierra Club Task Force on San Onofre, to California Coastal Commission, October 2, 2015
- Letter from Rita Conn, Let Laguna Vote, to Dr. Charles Lester, Coastal Commission, October 2, 2015
- Letter from Jack Monger, Industrial Environmental Association, to Joseph Street and Coastal Commission, October 3, 2015
- Letter from Donna Gilmore, San Onofre Safety, to California Coastal Commission, October 4, 2015
- E-mail from Laura Lynch to Joseph Street, Coastal Commission, October 4, 2015
- Six e-mails, with attachments, from Michael Aguirre, Aguirre & Severson, to Joseph Street, Coastal Commission, October 5, 2015
- E-mail from Marv Lewis to Joseph Street, Coastal Commission, October 5, 2015

Revisions to the Staff Report

Recommended revisions to the staff report include changes to **Special Conditions 1** and **3**, the inclusion of a revised and clarified sea level rise analysis examining flooding in 2051 (35-year timeframe) rather than 2047 (30-year timeframe), as well as a number of minor clarifications and corrections. Additions to the staff report are shown below in underline and deletions in ~~strikethrough~~.

The proposed revisions below as well as the below responses to public comments are recommended findings and will be incorporated into the relevant portions of the staff report as adopted findings.

Page 6, Special Condition 1:

- “1. **Evidence of Landowner Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval evidence of their legal ability to undertake the development as conditioned by the Commission. ~~Such evidence shall include documentation demonstrating that the U.S. Department of the Navy has renewed or extended its existing easement for use of the Part 50 licensed area for a term encompassing the authorized development (i.e., through October 6, 2035).~~”

Reason for Proposed Revision: There are a variety of ways an Applicant who does not own a fee interest in the property being developed can satisfy their obligation, prior to permit issuance, to demonstrate their ability to comply with the conditions of approval. Since the Applicant, prior to permit issuance, can demonstrate their authority to comply with the conditions of approval in a manner other than that specified, the sentence limiting the manner of compliance to one method is proposed for deletion.

Page 7, Special Condition 3:

- ~~“C. All development and redevelopment of the property by the Permittee shall be sited and designed to ensure geologic stability without reliance on any of the existing shoreline protective devices adjoining the North Industrial Area. As used in this condition, redevelopment is defined to include: (1) additions, or; (2) expansions, or; (3) demolition, renovation or replacement that would result in 50% or more of a structure, structural wall or structural foundation, or; (4) demolition, renovation or replacement of less than 50% of a structure where the renovation or addition would result in a combined alteration of 50% or more of the structure from its condition on October 6, 2015.”~~

Reason for Proposed Revision: Staff is recommending that clause C of **Special Condition 3** be deleted because it is duplicative of the restrictions on future shoreline protection development contained in clauses A and B, and therefore unnecessary.

Page 9, paragraph 4, lines 1-3:

~~“The plant is collectively owned by SCE (75.0576.8%), San Diego Gas and Electric Company (20%), and the City of Anaheim (3.16%) and the City of Riverside (1.79%). As a previous owner, the City of Riverside is also a co-participant on the ISFSI project. The plant operates subject to a long-term easement ...”~~

Page 10, paragraph 3, lines 2-3:

~~“The ISFSI, including its concrete approach aprons, would occupy approximately 32,000 40,000 square feet ...”~~

Page 11, paragraph 2, lines 1-2:

“...the SONGS facility would consist of 75 VVMs set in a surrounding berm measuring approximately ~~111~~160 ft wide by ~~211~~260 ft long...”

Page 11, paragraph 3, lines 4-5:

“...Cavity Enclosure Container (CEC), comprised of a ~~low carbon~~ stainless steel Container Shell welded to a stainless steel Base Plate.”

Page 11, footnote 1:

⁴“A small HI-STORM UMAX system with six storage modules was previously installed at the Humboldt Bay Power Plant (see CDP #E-05-001).”

Page 12, paragraph 4, lines 3-7:

“The MPCs would be placed in a licensed transfer cask, lowered into the pools, loaded with spent fuel assemblies, and then removed from the pools. Water would be drained from the MPCs; ~~the air inside of them would be~~ and replaced with helium, and they would be welded shut. Subsequently, ~~the MPCs would be placed in a licensed~~ transfer casks containing the MPCs would be ~~and~~ loaded onto a transfer vehicle that would use existing roads ...”

Page 15, paragraph 3, lines 3-6:

“SCE has requested Navy authorization to renew the grant of easement ~~until 2051, at which time SCE expects to have completed~~ to allow for plant decommissioning, and required site restoration, and the transferred of all SONGS spent fuel to DOE custody.”

Page 17, paragraph 4, lines 9-11:

“...the SONGS ISFSI has been designed to withstand significantly greater ground shaking intensities (1.5 g in two orthogonal directions, net 2.12 g) than the existing spent fuel pools (0.67 g in each direction).”

Page 19, paragraph 3, lines 2-3:

“...at some of the lowest grade elevations (approx. ~~14~~13 to 20 feet MLLW)...”

Page 19, paragraph 3, lines 5-7:

“During its review of SCE’s alternatives analysis and in view of the fact that the ~~proposed project~~ applicant seeks authorization for temporary, interim storage ...”

Page 26, paragraph 1, lines 10-11:

“The spectra labeled “SONGS” ~~is~~are derived from the NRC-approved “free field” spectra and takes into account ...”

Page 26, paragraph 1, lines 15-16:

“The ISFSI design spectra exceed ~~that~~ those of the design basis earthquake ...”

Page 30, paragraph 1, lines 6-8:

“Superimposing this tsunami on a 7-foot high tide (the 10% exceedance Spring high tide for the site) and a one-foot storm surge, resulted in a maximum “still” water level of 15.6 feet MLLW (SONGS 2&3 FSAR).”

Page 31, paragraph 4, lines 3-5:

“As a part of its CDP application, SCE prepared an analysis of future flood conditions over the life of the development (SCE 2015a, d, h), using the sea level rise projections ...”

Page 31, fourth paragraph, lines 11-16:

“The analysis indicates that sea level can be expected to rise ~~0.30.4~~ to 1.82.0 feet by ~~2047~~2051 (~~30-year time horizon~~), depending on which scenario is used. Under the high sea level rise scenario, and assuming an additional foot of sea level height associate with wind and storm surge and/or oceanographic forcing (such as due to an El Niño event), SCE estimated that in 2051 the still-water level at mean high tide could reach 7.68 feet MLLW. A more extreme high tide of +6.9 feet MLLW, combined with 1 foot of storm surge, 2 feet of sea level rise and maximum wave run-up, could result in temporary flooding up to 25.0 feet MLLW (SCE 2015h).¹⁰ Commission staff notes that a maximum high tide at SONGS (>7.2 feet MLLW) (SONGS 2&3 FSAR), 1 foot of storm surge and temporary high sea level associated with a large El Nino event (+0.4 to 1 ft) (Flick 1998; CCC 2015) could add an additional 0.5 to 1.5 feet to this projected flooding elevation.

Page 31, paragraph 4, continuing to page 32:

~~“For several reasons, Commission staff believes that SCE’s analysis underestimates the potential for future flooding at the project site. First, short-term fluctuations in water level (assumed by SCE to amount to +1 foot) may include both surge and the underlying effects of oceanographic forcing. Temporary increases in sea level associated with storm surge in Southern California may reach +1 foot, while short-term sea level increases in sea level associated with the large 1982-83 El Niño event ranged from 0.4 to 1 foot (Flick 1998; CCC 2015). Thus, a more conservative estimate of the contribution to sea level from short-term phenomena would be approximately +2 feet. Second, SCE examined flooding only under mean tidal conditions of 5.8 feet MLLW. High tides equal or exceed 7.0 feet MLLW about 10% of the time and high tide levels equal or exceed 7.2 feet about 1.5% of the time, based~~

on the distribution of five years of tide data¹⁰. Using these higher tide levels, present day extreme high still water level could reach 9.2 to 9.3 feet MLLW (SONGS 2&3 FSAR), and current wave runup could exceed 24 feet MLLW. Using the same additive method that SCE used to modify runup for future sea level rise, wave runup in 2051, with 2.0 feet of sea level rise, could exceed 27 feet MLLW. However, run up does not change linearly with changes in water level, so these estimates of how run-up will change with changes in water levels likely underestimate potential run-up.”

Page 31, *new footnote 10*:

¹⁰ However, run up does not change linearly with changes in water level, so these estimates of how run-up will change with changes in water levels likely underestimate potential run-up.”

Page 32, *footnote 10*:

¹⁰ Based on distribution of Table 2.4-11: Distribution of Spring High Tides at San Diego During Five Years, from the San Onofre 2&3 Final Safety Analysis Report (FSAR) Section 2.4, (Revision 24), adjusted by the amplitude ratio of 0.92.”

Page 33, *second paragraph, lines 5-8*:

“a maximum average bluff retreat rate of 20 inches per year over the proposed 35-year life of the project would equate to a total bluff retreat of ~~29~~ 58 feet, or about ~~one-third~~ half of the distance between the existing seawall and the proposed ISFSI facility.”

Page 35, *second paragraph, lines 3-6*:

“A crude calculation using a maximum estimated bluff retreat rate of ~~0.8 feet~~ 20 inches per year (Hapke et al. 2007, for unprotected slopes in San Mateo Formation bedrock) indicates that erosion could begin to undermine the ISFSI structure by approximately ~~2130~~ 2077.

Page 37, *fourth paragraph, lines 4-10*:

“The initiation and growth of stress corrosion cracking in stainless steel fuel storage casks are not fully understood and remain a topic of active research, but these processes are likely to be accelerated in a coastal environment such as at SONGS (e.g., Kain 1990; Bryan and Enos 2014; EPRI 2014). Commission staff is not aware of any documented instances of stress corrosion cracking in fuel storage casks at other nuclear power plants. However, the NRC has collected evidence of stress corrosion cracking in other welded stainless steel components at several coastal nuclear power plants (NRC Dunn 2014).”

Page 37, *fourth paragraph, lines 12-14*:

“Elsewhere, the NRC has estimated that at least 30 years would be required for the initiation of stress corrosion cracking in steel fuel storage casks (NRC 2014).”

Page 38, *second paragraph, lines 3-4*:

“In the Preliminary Safety Evaluation Report (SER) supporting the September ~~X~~8, 2015, final approval of an amendment ...”

Page 39, paragraph 2, lines 6-7:

“Accordingly, the Commission is adopting **Special Condition 4**, which requires the ~~landowners~~Permittee to assume the risks...”

Page 43, paragraph 3, lines 4-5:

“Construction would not occur during weekends and holidays, with the possible exception of operations such as excavation, pouring concrete or other activities that require continuous work.”

Appendix A, Substantive File Documents

“Bryan, C.R., and D.G. Enos (2014). “Understanding the Environment on the Surface of Spent Nuclear Fuel Interim Storage Containers”, Probabilistic Safety Assessment and Management PSAM 12 (conference), Honolulu, Hawaii, June 2014.”

“Dunn, D.S. (2014). “Chloride-Induced Stress Corrosion Cracking Tests and Example Aging Management Program”, Presentation for U.S. Nuclear Regulatory Commission, at Public Meeting with Nuclear Energy Institute on Chloride Induced Stress Corrosion Cracking Regulatory Issue Resolution Protocol, August 5, 2014. <http://pbadupws.nrc.gov/docs/ML1425/ML14258A082.pdf>”

“Electric Power Research Institute (EPRI) (2014). Flaw Growth and Flaw Tolerance Assessment for Dry Cask Storage Canisters, EPRI Technical Report #3002002785, October 2014.”

“Kain, R.M. (1990). Marine atmospheric stress corrosion cracking of austenitic stainless steels. *Materials Performance* 29(12): 60.”

“Southern California Edison (2015h). “Projected Sea Level Rise Given the Project’s Design Service Life”, transmitted by e-mail from L. Anabtawi (SCE) to J. Street (CCC), September 17, 2015.”

“U.S. Nuclear Regulatory Commission (2014). “Summary of August 5, 2014, Public Meeting with Nuclear Energy Institute on Chloride Induced Stress Corrosion Cracking Regulatory Issue Resolution Protocol”, September 9, 2014. <http://pbadupws.nrc.gov/docs/ML1425/ML14258A081.pdf>”

Exhibit 4, page 2, caption to Figure 1:

“The space between the cylindrical storage modules is filled with a ~~flowable grout material~~concrete.”

Exhibit 5, page 1, addition to legend, with indicative coloring:

“If necessary, pumps within the NIA sump area would be relocated, not removed”

Exhibit 6, Figure 3 (Horizontal Acceleration), curve label:

“UMAX ISFSI Design Spectrum (PGA = ~~2.12 g~~ 1.5 g in each direction)”

Exhibit 6, Figure 4 (Vertical Acceleration), curve labels:

“UMAX ISFSI Design Spectrum (PGA = ~~2.12 g~~ 1.0 g)”

“SONGS Design Basis Earthquake (PGA = ~~0.67 g~~ 0.45 g)”

Staff Response to Comments

The below responses to public comments are recommended findings and would be incorporated into the relevant portions of the staff report as adopted findings.

In the attached correspondence, the commenters provide disparate perspectives on the proposed project and staff recommendation. A number of commenters, including Garry Bown (Orange County CoastKeeper), Jerome Kern (Oceanside City Council), David Lochbaum (Union of Concerned Scientists), Jack Monger (Industrial Environmental Association), Glenn Pascall (Sierra Club), Ted Quinn (Technology Resources) and David Victor, Tim Brown and Daniel Stetson (SONGS Community Engagement Panel) express support for the staff recommendation. Southern California Edison (SCE), the applicant, offers several comments and multiple clarifications and technical corrections, but also supports the staff recommendation. A number of other commenters, including Michael Aguirre (Aguirre & Severson), Patricia Borchmann, Rita Conn (Let Laguna Vote), Donna Gilmore (San Onofre Safety), Gary Headrick (San Clemente Green), Charles Langley (Public Watchdogs), Marv Lewis, Ray Lutz (Citizens Oversight), Laura Lynch, Donald Mosier (Del Mar City Council), Dorah Shuey and Jane Swanson (San Luis Obispo Mothers for Peace) oppose the project and urge the Commission to deny SCE’s coastal development permit (CDP) application. The U. S. Marine Corps does not comment on the project itself, but argues that the Commission lacks jurisdiction to require or issue a CDP for development at the San Onofre Nuclear Generating Station (SONGS) site. Commission staff provides the following summary and response to the arguments made by commenters opposing the staff recommendation and hereby amends its proposed Commission findings to include these responses:

Comments Related to Geologic Hazards

Several commenters, including Ray Lutz, Dorah Shuey, Patricia Borchmann, and Jane Swanson, express concern that the proposed ISFSI could be undermined by shoreline erosion, fail during an earthquake, or be flooded during a tsunami or as a result of future sea level rise. Mr. Lutz and Ms. Swanson also noted that the groundwater table at the project site would be near the bottom of the ISFSI structure, and expressed concern that the ISFSI could be adversely affected by contact with groundwater during its period of emplacement.

As discussed at length in the September 25, 2015 staff report, Commission staff evaluated the vulnerability of the proposed project to geologic hazards, including earthquakes, erosion, and coastal flooding, and concluded that the proposed project, with the adoption of **Special Condition 2**, would minimize hazards to life and property and assure stability and structural integrity consistent with Section 30253 of the Coastal Act. No changes to the staff recommendation are proposed in response to comments regarding these hazards.

Commission staff also evaluated the hydrogeology of the project site and reviewed monitoring well data provided by SCE (SCE 2015b). At the two monitoring wells within the proposed ISFSI footprint, the water table elevation varies by approximately 0.7 feet above and below a mean elevation of about +5.4 feet MLLW, indicating that, at present, natural variability in the water table is not likely to bring groundwater into contact with the base of the concrete ISFSI foundation pad (at +7.5 feet MLLW). Increases in the water table elevation related to sea level rise could potentially lead to intermittent lead to groundwater contact with the base of the ISFSI toward the end of the proposed 35-year life of the project. However, the design of the ISFSI is such that there are multiple barriers, including the 3-foot thick foundation pad and the steel cavity enclosure container (CEC), between the groundwater and the fuel storage casks, and limited contact with groundwater would not undermine the structural integrity of the ISFSI during the proposed project life. Furthermore, as a part of **Special Condition 2**, SCE would be required to evaluate current and future coastal hazards, including the effects of groundwater intrusion, as part of its CDP amendment application should it wish to retain the ISFSI in its proposed location beyond 2035.

Comments Related to Site Alternatives

Comments submitted by Michael Aguirre and Ray Lutz argue that SCE has not adequately explored alternative project locations off of the SONGS site. Mr. Lutz's comments include an extensive discussion of the benefits of siting the project away from the coast, and present a conceptual analysis of a hypothetical ISFSI site in the Mojave desert. In their comments, Ms. Gilmore and Ms. Lynch stated that the potential future alternative (discussed in the staff report) of relocating the ISFSI within the SONGS site would require a major expense and would greatly increase the current estimate of decommissioning costs.

As discussed in greater detail in the staff report, Commission staff has reviewed SCE's analysis of off-site alternatives and agrees with the conclusion that such alternatives are either unavailable or infeasible. No off-site federal permanent repository or private interim storage facility currently exists, and there is no prospect of such a facility becoming available in the near term. Nor is there another inland nuclear power plant with an existing ISFSI that is willing to or licensed to accept spent fuel from another site. Finally, there is no other site under SCE's control that is licensed for the siting of an ISFSI or at which an ISFSI could be developed in a reasonable period of time.

The staff recommendation is based on findings that the proposed project, as conditioned, would be consistent with Coastal Act policies related to geological hazards, the protection of marine and visual resources, and public access and recreation, excluding matters of radiological safety, and does not evaluate the potential cost of any future relocation of the ISFSI within the SONGS site. **Special Condition 2** requires that SCE evaluate the merits and feasibility (including costs)

of such alternatives as part of a CDP amendment application to retain, remove or relocate the ISFSI prior to the end of a 20-year term of approval.

Comments Related to ISFSI and Cask Safety & Radiological Issues

Comments submitted by Donna Gilmore, Laura Lynch, Gary Headrick, Donald Mosier, Dorah Shuey, Patricia Borchmann, Jane Swanson, Michael Aguirre, Rita Conn and Marv Lewis offer numerous arguments for why the proposed Holtec HI-STORM UMAX ISFSI and storage casks are inadequate or inappropriate for storing spent fuel at the proposed site. The main contentions of these comments are summarized below:

- (a) *The proposed underground system is unproven and experimental.*
- (b) *The 60-year design life and 100-year service life for the UMAX system claimed by SCE and Holtec are unsubstantiated; the Holtec warranty for the system is only ten years.*
- (c) *The proposed fuel storage casks are unsafe; stress corrosion cracking can be expected to occur in the stainless steel casks within 20 years.*
- (d) *Storage casks used in the existing ISFSI have been loaded since 2003, so SCE will need to have an aging management plan much sooner than 20 years from now.*
- (e) *The UMAX system configuration planned for SONGS has not been approved by the NRC; the NRC has only licensed a fully underground system using 1/2-inch thick fuel storage casks, not the partially-underground system and 5/8-inch casks proposed by SCE.*
- (f) *The proposed aging management program is inadequate, and the proposed casks cannot be repaired if damaged.*
- (g) *The NRC does not consider or require aging management in their initial 20-year license approvals.*
- (h) *High burn-up fuel to be stored in the proposed ISFSI could require up to 45 years of cooling prior to transport to permanent storage.*
- (i) *The Commission should not rely on vendor promises of future solutions for inspecting the casks in order to approve this project; there is already sufficient evidence that the proposed casks may not be transportable and maintainable to reject their use; the Commission should demand SCE use a proven system that can be inspected, maintained, monitored and transported, and that doesn't crack.*
- (j) *Thick-walled casks are available, and currently used in the U.S., that would provide superior performance in terms of safety and future transportability; the need to acquire a site-specific license to use such casks at SONGS is not sufficient grounds for rejection; the Commission should require SCE to use thick-walled casks as a special condition for approval.*
- (k) *Numerous past discharges of radioactive materials have occurred at SONGS; locating the ISFSI at the proposed site would make the area unsafe for public access.*
- (l) *SCE is considering loading Areva storage casks from the existing ISFSI into the new UMAX system.*

Without assessing the validity of these concerns, the Commission staff notes that the consequences of any failure, malfunction, or defects in the proposed ISFSI system are primarily a matter of radiological safety, which is under the exclusive jurisdiction of the federal Nuclear Regulatory Commission (NRC). The state is preempted from imposing upon operators of nuclear

facilities any regulatory requirements concerning radiation hazards and nuclear safety. Thus, the findings contained in the staff recommendation address only those state concerns related to conformity to applicable policies of the Coastal Act, and do not evaluate or condition the proposed project with respect to nuclear safety or radiological issues.

Staff's analysis indicates that the avoidance of long-term coastal erosion and flooding hazards at the project site (without resorting to shoreline armoring) is dependent on the ability to remove the ISFSI before it becomes vulnerable. At present, the integrity of the proposed ISFSI system is certified by the NRC for 20 years, providing assurance that the casks will be transportable, and the ISFSI system removable, within this timeframe. Commission staff believes that the 20-year duration of approval recommended in **Special Condition 2** is necessary to assure that potential future geologic hazards (and the need for shoreline protection) are avoided, is consistent with the 20-year certification of the HI-STORM UMAX system granted by the NRC, and does not impose any additional regulatory requirements concerning radiation hazards and nuclear safety.

SCE has informed Commission staff that SONGS fuel transported within a HI-STAR 190 transportation cask will require less than 15 years of cooling time starting from reactor shutdown in 2012, with even the most recently offloaded spent fuel ready for transport by 2027 (SCE 10/5/2015). Furthermore, fuel transport schedules contained in SCE's Irradiated Fuel Management Plan and Decommissioning Cost Estimate, both formal regulatory documents submitted to the NRC, indicate that all SONGS spent fuel can be transported offsite by 2049, 37 years after the 2012 reactor shutdown.

Commission staff is not aware of any plan to transfer older fuel storage casks from the existing ISFSI to the new system. This activity was not proposed in SCE's CDP application and would not be authorized by the proposed CDP.

U. S. Marine Corps Comments:

On October 1, 2015, Commission staff received a letter from the United States Navy and Marine Corps asserting that the Commission lacks jurisdiction to require or issue a CDP for development occurring on the SONGS site. The basis for the Navy and Marine Corps position is that under the Federal Coastal Zone Management Act (CZMA), land, "the use of which is by law subject solely to the discretion of ... the Federal Government, its officers or agents" is excluded from the definition of the coastal zone. (16 U.S.C. § 1453(1)).

The U.S. Supreme Court, however, has addressed this issue and determined that the CZMA does not pre-empt application of the California Coastal Act to private activities on federal land. It held that "[b]ecause Congress specifically disclaimed any intention to pre-empt pre-existing state authority in the CZMA, we conclude that even if all federal lands are excluded from the CZMA definition of 'coastal zone,' the CZMA does not automatically pre-empt all state regulation of activities on federal lands." *California Coastal Commission v. Granite Rock Co.* (1987) 480 U.S. 572, 593. Thus, under *Granite Rock*, the Commission retains the authority under the Coastal Act to require coastal development permits for non-federal activities taking place on federal land, such as Southern California Edison's proposed project pending before the Commission.

The U.S. Navy and Marine Corps support their argument that the Commission does not have coastal development permit jurisdiction on federal land by reference to an unpublished U.S. District Court decision, *Manchester Pacific Gateway v. California Coastal Commission* (2008 WL 5642245 (S.D. Cal.)). First, to the extent that the *Manchester* case is inconsistent with the Supreme Court holding in *Granite Rock*, the Supreme Court's decision in *Granite Rock* controls. Second, the *Manchester* case is factually distinguishable from the situation presented by the pending proposal from SCE. The *Manchester* case involved a Congressionally authorized public-private venture that resulted in the Navy obtaining new office space at no cost to the federal government. *Id.* at 1. The court acknowledged that the purpose of that project, as mandated by Congress, was to "provide for the use of private parties to accomplish the federal objective to construct Navy administrative facilities." *Id.* at 5. The project was authorized through legislation that spelled out the general parameters of the project and specifically authorized the project to be jointly developed by the Navy and the private developer. *Id.* at 6. Thus, the project was both a Navy and a private project.

The pending application from SCE does not involve a joint public-private venture. Thus, the facts are not analogous to those presented in the *Manchester* case. Thus, both under *Granite Rock* and due to factual distinctions between these facts and those raised in the *Manchester* case, the CZMA does not pre-empt the California Coastal Act here, and the Commission does have the jurisdiction to require a coastal development permit for the proposed development.

Finally, the Commission notes that the October 1, 2015 letter includes a statement, without elaboration, that the SONGS site is under exclusive federal jurisdiction where State law generally does not apply and the Commission only has jurisdiction over the SONGS site through the consistency provisions of the Coastal Zone Management Act. While the Commission does not disagree that it has jurisdiction over the SONGS site through the consistency provisions of the Federal Coastal Zone Management Act, the Commission finds that the singular statement in the October 1, 2015 letter neither establishes that the SONGS site is under exclusive federal jurisdiction where state law generally does not apply nor provides sufficient documentation, analysis or other supporting evidence.