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County of San Diego

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CITIZENS OVERSIGHT, INC., et al.,
Petitioners and Plaintiffs,

v.

CALIFORNIA COASTAL COMMISSION,
et al.,
Respondents and Defendants.

Case No. 37-2015-00037137-CU-WM-CTL
Assigned for All Purposes to the Honorable Judith
F. Hayes, Dept. C-68

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR WRIT OF ADMINISTRATIVE
MANDAMUS AND DECLARATORY
RELIEF**

Date: October 7, 2016
Time: 10:30 a.m.
Dept.: C-68

IMAGED FILE

Petition filed: November 3, 2015

TABLE OF CONTENTS

I.	BACKGROUND	1
A.	APPLICATION FOR WRIT TO SET ASIDE BEACH RADIOACTIVE STORAGE DEVELOPMENT PERMIT.....	1
B.	THE ABSURD PLAN TO BURY RADIOACTIVE WASTE AT THE SEA IN SAN DIEGO.....	1
C.	CONTEXT OF SCE’S RADIOACTIVE BURIAL PLAN	3
D.	RADIOACTIVE WASTE MOVED 100 FEET FROM THE SEA	4
II.	ALTERNATIVES TO SEA BURIAL PLAN	4
A.	THE COMMISSION CANNOT RELY ON SCE-LEAST EFFORT	4
B.	PALO VERDE ALTERNATIVE	5
C.	PALO VERDE ALTERNATIVE GIVEN TO COASTAL COMMISSION	7
D.	COASTAL COMMISSION FAILS TO CONSIDER PALO VERDE	8
E.	UNFAIR PUBLIC HEARING.....	8
III.	ARGUMENT	9
A.	STANDING	9
B.	STANDARD	9
C.	THE COASTAL COMMISSION DID NOT GIVE THE AGGRIEVED PARTIES A FAIR HEARING	10
D.	THE COASTAL COMMISSION DID NOT PROCEED IN A MANNER REQUIRED BY LAW	11
E.	THE COASTAL COMMISSION DECISION WAS NOT SUPPORTED BY THE FINDINGS.....	12
F.	THE COASTAL COMMISSION FINDINGS WERE NOT SUPPORTED BY EVIDENCE	13
1.	Evidence Related to Palo Verde Option.....	13
2.	Dry Casks Evidence Failed	13
3.	Aging Management Plan Evidence Fails	15
IV.	CONCLUSION	16

TABLE OF AUTHORITIES

Cases

<i>Burke v. California Coastal Com.</i> (2008) 168 Cal. App. 4th 1098	10
<i>City of Coronado v. California Coastal Zone Conservation Com.</i> (1977) 69 Cal. App. 3d 570.....	9
<i>Page v. MiraCosta Community College Dist.</i> (2009) 180 Cal. App. 4th 471	11
<i>Schneider v. California Coastal Com.</i> (2006) 140 Cal. App. 4th 1339	10
<i>Seeger v. Odell</i> (1941) 18 Cal.2d 409	5

Statutes

California Code of Civil Procedure	
§ 1094.5.....	1, 9, 10
§ 1094.5(b)	10
California Public Resource Code	
§ 30108.....	6
§ 30204.....	12
§ 30211.....	12
§ 30221.....	12
§§ 30230-30232	12
§ 30253.....	12
§ 30600.....	1
§ 30801.....	9, 10
Coastal Act	
§ 30253 (a) and (b).....	5

Other Authorities

Article: Information Lost and Found, 100 Calif. L. Rev. 635.....	4
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1 **I. BACKGROUND**

2 **A. APPLICATION FOR WRIT TO SET ASIDE BEACH RADIOACTIVE**
3 **STORAGE DEVELOPMENT PERMIT**

4 These points and authorities based on the pertinent part of the Administrative Record
5 (cited as Petitioner's Administrative Record, or PAR) before the Coastal Commission are filed in
6 support of Petitioners' Application for a Writ of Mandamus to set aside the California Coastal
7 Commission development permit (9-15-0228). The permit allows Southern California Edison
8 (SCE) to bury radioactive waste at the seashore in San Diego at a cost exceeding \$240,000,000.
9 (PAR 388, 495-499, 503) See, Cal Code Civ. Proc. § 1094.5.

10 Petitioners request the Court issue the writ for the purpose of inquiring into the validity of
11 the Coastal Commission's final administrative decision to approve development permit 9-15-
12 0228, which was made as the result of a proceeding in which, by law, a hearing was required to
13 be given, evidence was required to be taken, and which discretion in the determination of facts is
14 vested in the Coastal Commission.

15 **B. THE ABSURD PLAN TO BURY RADIOACTIVE WASTE AT THE SEA IN**
16 **SAN DIEGO**

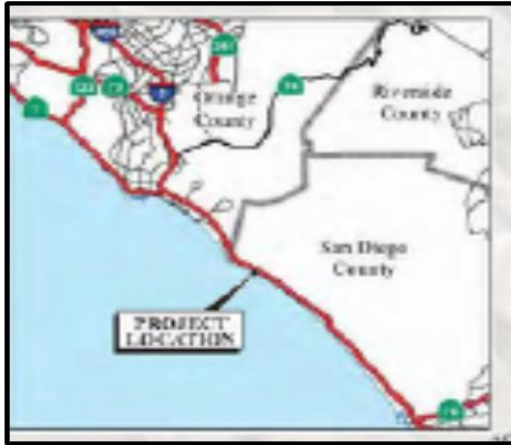
17 In 1972, voters adopted (via Proposition 20) the California Coastal Zone Conservation Act
18 of 1972 declaring government protection of California's coastal zone was required in order to
19 preserve it for present and future residents of the state and nation. Voters required any person who
20 wanted to perform development in the coastal zone lying between the seaward limit and 1,000
21 yards landward from the mean high tide line of sea (permit area) to obtain a permit. Prop 20; See,
22 Cal. Public Resource Code § 30600.

23 Under pressure from utility giant Southern California Edison (SCE), the Coastal
24 Commission issued a development permit (C.D.P. 9-15-0228) allowing SCE to entomb on the
25 San Diego beach 2,668 assemblies containing radioactive spent nuclear fuel pellets (spent fuel)¹
26 in 75 casks. (PAR 367-378, 495-499) In the nuclear fuel storage industry, the burial site is

27 ¹ Spent nuclear fuel refers to uranium-bearing fuel elements that have been used at commercial
28 nuclear reactors and that are no longer producing enough energy to sustain a nuclear reaction.
<http://www.nrc.gov/waste/spent-fuel-transp.html>

referred as an “Independent Spent Fuel Storage Installation” (ISFSI). (PAR 367-378) The radioactive waste will be located in the coastal zone permit area 100 feet from the sea in San Diego: (PAR 362)

ISFSI Proposed for San Diego

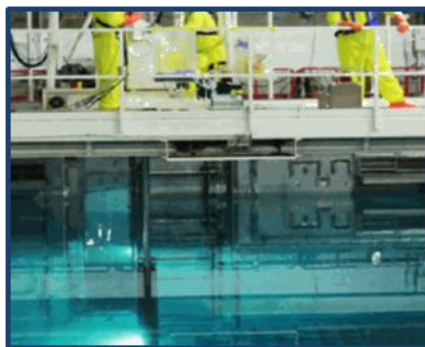


Radioactive Waste 100 Feet From Tide



SCE applied for the permit on 20 February 2015. (PAR 515) The spent fuel is highly radioactive and **requires secure storage for thousands of years to prevent harm to humans and the environment.** (PAR 309-310) There are 2668 “assemblies” containing spent fuel pellets in **wet** storage pools (PAR 303,309) and 51 fuel storage modules filled with spent fuel located in **dry** storage (PAR 272) above ground:

Pool Storage



Dry Storage



Once the spent fuel is removed from a reactor, the fission process has stopped but the spent fuel assemblies still generate significant amounts of radiation and heat. Because of the residual hazard, spent fuel must be shipped in containers or casks that shield and contain the

1 radioactivity and dissipate the heat.² (Request for Judicial Notice [RJN] Ex. 2.) SCE proposes to
2 bury the highly radioactive waste that requires secure storage for tens of thousands of years in 75
3 casks just 100 feet from the sea in San Diego: (PAR 317, 366)



11 The Coastal Commission granted the permit to bury the radioactive waste seaside in San
12 Diego on this absurd premise: “At present, **there are no feasible off-site alternatives** to the
13 proposed project.” (PAR 310) The Coastal Commission staff report does not show SCE
14 submitted support for this proposition with its application or later filings. (PAR 309-361)

15 This statement is rendered absurd because the report goes on to admit the storage casks
16 could be “degraded to the point of becoming unsafe to transport, the proposed ISFSI could be
17 required beyond 2051, possibly for many decades.” (PAR 310) In one of the understatement of
18 all time, the Coastal Commission admits storing the highly radioactive waste 100 feet from the
19 ocean has the “the potential to adversely affect marine and visual resources and coastal access.”
20 (PAR 310) The Coastal Commission is gambling with public safety and coastal integrity,
21 knowing it is “**uncertain whether it will be possible for SCE to remove the ISFSI as planned,**
22 **in 2051.**” (PAR 310)

23 **C. CONTEXT OF SCE’S RADIOACTIVE BURIAL PLAN**

24 The Coastal Commission did not discuss the circumstances in which SCE’s proposal to
25 bury the nuclear waste arises. (PAR 149-184, 232-274) The need to find temporary storage for the
26 San Onofre radioactive waste came about when SCE’s four new steam generators at San Onofre
27 failed, causing the plant to close in January 2012. (PAR 157-159) There was substantial

28 ² <http://www.nrc.gov/waste/spent-fuel-transp.html>

evidence that SCE knew about the design flaws that caused steam generators to fail and the plant to close. (PAR 244-254, 272-274)

D. RADIOACTIVE WASTE MOVED 100 FEET FROM THE SEA

The radioactive waste is now stored in pools, protected by the containment buildings. The plan is to transport the waste to the water's edge where it will be buried (PAR 291, 318):

Waste in Containment BLDGS



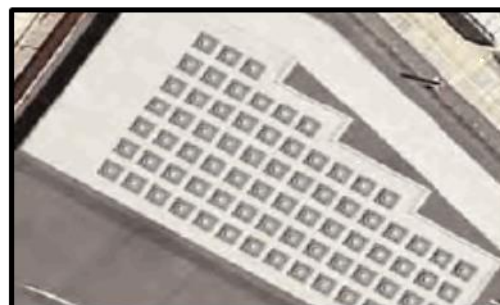
Waste Buried at Sea



Before Waste Buried



After Waste Buried



II. ALTERNATIVES TO SEA BURIAL PLAN

A. THE COMMISSION CANNOT RELY ON SCE-LEAST EFFORT

The Coastal Commission's statement that "At present, there are no feasible off-site alternatives to the proposed project" (PAR 310) is both absurd and an example of the least effort principle. Article: Information Lost and Found, 100 Calif. L. Rev. 635, 676-677. Having created a radioactive storage crisis at San Onofre, SCE is not even giving bare compliance with the Coastal Commission permit rules. SCE is supposed to be an information-seeker trying to locate an inland site to store the waste it produced at San Onofre. But, SCE is expanding as little effort as it can. Given a choice between low-value-but-easily-accessible information and high-value-but-harder-to-find substitutes, SCE officials pick low value. Article: Information Lost and Found,

1 100 Calif. L. Rev. 635, 676-677.

2 The Coastal Commission engaged in a gross violation of its discretion when it decided to
3 allow SCE to bury radioactive waste 100 feet from the shoreline of San Diego, knowing it cannot
4 assure the safety of the canisters holding the nuclear waste is “consistent with Coastal Act Section
5 30253 (a) and (b).” (PAR 348)

6 A radioactive dump on the shoreline at San Diego is a development inherently
7 incompatible with the Coastal Act. The SCE radioactive dump does not do any of the following:
8 (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard; (2)
9 Assure stability and structural integrity, and neither create nor contribute significantly to erosion,
10 geologic instability, or destruction of the site or surrounding area or in any way require the
11 construction of protective devices that would substantially alter natural landforms along bluffs
12 and cliffs. Coastal Act Section 30253 (a) and (b).

13 The Coastal Commission did not require SCE to adequately explore the alternative of
14 transporting San Onofre nuclear waste to a safer location, like SCE’s Palo Verde nuclear plant in
15 the Mojave Desert. (PAR 009-011, 273-274, 324-327) The NRC stated publicly “over the last 40
16 years, thousands of shipments of commercially generated spent nuclear fuel have been made
17 throughout the United States without causing any radiological releases to the environment or
18 harm to the public.”³ **Most of these shipments occur between different reactors owned by the**
19 **same utility to share storage space for spent fuel.**⁴

20 The Coastal Commission’s report stated “many of the potential alternatives were
21 determined by the SCE to be infeasible.” (PAR 325) The Coastal Commission should not have
22 relied on this claim, particularly in light of SCE’s record for making untruthful statements and for
23 obstructing justice. (PAR 162-168); see, *Seeger v. Odell* (1941) 18 Cal.2d 409, 415.

24 **B. PALO VERDE AS AN ALTERNATIVE**

25 When planning where to store radioactive waste that poses a threat to safety for thousands
26 of years, a reasonable period should be long enough to determine whether the nuclear waste could

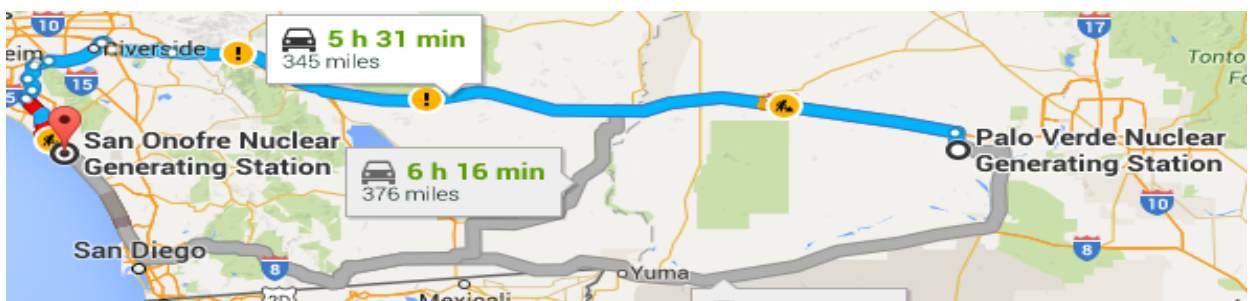
27 ³ <http://www.nrc.gov/waste/spent-fuel-transp.html> (RJN Ex. 2)

28 ⁴ <http://www.nrc.gov/waste/spent-fuel-transp.html> (RJN Ex. 2)

1 be stored at SCE's Palo Verde nuclear plant in Tonopah, Arizona. Cal. Pub. Res. Code § 30108.
2 After all, the NRC reports utilities share storage space produced by their different reactors.⁵ The
3 Coastal Commission report acknowledged that spent fuel can be stored under SCE's existing
4 NRC license. (PAR 322-323) SCE (and its co-owners) have an existing NRC license for the Palo
5 Verde nuclear plant, the largest one in the nation. (PAR 273) Palo Verde is located on some
6 4,000 acres in the Mojave, desert. Palo Verde is also licensed to be an ISFSI. (RJN Ex. 5) Here
7 is a picture of the ISFSI at Palo Verde (RJN Ex. 1):



13 The NRC reported how thousands of shipments of commercially generated spent nuclear
14 fuel have taken place with no radiological releases to the environment or harm to the public. The
15 NRC notes that "Most of these shipments occur between different reactors owned by the same
16 utility to share storage space for spent fuel."⁶ Palo Verde is between 345 and 376 miles from San
17 Onofre – a 7 hour drive (RJN Ex. 4):

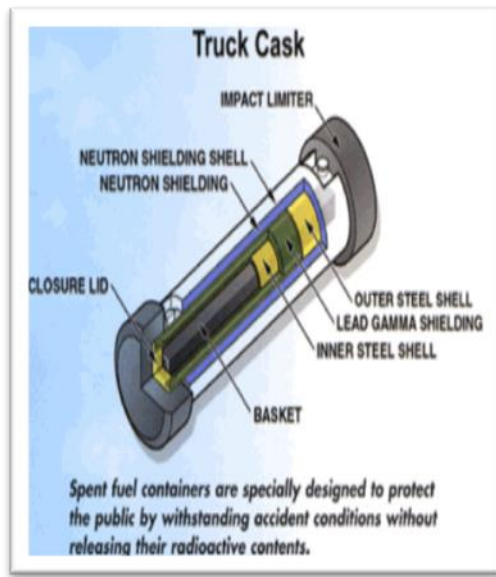


23 Here are examples of a truck and spent fuel casks that can be used to transport nuclear fuel
24 that were not considered in connection with the Palo Verde ISFSI option:⁷

26 ⁵ <http://www.nrc.gov/waste/spent-fuel-transp.html> (RJN Ex. 2)

27 ⁶ <http://www.nrc.gov/waste/spent-fuel-transp.html>

28 ⁷ <http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/transport-spenfuel-radiomats-bg.html>



Truck Version 1



Truck Version 2



Truck Version 3



Truck Version 4



C. PALO VERDE ALTERNATIVE GIVEN TO COASTAL COMMISSION

The Palo Verde alternative was presented to the Coastal Commission before the Coastal Commission granted the permit:

From: Michael Aguirre

To: Coastal coast4u; Street, Joseph@Coastal; mluevanocoastal@gmail.com; cgroom@smcgov.org; gregcoastal@sdcounty.ca.gov; sarahcoastalcom@yahoo.com; Lester, Charles@Coastal

Subject: Agenda Item 14 SCE Nuclear Waste Site

Date: Monday, October 05, 2015 5:14:07 AM

Attachments: malfesance.pdf

Greetings:** .The idea of a permit for a nuclear waste site on the shoreline of North County San Diego is perforce absurd. The suggestion there are no other sites other than the one SCE chose to put the nuclear waste from the years it operated San Onofre. If a business produces waste from its operations it falls upon the business to dispose of it. SCE consciously chose not to develop a site to move the waste during the last 30 years. SCE's attitude was grab the money from the operations and leave it to someone else to figure out what to do with the profits**

The Coastal Commission is dealing with SCE as if its business as usual. The Coastal Commission has before a permit application that would put nuclear waste on the shoreline of North County San Diego permanently. SCE plans to grab the \$4 billion in decommissioning money, disassemble the plant, and leave 3,600,000 lbs of nuclear waste behind stored in hard to move casks.

1 This you cannot allow. You must require SCE to find an alternative site. **
2 The better course is to deny the permit and instead require SCE to do its
3 homework to **find another site e.g. Palo Verde**. ** Thank You, Mike Aguirre
(PAR 273-274)

4 **D. COASTAL COMMISSION FAILS TO CONSIDER PALO VERDE**

5 There is no discussion about whether SCE could store the waste from San Onofre at the
6 Palo Verde nuclear power plant—except what Petitioners proposed. (PAR 274) The Coastal
7 Commission acknowledged Petitioners’ content that the SCE “has not adequately explored
8 alternative project locations off of the [San Onofre] site.” (PAR 009)

9 Palo Verde, like San Onofre, is an existing nuclear power plant with an ISFSI. (RJN Ex.
10 5) The Commission acknowledged that a general NRC licensed nuclear plant “may extend this
11 license to cover an ISFSI facility, without the need for a license amendment by satisfying the
12 requirements of Subpart K to 10 CFR Part 72.” (PAR 322) The Commission’s report showed no
13 consideration was given to expanding the Palo Verde ISFSI so San Onofre spent fuel could be
14 stored there.

15 Instead, the Commission employed flawed logic. The Commission’s premise included the
16 claim that the San Diego shoreline was an appropriate location to store SCE’s radioactive waste.
17 Thus, committing the logical fallacy of begging the question. The Commission then engaged in
18 more questions, begging the finding there were no “off-site federal permanent repository or
19 private interim storage facility currently exist[ing] [and no] prospect of such a facility becoming
20 available in the near term.” (PAR 310)

21 **E. UNFAIR PUBLIC HEARING**

22 The Coastal Commission limited the public discussion about whether to allow SCE to
23 bury its nuclear waste at the sea in San Diego to three hours. (PAR 376-500) The public
24 discussion was marred by private discussions between SCE and the Coastal Commissioners as
25 shown in this table (PAR 278-308):

26

Name	Where	Date	Discussion
Mitchell	Sherman Oaks	21-Sep-16	Nash; Powerpoint
Bocho	Bocho Office	24-Sep-15	Nash, Need to put spent fuel in dry storage

27

28

Vargas	San Onofre	24-Sep-15	Nash, Powerpoint; supports staff rec
Uranga	Malabui	22-Sep-15	Nash, Powerpoint; supports staff rec
Cox	San Diego	2-Oct-15	Nash, Powerpoint; supports staff rec

III. ARGUMENT

A. STANDING

The petitioners are aggrieved persons with the right to judicial review of the Coastal Commission decision to **approve** Coastal Development Permit 9-15-0228.⁸ (PAR 495-499) Petitioners filed a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure, within 60 days after the decision or action has become final. Each of the parties is an “aggrieved party” because they are persons who, in person or through a representative, appeared at a public hearing of the Coastal Commission in connection with the decision to approve Coastal Development Permit 9-15-0228 or who, by other appropriate means prior to a hearing, informed the Coastal Commission of the nature of his concerns. (PAR 001-002, 148-178) Pub Res Code § 30801

B. STANDARD

The petitioner seeks a writ of mandate setting aside the Coastal Commission’s decision to grant SCE a permit (9-15-0228) to bury radioactive waste at the ocean in San Diego. The court can inquire into the validity of the Coastal Commission’s final administrative decision to grant SCE development permit. Code of Civ. Proc. 1094.5; *City of Coronado v. California Coastal Zone Conservation Com.*, (1977) 69 Cal. App. 3d 570, 584.

As set forth in the facts above it was the conduct of SCE’s executives who forced the immediate problem of what to do with the radioactive waste SCE generated from its profit

⁸ The resolution provides the “Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.”

1 making electricity business. This case comes before the court as a link in a chain reaction SCE
2 caused when it decided to deploy four new but defective steam generators for the two nuclear
3 reactors at San Onofre. One of the new steam generators sprung a radioactive leak in January
4 2012. (PAR 265) All four failed 11 months after they were started. (PAR 250) The failure of the
5 steam generators caused the plant to close in January 2012. (PAR 165 fn 3, 260, 309) The
6 closure advanced the date for deciding where to store the radioactive waste. (PAR 243-264) SCE
7 persuaded the Coastal Commission to acquiesce in a plan that was easiest for SCE-leave the
8 radioactive waste behind buried on the beach at the sea in San Diego. (PAR 1-12, 309-361)

9 The Court can issue a writ of mandamus overturning the decision to issue a development
10 permit if the Court determines the Coastal Commission denied the aggrieved parties a fair hearing
11 [(CCP 1094.5 (b))] abused its discretion because it did not act as the law requires. The Court can
12 issue the writ if it decides the findings do not support the decision or if the evidence does not
13 support the findings. Code Civil Proc § 1094.5; Pub Res Code § 30801; *Burke v. California*
14 *Coastal Com.* (2008) 168 Cal. App. 4th 1098, 1106 (Cal. App. 2d Dist. 2008); *Schneider v.*
15 *California Coastal Com.* (2006) 140 Cal. App. 4th 1339, 1340.

16 **C. THE COASTAL COMMISSION DID NOT GIVE THE AGGRIEVED**
17 **PARTIES A FAIR HEARING**

18 The hearing was held on 6 October 2015. It was marred by SCE's ex parte
19 communications. A press release was issued informing the press the decision to grant the permit
20 was made before any vote was taken. The hearing before the Coastal Commission was a planning
21 session for a nuclear waste accident, not a fair hearing to determine if the permit should be issued
22 under the law and facts. What was said in the Fukushima Nuclear disaster report issued by the
23 Diet in Japan described what happened at the 6 October 2015 hearing:

24 **The TEPCO Fukushima Nuclear Power Plant accident was the result of**
25 **collusion between the government, the regulators and TEPCO, and the lack**
26 **of governance by said parties. They effectively betrayed the nation's right to**
27 **be safe from nuclear accidents. Therefore, we conclude that the accident was**
28 **clearly "manmade." We believe that the root causes were the organizational**
and regulatory systems that supported faulty rationales for decisions and
actions, rather than issues relating to the competency of any specific
individual.

1 The Coastal Commission members evaded the state open meeting law by using a “series
2 of private meetings (known as serial meetings) by which a majority of the members of [the
3 Coastal Commission] commit[ed] themselves to [the] decision [to grant the permit to SCE]”
4 before the 6 October 2015 meeting started. This caused the plant to close in January 2012. (PAR
5 165 fn 3, 260) *Page v. MiraCosta Community College Dist.*, (2009 180 Cal. App. 4th 471, 503-
6 504.

7 The petitioners provided an extensive report (“The Malfeasance Report”) and a brief filed
8 with the Ninth Circuit Court of Appeals detailing how SCE has engaged in a pattern of false
9 statements and acts of obstruction of justice. (PAR 234-265) The Coastal Commission was put on
10 notice of these facts with the delivery of both writings to the Coastal Commission before the
11 hearing. This caused the plant to close in January 2012. (PAR 165 fn 3, 260)

12 The hearing was also rushed. The radioactive waste has to be stored for tens of thousands
13 of years. (PAR 317) The plant was not permanently closed until June 2013. (PAR 256) The
14 decision about where to store the waste was made two years later in October 2015. SCE told the
15 Coastal Commission all of the spent fuel will be removed from the pools by 2019. (PAR 295,
16 320). The industry norm for removing spent fuel from the pools is 10 years.⁹ SCE is claiming
17 the new ISFSI at San Onofre will operate until at least 2049. (PAR 310) What is the rush?

18 **D. THE COASTAL COMMISSION DID NOT PROCEED IN A MANNER**
19 **REQUIRED BY LAW**

20 The Coastal Commission adopted a new circular rule of law when it comes to burying
21 deadly radioactive waste 100 feet from the shoreline in San Diego. Under this new rule if
22 radioactive waste storage on the beach cannot be mitigated then it can be buried there in
23 conformity with California law. The Coastal Commission could not find SCE lessened
24 significant adverse effects of planting radioactive waste 100 feet from the beach. The Coastal
25 Commission found SCE could plant its nuclear waste on the beach because there were no further
26 feasible mitigation measures or alternatives SCE could take that would substantially lessen any
27 significant adverse impacts of the development on the environment.

28 ⁹ <http://www.nrc.gov/waste/spent-fuel-storage/faqs.html>

1 Granting of the permit under these circumstances does not minimize risks to life and
2 property in areas of high geologic, flood, and fire hazard. It does not assure stability and
3 structural integrity. It does contribute significantly to erosion, geologic instability, or destruction
4 of the site or surrounding area. It does require the construction of protective devices that would
5 substantially alter natural landforms along bluffs. The granting of the permit is thus in violation
6 of Pub. Res. Code § 30253.

7 Granting of the permit under these circumstances interferes with the public's right of
8 access to the sea in violation of Pub Res Code § 30211. The granting of the permit also fails to
9 protect oceanfront land suitable for recreational in violation of Pub. Res. Code § 30221. Granting
10 of the permit does not maintain or enhance marine resources. It also threatens biological
11 productivity and the quality of coastal waters, streams, wetlands, and estuaries. It also does not
12 protect against hazardous substances. Thus the permit's issuance also violates Pub. Res. Code §§
13 30230-30232. Finally, the permitting of a nuclear waste dump at San Diego's beach is a
14 significant disruption of habitat values, and significantly degrades those areas, and is not
15 compatible with the continuance of those habitat and recreation areas as defined in and provided
16 for in Pub. Res. Code § 30204

17 **E. THE COASTAL COMMISSION DECISION WAS NOT SUPPORTED BY**
18 **THE FINDINGS**

19 The Commission decision to issue the beachside radioactive nuclear waste storage permit
20 was found by the Coastal Commission to be a rational act in conformity with California law.
21 However, the Commission admitted facts that are wholly inconsistent with its rush decision to
22 allow SCE to bury radioactive waste on the shore in San Diego:

23 Nonetheless, it cannot be ignored that the proposed ISFSI location within the NIA
24 lies just over 100 feet from the shoreline, at some of the lowest grade elevations
25 (approx. 14 to 20 feet MLLW) present at the [San Onofre] site. As discussed in
26 greater detail in the Geologic Hazards findings (Subsection D), the site could
27 potentially be exposed to several coastal hazards depending on how long the facility
28 were to remain in place. During its review of SCE's alternatives analysis and in
view of the fact that the proposed project seeks authorization for temporary, interim
storage, Commission staff noted that several areas currently occupied by Units 2
and 3 and related structures may share some of the advantages of the NIA (e.g.,

foundational stability sufficient to support two nuclear reactors) while also being both located farther inland (300 – 900 feet) and at a higher grade elevation (>30 feet MLLW) than the proposed ISFSI location. Though currently occupied by existing structures, these areas are expected to become available over the next 15 years as the decommissioning and dismantlement of Units 2 and 3 proceeds (SCE 2014b). SCE has expressed its willingness to reevaluate alternative locations as they become available, and, if warranted, relocate the spent fuel to a new ISFSI facility at a later date.

F. THE COASTAL COMMISSION FINDINGS WERE NOT SUPPORTED BY EVIDENCE

1. Evidence Related To Palo Verde Option

The evidence did not support the Commission’s finding that SCE evaluated several alternatives to the proposed project. If the Commission meant to say in “good faith,” then the evidence does not support the claim that SCE looked for an alternative site in good faith. The best example of that is the Palo Verde site. The Commission also failed to state what constitutes a “reasonable period of time” in the context of finding a safe storage location for radioactive waste that needs to be stored for thousands of years. If there is any measure of the health and well-being of a civilization, it is the extent to which it looks after “posterity” or future generations. The fact that the Coastal Commission played fast and loose with the facts betrays a selfish attitude that seeks to push off onto those who did not benefit from the electricity that produced the radioactive waste byproduct. As explained in detail above, SCE owns an existing ISFSI. The NRC tells us most nuclear waste transporting is done between nuclear plants based on shared storage. The evidence does not show this option was considered in good faith.

2. Dry Casks Evidence Failed

The Commission findings related to the safety of the casks used to store the radioactive waste failed and in some respects did not support the decision to issue a permit to allow the project to move forward. The findings did not support the decision because the Commission was forced to admit that the casks would keep the nuclear spent fuel safe after were buried in the ground. (PAR) The Commission admitted in its findings:

Ultimately, SCE’s ability to avoid long term coastal hazards and the need for shoreline protection, and thus assure consistency with Coastal Act Section 30253, depends on its ability to eventually remove the ISFSI from the proposed site. In

1 turn, the removal of the ISFSI depends on the fuel storage casks (MPCs)
2 remaining in a condition adequate to allow safe removal from the storage modules
and transfer to a new location. *

3 The storage cask that would be used in the proposed ISFSI, the Holtec model
4 MPC-37, is constructed from corrosion-resistant stainless steel, with a design life
of 60 years (Holtec 2014a, b). ** SCE expects the service life of the ISFSI and
5 casks to be at least 100 years (SCE 2015b).

6 SCE does not anticipate that major repairs to the ISFSI or components would be
needed within either the 60-year design life or 100-year service life of the
7 system,**

8 The first is that the stainless steel MPCs will be in continual contact with moist,
salt-laden marine air, and as a result could, over time, experience a type of
9 degradation known as stress corrosion cracking. The initiation and growth of stress
corrosion cracking in stainless steel fuel storage casks are not fully understood and
10 remain a topic of active research, ** (PAR 345)

11 A highly regarded student of the Holtec cask system, Donna Gilmore put the Coastal
Commission on notice of high level of risk of the casks SCE plans to use. (PAR 001-002, 010-
12 011, 14-38, 133-141) The Commission did not address the risks raised in any meaning way. Ms.
13 Gilmore summarized the problems with the canisters SCE plans to use to store the nuclear waste:

14 **Holtec UMAX 37-fuel assembly canister system inadequacies**

- 15
- 16 • Does not address coastal corrosion issues
 - 17 • Cannot be inspected, repaired or maintained
 - 18 • Subject to short-term stress corrosion cracking
 - 19 • Does not meet current NRC approved UMAX technical specifications.
 - 20 • No approved transport system for San Onofre high burnup fuel.
 - 21 • Warranty is only 10 years on the underground structure, 25 years for the thin
canister and 2 years for existing NUHOMS canisters that Holtec may load in the
underground system. (PAR 134)

22 Ms. Gilmore also provided notice of other alternative casks systems used in Germany that
appear to be a safer feasible alternative (PAR 140-141):

23 ///

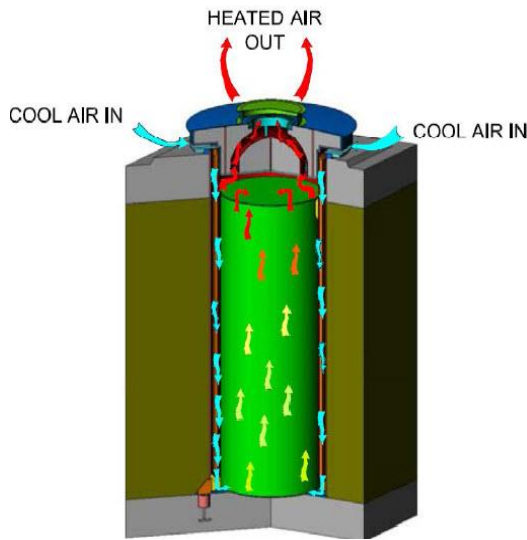
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3. Aging Management Plan Evidence Fails

The Commission, in violation of applicable law and without regard to contradictory findings and failure of proof, went along with accepting promises of future action to make up for the deficient casks. The Commission report states that “SCE has indicated that it **will develop** its aging management program shortly after the fuel is transferred to the proposed ISFSI.” The simple answer the Commission should have given -- had it been following its mandate to protect the coastal zone -- would have been to tell SCE to come back when they have the aging management plan in place.

Again, the Commission’s findings do not support the decision, and in other respects, the evidence does not support the findings. Again, Ms. Gilmore provided the Commission with extensive information showing the SCE’s planned aging management system was not viable. The evidence was not provide by SCE to justify the aging management findings the Commission reached:

Existing Areva NUHOMS canisters have been loaded since 2003, so the idea that Edison needs to have an aging management plan in 20 years is not the case. They need an aging management plan for their existing NUHOMS canisters and system. Does the existing NUHOMS canister ISFSI require a separate Coastal Commission renewal permit? Both the existing NUHOMS and proposed Holtec thin canisters are of the same materials (welded 316L stainless steel). We have only 5 years before we meet the Koeberg timeline. This idea we can wait 20

1 years is not realistic on many levels. To buy products originally designed for 20
2 years that do not have aging management built into the design is unacceptable.
3 Edison should be required to provide their aging management plan now, so it can
4 be fully evaluated by the Coastal Commission. What we already know is not
adequate. This is too important an issue to base approvals on Edison promises of
future solutions. (PAR 144)

5 IV. CONCLUSION

6 Those who have become familiar with the fact that SCE deployed the steam generators
7 knowing of their risk of failure due to defective tube design have come to learn of the type of
8 thinking SCE and its regulators adopted. The attitude was a combination of ‘lets minimize the
9 problem,’ ‘we will still get paid if it materializes,’ and ‘we will deal with the fallout when it
10 happens.’ This is exactly what happened with the failed steam generators at San Onofre. SCE is
11 charging ratepayers for the electricity the defunct plant was *supposed to be* generating. In the
12 case of the nuclear waste storage the Coastal Commission is letting SCE store at the beach, much
13 more than money is at stake.. For these reasons, and to protect this and future generations of the
14 People of San Diego and Orange Counties, Petitioners respectfully request the Court issue the
15 writ of mandamus and set aside the permit allowing SCE to plant its radioactive nuclear waste on
16 San Diego’s shoreline.

17 AGUIRRE & SEVERSON, LLP

18
19 Dated: June 8, 2016

20 /s/Michael J. Aguirre
21 Michael J. Aguirre, Esq.,
22 Attorneys for Petitioners
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