

**Statement Submitted  
By  
City of Anaheim**

Pursuant to Section 6.2.4 of the Second Amended San Onofre Operating Agreement (the "OA"), the City of Anaheim (Anaheim), as one of the Minority Owners of the San Onofre Nuclear Generating Station ("SONGS"), hereby submits to the Board of Review ("BOR") the following position statement respecting a dispute that exists between Southern California Edison Company ("SCE") and Anaheim as a Minority Owner concerning whether SCE's proposed 2004 SONGS Operation & Maintenance Budget and 2004 SONGS Capital Budget submitted to the BOR on January 23, 2004 should be rejected, and whether Steam Generator degradation represents an Operating Impairment as defined in the OA.

SCE proposes to file at the California Public Utilities Commission ("CPUC") an application seeking approval for the SONGS Units 2 and 3 steam generator replacement project ("SGR") and rate recovery for associated costs without the BOR's approval for this project to go forward. If carried out, this action would constitute an improper attempt to subvert the budgetary approval and dispute resolution processes contemplated by the OA involving a significant financial commitment by the SONGS Units 2 and 3 owners. Further, if SCE proceeds with this rate recovery application without the BOR's approval for the SGR project to go forward, it will be contrary to Anaheim's stated intent, as recorded in the BOR minutes, that the BOR's unanimous approval for SCE to obtain a license extension to 2022 before the Nuclear Regulatory Commission ("NRC") did not constitute either an express or implied approval that SONGS Units 2 and 3 should continue to operate beyond the original NRC license termination date of 2013.

SCE's proposed rate recovery filing may compel Anaheim to oppose the SGR project before the CPUC because SCE has failed to utilize the contractually contemplated means of addressing whether this substantial capital project should go forward. SCE's unilateral filing of such an application constitutes a partial material breach of the OA in that it will frustrate and subvert Anaheim's contractual rights to decide through the BOR whether this immense project is appropriate before the matter is taken to the CPUC for its determination as to whether and to what extent the costs of the SGR are to be recoverable by SCE and SDG&E as electrical corporations subject to the CPUC's jurisdiction.

SCE's premature regulatory plan improperly attempts to avoid SCE's unconditional obligation under the OA to obtain BOR approval of the SGR project and to circumvent the dispute resolution procedures that the parties contemplated when they signed the OA. SCE's act of filing an application with the CPUC for SGR rate recovery without BOR approval of the SGR project would also represent a breach of the implied covenant of good faith and fair dealing, pursuant to which SCE has a duty to perform its obligations under the OA in good faith and not to take actions detrimental to Anaheim's contractual rights.

If SCE proceeds with its regulatory plan at the CPUC and the CPUC approves this project over Anaheim's objections, the City would not be bound by such a decision because it is not subject to the CPUC's jurisdiction. Approval of the City's budget and rate making applicable to SONGS is solely vested in the Anaheim City Council. As a result, the City would be within its contractual rights to refuse to approve the SGR project and associated budgets. The SONGS owners would then be contractually obligated to litigate before an arbitrator whether this project should go forward. This outcome demonstrates

that SCE's effort to place BOR approval of the project, including the approval of any associated budget, before the CPUC prematurely will result in a waste of valuable time and resources of the SONGS owners, intervenors, the CPUC staff, and the CPUC itself through a premature application process.

The additional question of whether such proceedings at the CPUC were taken in bad faith in derogation of the contractual rights of Anaheim and the other Minority Owners would unnecessarily complicate any such proceedings, impose additional costs and delays, and would open those proceedings to prolonged judicial scrutiny. This is precisely what the provisions concerning the duties of the Board of Review were intended to avoid.

The City submits that the 2004 Capital Budget should not be approved because the BOR has not yet decided whether or not to proceed with the SGR project and the budget proposed by SCE does not permit the BOR to approve or disapprove SONGS capital expenditures in contravention of Section 6.1 of the OA.

The City submits that the proposed 2004 SONGS O&M Budget should not be approved unless and until such time as SGR has been brought before the BOR for its approval. SCE's proposed regulatory course of action puts the City as a Minority Owner at risk of being assessed overhead costs associated with the SGR project at some point in the future through the Administrative & General charge that SCE assesses the Minority Owners. For example, SCE might eventually attempt to assess the Minority Owners a portion of the costs associated with the preparation of SCE's proposed CPUC filing, including those associated with any retained firm and environmental assessment efforts. With respect to the issue of Operating Impairment, it is the position of the City that

degradation of the existing steam generators represents an Operating Impairment as defined in the OA in that the degradation of the steam generators in Units 2 and 3 constitute an unplanned event or circumstance that has the reasonably anticipated effect of reducing the Maximum Dependable Capacity as that term is used in the OA, the reliability, or both, of one or more of the units.