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6 SAN DIEGO GAS & ELECTRIC COMPANY

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

9 CENTRAL DIVISION

10
11 SAN DIEGO GAS & ELECTRIC COMPANY,

12 Plaintiff,

13 v.

14 SOUTHERN CALIFORNIA EDISON
15 COMPANY, and DOES 1-30, inclusive,

16 Defendants.
17
18
19

Case No:

G/C 828441

20
21 **VERIFIED COMPLAINT FOR
22 DECLARATORY RELIEF**

23 Plaintiff SAN DIEGO GAS & ELECTRIC COMPANY ("SDG&E") brings this action against
24 defendant SOUTHERN CALIFORNIA EDISON COMPANY ("Defendant" or "EDISON") seeking
25 declaratory relief and complains and alleges as follows:

26 **INTRODUCTION**

27 1. EDISON, SDG&E, the City of Anaheim, and the City of Riverside together jointly
28 own San Onofre Nuclear Generating Station ("SONGS") Units 2 and 3. EDISON operates SONGS
Units 2 and 3 on behalf of all of the owners.

2. EDISON and SDG&E together jointly own SONGS Unit 1, which began operating in

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1 1968 and was permanently shut down in 1992.

2 3. SONGS Units 2 and 3 began operating in 1983 and 1984, respectively. SONGS Units
3 2 and 3 use steam generators to convert heat from each Unit's nuclear reactor into steam for the
4 production of electricity. These steam generators had an original life expectancy of 40 years.
5 SONGS Units 2 and 3 were not designed with an expectation that these steam generators would need
6 to be replaced during this life expectancy period. EDISON, for example, stated in its February 22,
7 2000 application to the Nuclear Regulatory Commission for extension of the SONGS Units 2 and 3
8 operating licenses from 2013 to 2022 that "SONGS Units 2 and 3 were designed, licensed and
9 constructed for 40 years of operation..."

10 4. On August 5, 1993, EDISON first notified the SONGS Units 2 and 3 co-owners that
11 the steam generators had begun to deteriorate at a faster than expected rate. Over time, this
12 deterioration has reduced both the reliability of SONGS Units 2 and 3 and the electrical output of
13 SONGS Units 2 and 3. Future deterioration will further reduce both reliability and output over time.

14 5. EDISON now proposes to begin replacing the SONGS Units 2 and 3 steam generators.
15 In its February 27, 2004 filing with the California Public Utilities Commission ("CPUC"), EDISON
16 estimated that replacing both steam generators will cost \$680 million and asked the CPUC for
17 approval by September 2004 to spend up to \$50 million towards replacement steam generator
18 fabrication and other costs. EDISON has subsequently stated that the \$680 million figure does not
19 include approximately \$133 million in project financing costs, bringing the total project price tag as
20 estimated by EDISON to \$813 million.

21 6. The rights and responsibilities of the owners are set forth in the Second Amended San
22 Onofre Operating Agreement (the "Agreement"). The Agreement states that if an unplanned event or
23 circumstance has the reasonably anticipated effect of reducing either the reliability of one or both of
24 SONGS Units 2 and 3 or the electrical output of one or both of SONGS Units 2 and 3 below a level
25 known as the "Maximum Dependable Capacity," then an "Operating Impairment" will be deemed to
26 exist, triggering certain contractual terms and conditions including cost-sharing provisions. If an
27 Operating Impairment exists, SDG&E could elect not to participate in replacing the steam generators
28 as EDISON has proposed in exchange for a reduction in SDG&E's ownership share of SONGS Units

1 2 and 3.

2 7. EDISON has to date refused to declare the deterioration of the SONGS Units 2 and 3
3 steam generators to be an Operating Impairment under the terms of the Agreement.

4 8. SDG&E brings this action to obtain a judicial determination that the deterioration of
5 the SONGS Units 2 and 3 steam generators constitutes an Operating Impairment.

6 **JURISDICTION AND VENUE**

7 9. Defendant is subject to the jurisdiction of this Court by virtue of entering into a
8 contract to operate a nuclear electricity generating station in San Diego County, California.

9 10. Venue is proper in San Diego County Superior Court in that San Diego County is the
10 county in which the contract at issue was to be performed pursuant to Code of Civil Procedure §
11 395(a).

12 **THE PARTIES**

13 11. SDG&E is a California corporation with its principal place of business in San Diego,
14 California.

15 12. EDISON is a California corporation with its principal place of business in Rosemead,
16 California.

17 **CAUSE OF ACTION**

18 (Declaratory Relief)

19 13. SDG&E incorporates each and every allegation set forth in the preceding paragraphs
20 as though fully set forth herein.

21 14. On February 26, 1987, Plaintiff, Defendant, the City of Anaheim, and the City of
22 Riverside entered into an agreement entitled the Second Amended San Onofre Operating Agreement
23 (the "Agreement") to operate the San Onofre Nuclear Generating Station ("SONGS") Units 2 and 3 in
24 the northwest corner of the Marine Corps Base at Camp Pendleton, California. A copy of the
25 Agreement, without exhibits, is attached as Exhibit A.

26 15. Section 4.25 of the Agreement defines an "Operating Impairment" as "[a]ny
27 unplanned event or circumstance...which at the time of such event or circumstance either reduces, or
28 has the reasonably anticipated effect of reducing, the Maximum Dependable Capacity (Net), the

1 reliability, or both, of one or more Units.”

2 16. The relevant “Units” here are SONGS “Unit 2,” which the Agreement defines as the
3 “second nuclear generating unit at SONGS having at the effective date of this Agreement a Maximum
4 Dependable Capacity (Net) of 1,070 megawatts...,” and SONGS “Unit 3,” which the Agreement
5 defines as the “third nuclear generating unit at SONGS having at the effective date of this Agreement
6 a Maximum Dependable Capacity (Net) of 1,080 megawatts...”

7 17. The Agreement defines “Maximum Dependable Capacity (Net)” as the “gross
8 electrical output of a Unit as measured at the output terminals of the turbine generator during the most
9 restrictive seasonal conditions (usually summer) less the normal station service loads for such
10 Unit...”

11 18. SONGS Units 2 and 3 are each equipped with two steam generators that utilize
12 nuclear reactor heat to produce high-pressure steam. The steam drives large turbine-generators to
13 produce electric power. The steam generators also serve as a barrier between the radioactive reactor
14 coolant system and the non-radioactive steam system. As such, their reliability is of vital importance
15 to the safe operation of SONGS Units 2 and 3. These steam generators have deteriorated to the point
16 that the Maximum Dependable Capacity (Net) and/or reliability have been or can reasonably be
17 anticipated to be reduced in both units. Indeed, EDISON itself in its February 27, 2004 CPUC filing
18 states that as a result of steam generator degradation, there is a 25 percent probability that Unit 2 and
19 a 15 percent probability that Unit 3 will not be able to operate beyond the “Fuel Cycle 16 Refueling
20 and Maintenance Outage,” which, according to EDISON, could occur as early as 2009.

21 19. An actual controversy has risen between the parties in that: (a) EDISON takes the
22 position that no Operating Impairment exists here and has already taken steps to move forward with
23 its proposed \$813 million steam generator replacement project; and (b) SDG&E takes the position
24 that an Operating Impairment does exist here, triggering the procedures in Section 16 of the
25 Operating Agreement in which SDG&E has the right not to participate in paying for EDISON’s
26 proposed project in exchange for a reduction in SDG&E’s ownership interest in SONGS Units 2 and
27 3.

28 20. In addition to requesting that the Court declare an Operating Impairment, SDG&E also

1 requests that this Court determine the appropriate reduction in SDG&E's ownership interest under
2 Section 16.3 of the Operating Agreement if SDG&E elects not to participate in the replacement of the
3 Units 2 and 3 steam generators.

4 21. A judicial declaration is necessary and appropriate under the terms of the Operating
5 Agreement.

6 **PRAYER FOR RELIEF**

7 22. For a declaration that an Operating Impairment exists under the Agreement with
8 respect to the deterioration of the SONGS Units 2 and 3 steam generators.

9 23. For a declaration as to the appropriate reduction in SDG&E's ownership interest in
10 SONGS Units 2 and 3 under Section 16.3 of the Operating Agreement.

11 24. For costs of suit herein, including attorney's fees, to the extent allowed by law; and for
12 such other and further relief as the Court deems just and proper.

13
14 DATED: April 14, 2004

OFFICE OF THE GENERAL COUNSEL
James F. Walsh
Robert J. Borthwick

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16
17 By



ROBERT J. BORTHWICK
Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

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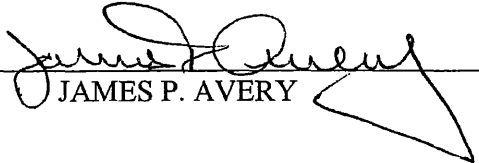
VERIFICATION

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN DIEGO)

I, the undersigned, certify and declare that I have read the foregoing Complaint and know its contents. I am an officer of San Diego Gas and Electric Company, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the document above are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 13th day of April, 2004, at San Diego, California.


JAMES P. AVERY